

**OFFICE OF THE DEFENDER GENERAL
FY 2015 BUDGET ADJUSTMENT PLAN
January, 2015**

Pursuant to Administration Memorandum, dated November 26, 2014, we are submitting the following, detailing the plan to address a second General Fund reduction assessed to the Office of the Defender General by the Agency of Administration.

In the short term, these proposed measures will achieve the desired General Fund savings without permanently impacting the ability of the ODG to provide constitutionally required services. Also, these measures do not require a revision of our recently-negotiated collective bargaining agreement with the VSEA-ODG Bargaining Unit, nor will they upset the balance of pay equity finally achieved with State's Attorneys after 38 years of gross pay disparity.

In the long term, if the impact of this reduction is not mitigated in future budget years, there will be a significant negative impact on the ODG's ability to accomplish the statutorily defined and constitutionally mandated mission. That having been said, the ODG will make substantial efforts to accomplish its mission within the confines of the reduced General Fund amount for FY 2015.

**SUMMARY OF PROPOSED REDUCTIONS INCLUDING
MANAGEMENT SAVINGS**

Item	Management Savings	Budget Adjustment	Total
Eliminate Appellate, Training & Litigation Support Contract (5 months)	17,500		17,500
Hold retiring Addison attorney position open 5 months		45,000	45,000
Reduce Franklin attorney to 3 days/week remainder FY	4,335	15,665	20,000
Eliminate Family Support Project (6 months)		50,000	50,000
Eliminate 1 day of mini-trial school training		3,500	3,500
Eliminate 1 day of criminal defense training		9,000	9,000
Eliminate out-of-state training	4,271	3,729	8,000
Reduce Cleaning to bi-weekly	4,000		4,000
Eliminate out-of-state travel		6,000	6,000
Eliminate Senior 1 FTE Chittenden attorney ½ yr.		63,176	63,176
Totals	30,106	196,070	226,176

IMPACT BEYOND FY 2015

STAFF ATTORNEY REDUCTIONS: (\$128,176)

Given our current staffing levels, these reductions will have a significant impact long term on services provided, primarily manifesting itself in a slowdown in the criminal process. This can be best understood by considering that in a given year 1 FTE attorney is expected to be able to handle 400 added misdemeanors, or 150 added felonies, or 200 added other (Violations of Probation or Prisoners' Rights or Juvenile cases) cases, or a weighted combination of the three. The rescission reduction of approximately 2.4 attorney positions will delay the handling of a minimum of 960 misdemeanors, or 360 felonies, or 480 other cases (primarily juvenile and/or probation violation cases), or a weighted, proportional combination of the three, for a year. This will cause a bottleneck in the criminal justice system, resulting in a slowdown in the litigation and resolution of all cases across the system.

This reduction in staffing will increase our overall understaffing based upon ABA Caseload Standards. In the long term, or if caseload spikes due to increased law enforcement activity or resourcing, there is a greater likelihood of cases being dismissed resulting from inability to comply with Brillon speedy trial rights. There is a possibility of cases being reversed for ineffective assistance of counsel. There is a possibility of cases being dismissed as result of our inability to manage the caseload. And, most importantly, there is a possibility of truly innocent people being convicted because, in a particular case, we are unable to perform our constitutionally mandated service.

Recall from our FY 2015 Budget Narrative that one of the prime measures of the demand for defense services is the number of added clients during a fiscal year. Public defenders routinely represent significantly more clients than is recommended under guidelines developed in 1973 to assure competent representation by the National Advisory Commission on Criminal Justice Standards and Goals. For many years, the ODG has utilized this LEC formula as a measure of the workload of its staff. The most significant caseload increases through the first quarter of FY 2014 were Public Defense added felony clients with a 9.8% increase, and added miscellaneous clients (primarily probation violations) with a 15% increase over first quarter FY 2013. This follows a 5.2% increase in Public Defense added felony clients and an 11.4% increase in Public Defense added miscellaneous clients during FY 2013.

ELIMINATION OF FAMILY SUPPORT PROJECT: (\$50,000)

We have chosen as part of this rescission plan to eliminate the Family Support Project from our juvenile representation. While this program has resulted in extraordinary successes by aiding families involved in CHINS proceedings who are amenable to treatment access the resources that are necessary for successful reunification with their children, this program piggy-backs upon what DCF should be doing with appropriate social work. While very successful, it is not necessarily a core mission function. It should be noted that this program has been recognized by the Vermont Chief Justice, and nationally, as innovative in the manner which it successfully pairs services with clients in need. This program was initially developed and funded out of savings from existing ODG resources with limited additional General Funds.

SUSPENSION & REDUCTION OF CERTAIN TRAINING: (\$20,500)

In the past, under similar rescission scenarios, the ODG has suspended out of state training to save on travel, lodging and tuition expenses for its attorneys. In recent years, given the increased demand for trials due to changes in the sex offender and domestic violence statutes, together with increased drug sweep activity, it was necessary to provide more comprehensive trial practice training. As a result, new attorneys were provided Vermont-based, multi-day “mini-trial” school opportunities in the spring and fall of each year; and more experienced attorneys have been provided the opportunity to get extensive advanced trial skills training out-of-state.

While the elimination of this training cannot continue long term, it is doable for FY 2015 to aid in reaching the General Fund budget amount called for by the rescission.

EFFICIENCY AND ENHANCEMENT SAVINGS: (\$27,500)

The Appellate, Training, & Litigation Support contract attorney would be eliminated, resulting in increased caseload pressure on existing staff who handle appeals and serious felony cases. Cleaning would be reduced from weekly cleaning of offices to bi-weekly cleaning. Staff may end up taking out the trash and performing other cleaning duties, which will reduce their time doing their actual jobs. Reduction in out-of-state travel would mean the Prisoners’ Rights’ Office staff will be unable to visit with Vermont prisoners and review conditions and issues in out-of-state facilities.

HEALTH CARE AND OTHER BENEFIT INCREASES

Given that the increases (and decreases) are an increase to a budgeted blended benefit rate, we will make every effort to absorb these increases within vacancy savings.

CONCLUSION:

As always, my office remains willing to do its part in response to a statewide budgetary crisis. I fear, however, that other agencies will not, thereby impacting indigent individuals’ constitutional right to counsel. Please consider that the Vermont and United States Constitutions require that the State provide indigent persons with an adequate defense. There are many other good things that the state provides that are not constitutionally required that might merit a closer fiscal look, given the catastrophic impact that any additional cuts will have on the core constitutional service that the ODG provides.