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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: Cynthia Knight, Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/8/2022

As the Chief Human Resources Officer for the Office of the Public Defender, I respectfully request that the Committee issue an unfavorable report on Senate Bill 255. SB 255 seeks to place our Special Appointment attorneys in the merit system.

The Office of the Public Defender is a law firm. At its inception, the framers of our agency were sensitive to this distinction and ensured we were not set up as a typical state agency.

The 1992 ABA report: Ten Principles of a Public Defense Delivery System reinforces our structure when it wrote:

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.

The OPD and the Attorney General's office meet those clear guidelines by maintaining the existing arrangement.

Furthermore, the Office of the Public Defender was established as an independent agency designed to be free from outside and political influence to solely focus on advocacy for our clients. For fifty years, we

have been a national model for the effective delivery of indigent defense services. We have pioneered models for effective death penalty defense, juvenile representation, integration of social work services, and attorney training. The Special Appointment designation allows for our Public Defenders to advocate for clients in the most flexible and proactive way possible.

There have been statements made that misrepresent the Special Appointment designation. I would like to offer clarification: Special Appointments are “at-will” employees who follow the same hiring and disciplinary appeals processes as Executive Service and Management Service positions. Special Appointments have all the rights and privileges of regular State Employees. They are annually evaluated by the PEP process, contribute to the robust pension system for retirement benefits, and are not subject to an annual reevaluation of their job as contractual employees are.

This bill will also substantially change our ability to recruit and hire incoming attorneys. By statute, an attorney must be admitted to practice law in the State by the Court of Appeals of Maryland to be an Assistant Public Defender. If only qualified candidates could be considered for attorney positions, we would be required to end our current practice of extending contingent offers to candidates awaiting bar admission, thereby eliminating recruitment of law students, recent law school graduates, as well as out of state lawyers. The impact would be extreme. For example, ending the practice would mean that recent law school graduates would need to wait at least six months to apply to an entry-level position to OPD. In today’s labor market, that would be devastating to our recruitment efforts. And that is just one example. It cannot be stressed enough how heavily we rely on bar contingent offers to recruit the committed and capable attorneys our clients deserve.

Because of the importance of their work, Assistant Public Defenders deserve the flexibility in advancements and promotions that Special Appointment allows. A promising young district court attorney can participate in felony trial cases sooner than the merit system will allow; leadership positions can be selected based on skill and commitment to clients rather than seniority, and transfers can swiftly be executed to accommodate individual attorney lifestyles and overall client needs. As I have repeatedly said, converting assistant public defenders to professional service provides merit protections for underperforming attorneys, but is a demotion in opportunities for rising stars.

The merit system would require a rigid advancement structure that shifts priorities away from our client-centered values and obligations. An attorney who is not well suited for felony trial work should not be representing felony clients at trial merely because they have seniority in state employment.

The Office of the Public Defender proudly employs 561 attorneys:

- 209 of whom have the distinction of being long-term attorneys.
- 110 have served faithfully for more than ten years;
- 74 have served 20 years, and
- 25 attorneys have 30 years of service or more.

From January 1, 2020 through March 1, 2022:

- 56 employees submitted for retirement:
- 16 retired with 20 years or more of service;
- 19 retired with 30 years;
- 8 retired with 40 years or more; and we had
- 1 employee who retired with 50 years of service.

OPD has proven itself as a place where attorneys called to this mission can have a long-term career.

Our current disciplinary process is used sparingly and in only the most extreme situations. Over the past three years, we have had only (3) three attorney terminations, and (3) three core staff terminations. Over the span of 10 years, we have had 42 terminations, 29.5 on which were attorney positions.

Being a Public Defender is a difficult job with long hours and unique circumstances. You will often hear our attorneys say “being a public defender is not a job it’s a calling.” Please allow us to nurture that calling in an appropriate and effective manner by retaining the broad flexibility that the framers of the Office of the Public Defender outlined and implemented.

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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