

FEDERAL PUBLIC DEFENDER

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July 20, 2023

Sent by Federal Express
(202) 224-2621

Honorable Patty Murray
Chair, Senate Committee on Appropriations
U.S. Senate
154 Russell Senate Office Building
Washington, D.C. 20510

Re: Federal Public Defender Budget Cuts

Dear Senator Murray:

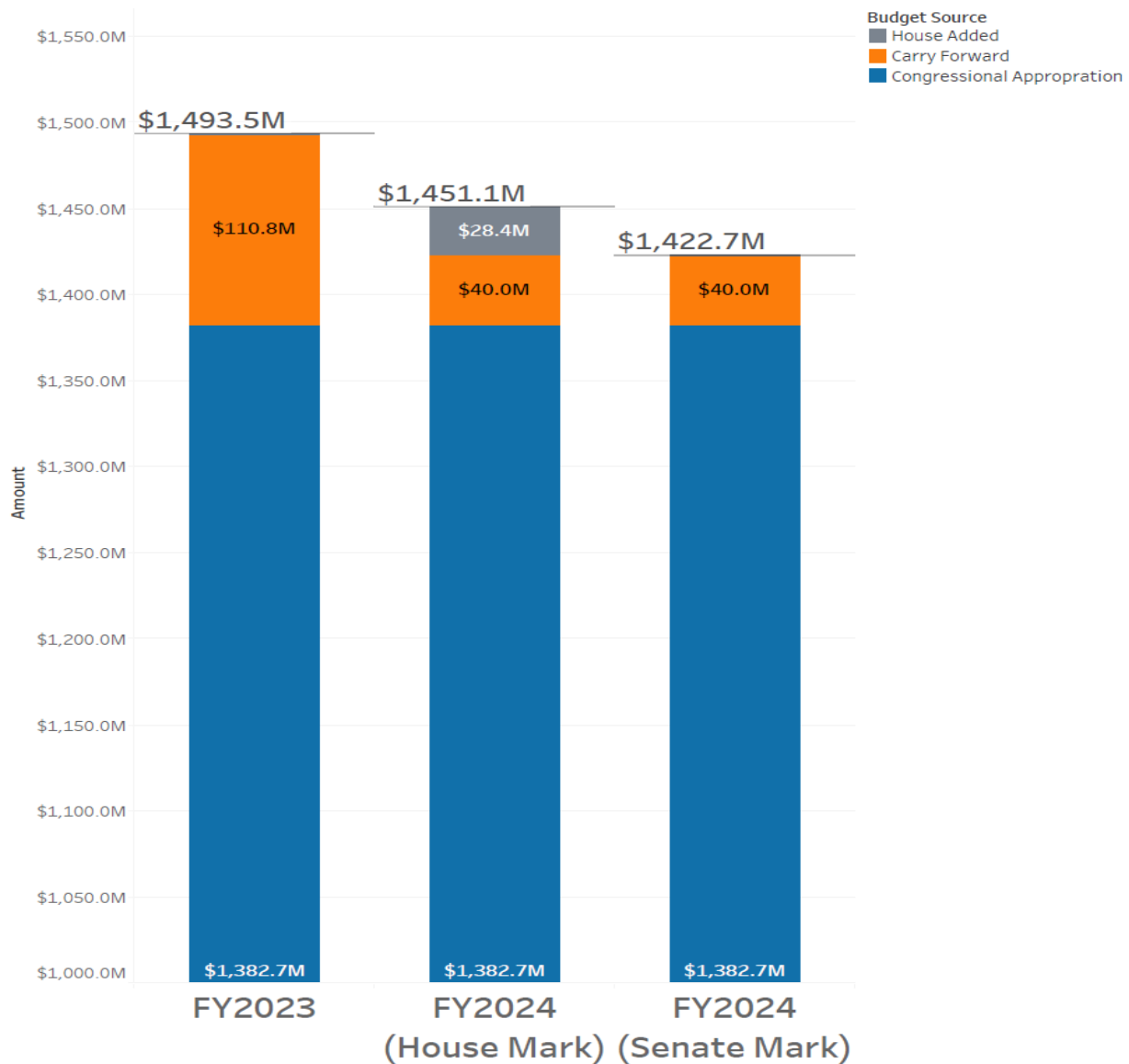
On behalf of Federal Public and Community Defenders in Washington State, we write to share our alarm over the July 13, 2023, Senate budget subcommittee mark for the Defender Services appropriation for FY 2024. Both the Senate and House marks would lead to massive cuts to federal public defender offices nationwide with devastating impacts to the clients and communities we serve. The overwhelming majority of our clients are poor and disproportionately people of color, who already face steep challenges receiving equal justice under the law regardless of wealth.

As Chair of the Senate Committee on Appropriations, you are in a unique position to help protect the most vulnerable people in the federal court system. We would be grateful for the opportunity to speak with you further about the cuts and why they would be so harmful.

The Impact of the Cuts

Under the Senate mark, our FY 2024 funding is \$70.8 million less than was provided in FY 2023 because, in setting the mark, the committee failed to take into consideration our large carryforward last year, which resulted in an artificially low appropriation in FY 2023. The House mark similarly overlooked the FY 2023 carryforward and used the appropriated funds as its starting point. Under the House appropriations mark for the federal defender program, our FY 2024 funding is \$42 million less than FY 2023.¹

¹ The Defender Services FY 2023 appropriation was \$1.38 billion. Added to this figure was a carryforward of \$110.8 million. This anomalously large carryforward was the product of the pandemic when reduced cases, trials, panel payment, and training and travel resulted in a



temporary reduction in costs within the program. These carryforward funds, combined with the appropriation, amounted to the \$1.493 billion necessary to fund our work and meet our FY 2023 obligations.

Because the appropriation for FY 2023 was offset by such a large carryforward, Defender Services' FY 2024 budget request is a \$150,300,000 increase in our FY 2023 budget. However, in crafting the federal defender program's FY 2024 budget, the Senate used the FY 2023 enacted appropriation (\$1.383 billion) as the budgetary benchmark—without accounting for the unique \$110.8 million pandemic-era carryforward (instead, the federal defender program's carryforward for FY 2024 is about \$40 million—a third of the FY 2023 carryforward). The budget subcommittee reliance on only the FY 2023 appropriation, without regard to the carryforward funds, effectively penalized Defender Services for using its carryforward to save the government money in FY 2023.

Under either mark, if this shortfall is not corrected, the Defender Services program will be devastated. The upshot of these appropriations marks is that the federal defender program could lose 493 full-time-equivalent positions (FTE), even after cutting programming such as I.T. and training. This is 12% of our onboard staff. Moreover, a recent Judicial Conference work measurement study concluded that our program needs approximately 300 FTE *more* than we currently have onboard to do our work effectively, which means the cuts will leave our program short-staffed by approximately 818 positions.

Cuts to Defender Services Are Self-Defeating

Congress created the Federal Defender program more than fifty years ago to improve the quality of representation in federal court through the establishment of Federal Defender offices staffed by public servants with expertise in federal criminal law. In accordance with that mission, we provide high-quality, efficient, and cost-effective representation for indigent defendants. In Washington State, as is the case throughout the country, more than 80% of defendants in federal court require assigned counsel because they are too poor to afford to hire a lawyer. When federal defenders have a conflict in representing a client, the case is assigned to private counsel who are paid hourly fees (attorneys from the Criminal Justice Act (“CJA”) Panel). Our offices handle thousands of criminal cases a year, and studies have shown that we do so better, and more cost effectively, than any other alternative.

Our ability to provide efficient representation comes from specialization in federal criminal law and the ability to maximize resources for the benefit of multiple clients. Furthermore, Federal Defenders have always run lean operations. For many years, we have implemented rigorous cost-containment measures in our offices, which include negotiating discounted expert fees well below market rates, using bilingual staff for interpretation needs, and limiting the replacement of needed equipment, among many other cost-saving initiatives.

The proposed budget cuts would create unmanageable workloads for Federal Defender staff. We already have significantly higher caseloads than our DOJ counterparts: in the Western District of Washington, for example, the ratio of federal prosecutors to federal public defenders is more than 4 to 1. If the cuts are implemented, Federal Defenders will need to withdraw from large resource-intensive cases and will no longer coordinate discovery in multi-defendant cases. This will further increase CJA expenses. We may have to stop participating in re-entry and diversionary courts. Those courts lower recidivism rates, improve public safety, and reduce costs from incarceration. For these reasons, impending cuts to the Federal Defender program will not only irreparably

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damage the criminal justice system, but they will also paradoxically increase the cost to taxpayers.

Cuts to Defenders Services Erode Justice

Perhaps most significantly, the cuts threaten to erode our system of justice by diminishing the quality of representation of both innocent and guilty defendants in federal court. The integrity of our adversarial judicial process is severely undermined by a defense crippled by budget cuts. We cannot conduct appropriate investigations or review terabytes of information commonly produced by cell phone and computer searches, or engage in the dozens of other necessary legal tasks, without sufficient staffing. And when we are unable to do our jobs properly, our clients, their families, and their communities justifiably lose faith in the justice system.

There is no better, more efficient way for the federal government to meet its constitutional responsibility to provide effective assistance of counsel than through the Federal Public Defender program. This is why the impending budgetary decimation of this program makes no sense.

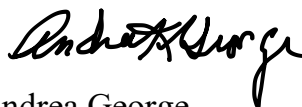
Sixty years ago, in *Gideon v. Wainwright*, the Supreme Court recognized that everyone accused of a crime has a constitutional right to the assistance of counsel to defend their rights and liberty. The federal defender program's constitutional mission is to discharge the promise of *Gideon*: to fulfill the constitutional obligation to provide a zealous defense against government charges even to those who cannot afford to hire a lawyer. We cannot carry out our mission if funding is not provided.

Thank you for your attention to this vital matter. We would greatly appreciate the opportunity to speak with you or your staff about the impending crisis and ways to avert it.

Respectfully,



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