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215 Church Street, Suite 111
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(404) 248-1777 Fax: (404) 248-1666

June 21, 2020

The Honorable Blake Tillery
Chair, Senate Appropriations Committee
109 State Capitol
Atlanta, GA 30334

The Honorable Terry England
Chair, House Appropriations Committee
245 State Capitol
Atlanta, Ga 30334

Submitted via Electronic Mail to: blake.tillery@senate.ga.gov & terry.england@house.ga.gov

Dear Chairman Tillery and Chairman England,

The Georgia Association of Criminal Defense Lawyers (GACDL) appreciates your leadership through this time of uncertainty as this unprecedented pandemic forces every state agency to make difficult budgetary decisions. This reality causes a crisis for Georgia's Public Defender System and, if adopted, the cuts in the current proposed budget will bring the system to its knees. There are several cuts to the GPDC budget that raise concern for GACDL¹, but today, we write to you with a specific concern about the proposed cuts to the Georgia Public Defender Council's (GPDC) Appellate Division. As you weigh the important budget decisions before you, GACDL writes to encourage you to be mindful of the progress Georgia has made in bringing meaning to the constitutional right to counsel, and the important ground that will be lost with the version of HB 793 currently under consideration by the conference committee.

The ability to appeal a conviction is a critical check on our criminal legal system. Through the appeals process, Georgians challenge a range of errors in their criminal cases, including prosecutorial misconduct, unlawful searches and seizures, and ineffective assistance of counsel. Georgians have a constitutional right to appellate counsel because the option of appellate review is so vital. Unfortunately, Georgians who cannot afford an appellate lawyer will see this right significantly diminished under House Bill 793, because it slashes the Appellate Division of the Georgia Public Defender Council's budget by almost \$1 million.²

As of early June 2020, GPDC's Appellate Division had 12 full-time lawyers representing Georgians in criminal appeals without the financial resources necessary for hiring an attorney. As of mid-May 2020, the Appellate Division lawyers represented over 230 incarcerated poor people throughout Georgia.³ If the funding cuts contemplated in HB 793 were to become reality on July 1, many of

¹ Such reductions include those for Opt-Out Circuit Payments (line 242.14) and experts (line 242.15) the latter of which will potentially breed ineffective representation. *See, e.g., Tezeno v. State*, 343 Ga. App 623, 808 S.E.2d 64 (2017). *See also, Darst v. State*, 323 Ga. App. 614 (2013).

² According to records obtained from GPDC, FY19 Appellate Division expense totaled just under \$2.3M.

³ According to records obtained from GPDC.

these citizens represented by GPDC's Appellate Division will likely go from having a dedicated appellate defender with access to agency support and the intellectual capital of the Division, to a part-time contract lawyer who receives a small financial benefit to take each case.⁴

Georgia's track record with underpaid contract lawyers is dismal and prompted passage of the landmark Indigent Defense Act of 2003⁵, which replaced a system heavily reliant on part-time contractor attorneys with dedicated, full-time lawyers. Moreover, the adequacy of the current Appellate Division is owed to costly litigation. *Flournoy v. Georgia, et al*, was a class-action lawsuit against the state that alleged inadequate and ineffective appellate representation for indigent Georgians. Parties to the 2011 consent decree in *Flournoy*⁶ agreed that GPDC would appoint conflict-free appellate counsel in a timely manner by implementing a revised procedure for assigning appellate representation. The decree also required the retention of seven additional full-time specialized staff attorneys in the agency's appellate division.

The funding scheme now contemplated in HB 793 will turn back the clock to a time when quality representation for the poor was luck of the draw, not the guarantee enshrined in the Georgia and United States constitutions. The GPDC Appellate Division makes real the constitutional right to effective counsel for incarcerated people challenging their convictions. It is imperative that it is fully funded.

We know you do not take lightly your role in addressing the budgetary concerns of Georgia. Similarly, we do not take lightly the devastating impact cuts to the GPDC budget would have on an already underfunded workforce. If there is anything our organization can do to be a resource to your conference committee, do not hesitate for a moment to ask. I am available to you by phone (404-351-3000) or email (lawjzimm@gmail.com) and our legislative team – Jill Travis and Mazie Lynn Causey – are available to you as well. You can reach them at 470-303-4087 and 404-414-7747, respectively.

Sincerely,



Lawrence J. Zimmerman
President

cc: Senate President Pro Tempore Butch Miller
Senate Majority Leader Mike Dugan
House Speaker Pro Tempore Jan Jones
House Majority Leader Jon Burns
Chairman Andy Welch, Appropriations Public Safety Subcommittee
Ms. Omotayo B. Alli, Esq., Executive Director, GPDC

⁴ According to the contracts used to employ such part-time lawyers, a base appeal of up to 40hr work-time results in \$2,000 pay or \$50 per hour (*exclusive* of taxes, etc.).

⁵ O.C.G.A. § 17-12-1 et. seq.

⁶ The technical duration of the *Flournoy* decree has expired, but significantly reducing the Appellate Division will create a context for a repeat experience of the infirmities it cured.