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Patrick Moran - President

### Testimony

#### HB 1277 - State Personnel Management System - Office of the Public Defender – Placement Favorable

AFSCME Council 3 supports HB 1277. This legislation addresses the large number of “at-will” state employees in the Office of the Public Defender (OPD). HB 1277 would provide that assistant public defenders who would otherwise be described as “professional service” under the State Personnel Management System (SPMS) be removed from the category of “special appointee.”

Under State Personnel Law, a “Special Appointee” is described under §6-405 in SPP as:

- (1) a position to which an individual is directly appointed by the Governor by an appointment that is not provided for by the Maryland Constitution;
- (2) a position to which an individual is directly appointed by the Board of Public Works;
- (3) as determined by the Secretary, a position which performs a significant policy role or provides direct support to a member of the executive service;
- (4) a position that is assigned to the Government House;
- (5) a position that is assigned to the Governor's Office; and
- (6) any other position that is specified by law to be a special appointment.

The employees that this bill addresses fit in #6. While there may be reasons for the other 5 types of employees to be “special appointees”, it is hard to find one for the assistant public defenders.

There are roughly 425 assistant public defenders in Maryland, all of whom are categorized as at-will “special appointees.” This means that they can be terminated at any time, and for no reason or regard for their job performance. When the Office of the Public Defender was first formed in the 1970s, it was staffed with contractual, part-time attorneys who did public defense in addition to their private careers. This position has since evolved and today the line attorneys are full-time, permanent employees. Similarly situated state employees with professional licenses and advanced degrees fall under the “professional service” category under the SPMS; including psychologists in other state agencies or social workers in the OPD who all already have merit status. It is also worth noting that in 1992, the American Bar Association (ABA) recommended in their *10 principles of Public Defense Delivery Systems* publication that,

“Selection of the chief defender and staff should be made on the basis of merit. The chief defender should be appointed for a fixed term of years and be subject to renewal. Neither the chief defender nor staff should be removed except upon a showing of good cause.”

The ABA went on to provide further commentary, stating:

“Selection of the Chief Defender and staff should not be based on political considerations or any other factors unrelated to the ability of persons to discharge their employment obligations. Hiring and promotions should be based on merit and the defender program should encourage opportunities for career service.”

Every AFSCME Maryland State and University contract guarantees a right to union representation.  
An employee has the right to a union representative if requested by the employee.  
800.492.1996

In 2010, the Maryland General Assembly passed legislation that partially conformed with these recommendations. Chapter 223 of 2010 created a term for the Chief Public Defender in Maryland and required that the position can only be removed for cause. Left out from this effort, however, were the staff attorneys for the OPD who are still classified as “special appointees.”

HB 1277 corrects this by placing the assistant public defenders into the state merit system, removing them from “special appointee” status by placing them into the “professional service” category under the State Personnel Management System. The SPMS was designed to put in place a fair and equitable system for processing personnel actions including recruitment, selection, training, discipline, leave, transfers, and discharges. This has worked for other state agencies, and other classifications within the OPD. It can work for the assistant public defenders.

This Bill is important because when employees are forced to operate in constant fear of being terminated from their job without just-cause, they are less likely to have high morale which diminishes their ability to have positive relationships at work. This Bill also requires merit-based hiring and promotions for assistant public defenders which will help to alleviate issues with transparency and will promote more equity.

There is a technical amendment needed in the Bill to ensure that these employees also have access to the grievance procedure under SPP §12-102. We also urge the committee to reject a proposed amendment to make merit conversion applicable for new hires only. The purpose of the Bill is to ensure that all frontline employees in the Office of the Public Defender are treated equally, and this would not be accomplished if new hires had merit status but existing employees who have dedicated their career in service were excluded. There is no legal obstacle to converting current employees into the state merit system.

Our assistant public defenders are dedicated professionals who deserve the same equal treatment in the workplace as other state employees. For all of these reasons, we ask for a favorable report on HB 1277.