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ASSISTANT PUBLIC DEFENDERS

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August 14, 2019

***Via First Class Mail and  
Electronic Mail***

Hon. Telford E. Forgety, Chancellor  
Post Office Box 1370  
Dandridge, Tennessee. 37725-1370

Dear Chancellor Forgety:

Accompanying this letter, you will find the caseload and personnel information I have received from the District Public Defenders Conference. This data is being presented as I have received it. Also included is a spreadsheet my office prepared. The spreadsheet includes information comparing the staffing levels in each Public Defender's office to the population contained within each district, as well as a comparison of each district's poverty rate.

**I. CASELOAD DATA**

In reviewing caseload data, it is important to keep in mind that it is not, nor was it ever intended to be, a weighted caseload study. It is not a time management study. The data suffers from the same limitations that all the case information that we are reviewing suffer from. It is a snapshot of a defined time period in the past. It does not, and cannot, make any predictions of future expected caseloads. The data compiled by the Public Defenders Conference is also subject to the same difficulties associated with the compilation of data by the Administrative Office of the Court. That is, the data is only as good and accurate as the person who is inputting the data.

Our Conference's data collection methodology also requires explanation. The caseload numbers represent charges, not number of cases. The Public Defenders Conference concluded that because clients are often charged with multiple crimes in the same case, merely reciting the number of cases an office handles does not sufficiently reflect the workload of each office.

As an example, John Doe is charged with aggravated stalking. This would represent one charge. If John Doe is also charged in the same indictment with unlawful carrying or possession of a firearm during the same incident, that would result in two charges under methodology employed by the Public Defenders Conference, though only one case had actually been filed by the State.

In another example, John Doe is charged with aggravated stalking, on four separate occasions on four separate dates, but all are contained in the same charging instrument. Under the methodology used by the Public Defenders Conference, this is counted as four charges, again despite all four being charged in one filing.

There are limitations associated with this methodology. The severity of the charged offenses is not accounted for. A charge of first degree murder carries the same numerical value as a public intoxication charge. A consideration of lesser importance is that there is no accounting for lesser included offenses.

Finally, the data is incomplete. The Hamilton County, Knox County, Davidson County, and Shelby County Public Defender offices maintain their own caseload information. The Conference does not readily have access to this data, and so I am unable to provide it to you.

## **II. DATA REGARDING NUMBER OF ASSISTANT PUBLIC DEFENDERS**

Information regarding the staffing levels of each Public Defender's office also requires explanation. First, the Public Defender's offices in Davidson and Shelby Counties are treated separately by statute, since they predate the creation of our statewide public defender system in 1989. Created in 1917, the Shelby County Defender's office was one of the first public defender offices in the United States; the office in Davidson County dates to 1961. The majority of the funding for both the Davidson and Shelby County offices comes from their respective counties. Both offices receive an appropriation from the State. In this fiscal year's state budget, Shelby County will receive \$5,575,000.00, and Davidson County \$2,436,800.00. The amount of State funding is governed by TENN. CODE ANN. § 8-14-110. All of these offices' employees are county, not state, employees. The number of employees and their salaries are determined by their county legislative bodies.

The remaining twenty-nine Public Defender's offices were created by statute in 1989. Funding for these offices comes from three sources: the State, counties, and what are referred to as \$12.50 funds. State and County funding are the easiest to explain. All twenty-nine offices are State funded. Some offices, but not all, receive some additional funding from their counties. A few counties, Knox and Hamilton for example, fund Assistant Public Defenders and support staff. In both of these circumstances, the county funded Assistant Public Defenders and support staff are county employees.

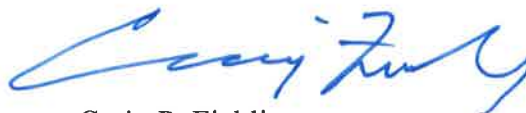
Pursuant to TENN. CODE ANN. § 40-14-210, each county may impose a \$12.50 cost on any misdemeanor or felony case. These funds are to be used to defray the costs of indigent defense. They can only be imposed if approved by two-thirds vote of the county legislative body. The funds are for the use of the county's District Public Defender's office. As with county funding, some Public Defender's offices, but not all, receive \$12.50 funds. For example, my district, the 13<sup>th</sup> Judicial District, receives \$12.50 funds from two counties, Putnam and Overton. These funds are insufficient to cover the cost associated with employing an Assistant Public Defender. They are instead used to fund a full-time secretary. The remaining funds are used for attorney training and other things that aid indigent defense (we purchase medical textbooks and legal treatises). Other districts generate enough \$12.50 revenue to fund the salaries of Assistant Public Defenders. Any employee whose position is funded through 12.50 funds is a State employee, and is entitled to receive all State benefits.

### III. POPULATION SPREADSHEET

One of the assistants in my office has prepared a spreadsheet that compares the number of Assistant Public Defenders to the population of their districts. I believe the spreadsheet is straight forward. This spreadsheet takes into account the poverty rates and the population living under the federal poverty line in each district, even though the Task Force has not designated poverty as one of the considerations for our deliberations. As I explained at our last meeting, I am of the opinion that the poverty rate of a county has an impact on Public Defenders' caseloads. I realize that this is a lesser concern of both the bench and our colleagues in the District Attorney General's Conference. As we consider potential judicial realignment and how that will affect a Public Defender's Office, I believe it is important that we take into account the counties' poverty levels.

I hope this information is useful. If you or any member of the Task Force should have any questions, please feel free to give me a call.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Craig P. Fickling".

Craig P. Fickling  
District Public Defender

CPF/tm

cc: Redistricting Task Force Members  
Patrick Frogge