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POSITION ON PROPOSED LEGISLATION

BILL: SB 255 - State Personnel Management System – Office of the Public Defender – Placement and Collective Bargaining

FROM: Michael Beach, Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/8/2022

My name is Michael Beach, and I am OPD's Director of Strategic Litigation and Law Reform. Until October of last year, I was the District Public Defender for Calvert, Charles, and St. Mary's Counties. I had the privilege of serving as District Public Defender for 7 ½ years and was the Deputy District Public Defender for two years before that. I have been with OPD for 18 ½ years, but I was not always a public defender. For six years after law school, I was a judicial law clerk, worked at a large law firm, and was a graduate teaching fellow at Georgetown University Law Center.

In 2003, I found my true calling and began working for the Maryland Office of the Public Defender, and I have never looked back. Over 18 ½ years, I have seen this agency transform itself into the biggest and best law firm in the state – it pioneered death penalty defense and celebrated the end of the death penalty in Maryland. It created and sustained an unparalleled team of juvenile defenders and integrated social work services. It has created a recruiting and training program that attracts the best talent from coast to coast. I have watched it become one of the finest public defender systems in the country.

Of course, we can always get better, but this bill undercuts so much of what has brought us to where we are today. The complaints you may hear about caseloads and turnover are not unique to the Maryland Office of Public Defender. Even states like Minnesota and New York, whose attorneys are unionized, face the same issues, as mentioned in the attached two articles:

- "Minnesota's public defense system seeing an exodus of attorneys," January 11, 2022 (Minnesota Assistant Public Defenders Union, Teamsters Local 320):

<https://www.twincities.com/2022/01/11/minnesotas-public-defense-system-seeing-exodus-of-attorneys-over-low-pay-high-caseloads/>

- "Low pay for public defenders seen as threat to justice," October 29, 2018 (pre-pandemic). "Office is suffering from a crisis of attrition and facing difficulty recruiting new lawyers." (Association of Legal Aid Attorneys (NY) UAW Local 2325):

<https://citylimits.org/2018/10/29/low-pay-for-public-defenders-and-prosecutors-seen-as-threat-to-justice/>

I love the clients we serve. They inspire us daily, even though we often find them at what is the lowest moment in their lives. My colleagues inspire me every day too – all the wonderful lawyers and core staff I’ve been lucky enough to work with since 2003. I’ve also had the unique privilege to supervise the newest generation of public defenders over the past several years. I’ve found myself learning far more from them than they have learned from me. That’s because OPD has had the flexibility to hire, promote and retain the top law students and attorneys, who are also singularly dedicated to our mission. That will change under this bill. That is a bad thing for our agency and a bad thing for the justice system as a whole.

First, this bill amends the Public Defender statute to allow assistant public defenders to engage in the private practice of criminal law. This is a grave mistake and drastic change in the law, our culture, and our history -- public defenders have been prohibited from engaging in the private practice of criminal law from the very beginning of the agency. The criminal justice system disproportionately impacts poor people and people of color. We, as an agency, cannot live up to our mission and our ethical duty of loyalty to our clients while moonlighting in the private sector. Our caseloads are too large, our time is too limited, and our loyalties must be undivided.

Second, under this bill, we will no longer be able to hire the best law students, like some of my amazing colleagues in Southern Maryland to whom we extended job offers while they were still in law school. Putting public defenders under the State Personnel Management System (SPMS) will forbid us from offering jobs to third-year law students before they pass the bar, putting us at a huge disadvantage to other offices competing for this limited and unique talent pool. This will be damaging to our mission. As District Public Defender, I have personally experienced the challenges of hiring through the SPMS, which is already used for our core staff. Its slow processes and prioritization of hiring factors detached from our mission won’t translate well at all into public defender hiring. To advance our unique role in the criminal justice system, people who want to be public defenders as a calling should get the same shot at working with us as do others with qualifying state employment experience who may be looking for another government job. Of course, state employees should get a fair shot if they believe in our mission, but they should not get a leg up on everyone else.

Third, this bill will remove our current flexibility to promote the best and brightest. We have been able to advance younger attorneys who show exceptional promise, providing them felony cases and jury trial experience at a very early stage in their careers. This improves morale and retention. Our flexibility in recruiting, hiring, and promotion has also promoted DEI priorities in our personnel actions, and the agency has become more and more diverse over my time at OPD. This bill will result in seniority prevailing over talent and DEI priorities, it will open the door to grievances over perceived unfairness in case assignments and other job conditions -- all of which will distract from our daily work, and could even result in disputes between attorneys and clients being aired in administrative hearings over job performance, implicating sacred client privileges.

Fourth, as detailed in the testimony provided by OPD's Chief Human Resources Officer, Cynthia Knight, OPD rarely terminates attorneys and limits termination to the most exceptional circumstances. I can attest to this from personal experience, having requested termination only twice during my nine years in leadership in Southern Maryland (and not at all for more than three years). In both instances, our clients were being seriously hurt, and the attorneys were given ample opportunities to turn things around. I have also seen firsthand how lengthy and convoluted the termination process is for administrative professionals under SPMS. Being forced to keep the rare attorney who is providing incompetent or unethical representation for a year or more while the disciplinary process plays out, means, by necessity, that the attorney must continue appearing in court, resulting in significant post-conviction issues and disproportionate harm to poor people and people of color. This is something unique to our agency because of how frequently we must be in court and must engage in direct client representation. Termination is always a last resort, but a lack of flexibility in dealing with the very rare attorney who is hurting our clients will undermine our unique mission and make the harm to our clients worse.

I have been blessed in my years at OPD, particularly my time in leadership. I am a personal witness to some of the great things about our agency that this bill will take away. Being able to hire and supervise a young and diverse cadre of attorneys and watch them try and win cases in front of a jury within a year of being hired is inspiring. Watching attorneys try and win serious felony cases for clients facing life in prison within just a few years of being hired is extraordinary. Being able to hire, supervise, and learn from the best and most dedicated public defenders in the country as they fight for the dignity of people our criminal justice system has often neglected, mistreated, or ignored – be it in juvenile court, at trial, at sentencing, or post-conviction -- makes this a rewarding and purposeful career.

I think I have the best job there is. I love this agency, and it has come so far. I urge you not to advance a bill that undoes so much progress.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB0255.

Submitted by: Maryland Office of the Public Defender.

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