



MISSOURI STATE PUBLIC DEFENDER OFFICE OF THE DIRECTOR

August 7, 2015

The Honorable Jay Nixon
Governor of Missouri
P.O. Box 720
Jefferson City, Missouri 65102

Dear Governor Nixon:

On July 31, 2015, after a multi-year investigation, the Civil Rights Division of the United States Department of Justice released a condemning report that detailed a pattern of practice wherein the St. Louis County Family Court routinely violated the constitutional rights of poor children, particularly African-American children. This is the fourth report released in just the last 5 months that makes it undeniably clear that racial bias has metastasized throughout Missouri's criminal justice system.¹ According to the instant DOJ report, several factors contributed to the constitutional violations of children in St. Louis County, including "the staggering caseload of the sole public defender assigned to handle all indigent juvenile delinquency cases."

This finding cannot come as a shock. For years, the Missouri State Public Defender (MSPD) has warned that the rights of poor Missourians are being violated throughout the state because MSPD's resources are too few and the caseloads too high. These claims were confirmed for both juveniles and adults. In the Spring of 2013, the National Juvenile Defender Center (NJDC) released a report that declared Missouri's indigent defense system to be "in crisis" after having "endured two decades of crushing caseloads and inadequate resources to provide its mandated services." A year later, following yet another failed attempt to acquire more resources, the American Bar Association (ABA) released the results of a commissioned report using a nationally renowned accounting firm, RubinBrown, which assessed MSPD's workload data in order to draw unbiased conclusions. To facilitate this review, MSPD became the first public defender system in the country to require its attorneys to track time in five minute increments. Applying the Delphi methodology, a proven business-analysis model, the ABA Report found that MSPD did not have nearly enough resources to meet its obligations and that 291 additional attorneys were needed.

This report, which predated the DOJ report by exactly one year, proves that the resource issue is not just a St. Louis County problem - it is a Missouri problem, one that affects poor juveniles as well as poor adults. Under the ABA analysis, the attorneys in the St. Louis County office are at 265% workload capacity - which is staggering; that said, the offices throughout the rest of the state experience similar workloads: 239% capacity for the Springfield office, 254% for Jefferson City, and 254% for Farmington, to name just a few. Just as the DOJ found that the St. Louis County's juvenile caseload is nearly double the widely-

¹ *Investigation of the Ferguson Police Department*, United States Department of Justice, Civil Rights Division, March 4, 2015; *2014 Annual Report: Missouri Vehicle Stops*, Office of the Missouri Attorney General, June 1, 2015; *The Impact of Race, Gender, and Geography in Missouri Executions*, Frank R. Baumgartner, University of North Carolina at Chapel Hill, July 16, 2015; and *The Investigation of the St. Louis County Family Court*, United States Department of Justice Civil Rights Division, July 31, 2015.

accepted standard, 25 of MSPD's 33 trial offices are similarly situated, with the remaining offices so nearly equal in caseload distress that moving FTEs to mitigate the most overburdened offices would equate to reorganizing deck chairs on the Titanic.

To be frank, your office has not only failed to act in response to either the NJDC or ABA report, it made matters worse. When the legislature passed \$3.47 million to help eliminate travel in conflict cases, you vetoed the funding. When the legislature overrode your veto, you withheld the funds. And then, in the subsequent budget, you reduced MSPD funding by the same \$3.47 million that was appropriated the prior year. Candidly, your administration's lack of effort to address the problem coupled with the steps that you have personally taken to maintain the status quo leaves the impression that you are not so much uninformed as you are unconcerned. This disregard is emphasized by your administration's recent efforts to improve the State Fairgrounds at a cost of \$4 million, build the 88th state park at \$52 million, to say nothing of a new football stadium estimated to cost in excess of \$860 million. These luxuries, while appealing to some, cannot compare to the state's obligation to ensure that every Missourian, regardless of means, enjoys equal protection under the law.

Missouri's contempt for the rights of poor persons is further evident by its rank of 49 among 50 states in the amount of support provided for indigent defense. Existing caseloads coupled with abysmally low salaries for assistant public defenders create a turnover rate that exacerbates the resource issue. Given the unwillingness to provide an adequate defense for poor people, it is not surprising to me that tax payers have had to, in turn, carry the enormous financial burden of an artificially inflated prison population that continues to rise despite the opposing national trend.

Since taking office, your administration has increased the Department of Corrections' (DOC) budget by \$55 million (\$725 million in FY 2015), and that is on the heels of nearly \$100 million additional dollars DOC received since 2004. This growth has enabled Missouri to climb as high as 9th nationally in the rate at which it incarcerates its citizens, and at a cost in excess of \$20,000 per year, per person, which equates to spending hundreds of millions to house addicted and non-violent individuals year after year.

In FY 2014, MSPD's trial division alone handled more than 70,000 cases. Given our appropriation for that year, that's an average of just \$345 per case. No reasonable person can conclude that \$345 is adequate to defend someone charged with a criminal offense. If the state simply provided the resources that would enable MSPD to deliver adequate representation, it would be pennies on the dollar compared to the cost of incarcerating people, many of whom shouldn't be in prison in the first place.

Like Missouri, the State of Idaho benefitted from an independent, data-driven assessment of the workload and resources of its public defender system. And, like Missouri, a report concluded that existing funding was woefully inadequate to guarantee the constitutional rights of indigents. In response, state leaders in Idaho responded as state leaders often do when they want to create the appearance of addressing a matter - they formed a task force. Thankfully, after several years of budgetary inaction, the American Civil Liberties Union filed suit.

It is my strong preference that this ongoing and egregious matter is resolved in traditional fashion, without having to resort to the legal wrangling that will only conclude what the DOJ and ABA have told us - that the state is not meeting its obligations to its citizens under the U.S. and Missouri Constitutions. And while it is my welcome responsibility to ensure that some of the most fundamental constitutional rights remain guaranteed for indigent persons in this state, understand that I cannot fulfill my obligation without you and the Legislature fulfilling yours.

The constitutional problems cited in the DOJ's most recent report are indeed many and they should each be addressed with great urgency; however, I suggest that the state begin by following the advice of Vanita Gupta, head of DOJ's Civil Rights Division: "What immediately they could do, by way of a start, is they could add public defenders."

Therefore, I am requesting a \$10 million supplemental budget to provide adequate resources to the state's public defender system. According to a press release in March of this year, the State Budget Director announced that state revenues are up \$20 million from the prior fiscal year. In light of this, and the fact that so many millions have been set aside for new projects of leisure, I'd say the money is there.

The civil unrest that followed the events of Ferguson in 2014, which incidentally resulted in yet another scathing DOJ report, caused the state to incur about \$12 million in response costs. Ironically, and tragically, this civil unrest resulted from chronic civil rights violations experienced by some of the most vulnerable Missourians. This leads me to a rather obvious suggestion - instead of paying millions to respond to civil unrest brought about by injustice, why not simply provide the justice?

Very truly yours,



Michael Barrett
Director

cc: The Honorable Ron Richard
Senate Pro Tem Leader

The Honorable Todd Richardson
Speaker of the House

The Honorable Chris Koster
Missouri Attorney General

The Honorable Vanita Gupta
Principal Deputy Assistant Attorney General
U.S. Department of Justice - Civil Rights Division