

COUNTY OF SACRAMENTO  
CALIFORNIAFor the Agenda of:  
February 10, 2009

TO: Board of Supervisors

FROM: Countywide Services Agency

SUBJECT: 2009 Report Back On Provision Of Indigent Defense

CONTACT: Jim Hunt, Acting Agency Administrator 874-5886

**Overview**

During Fiscal Year 2008-09 Proposed Budget Hearings in June the Board directed the County Executive to consult with other jurisdictions on various ways of providing indigent defense. Countywide Services Agency staff surveyed other counties to compile an inventory of the various defense structures and processes practiced across the state. As discussed more fully later in this report, the analysis and cost comparison indicates the current model utilized by Sacramento County is cost effective. While it has been determined that a Conflict office is both economically and programmatically sound, this concept should be re-visited periodically to ensure it remains the best option.

**RECOMMENDATIONS**

1. Continue the current model utilizing a Public Defender Office for primary defense and a conflict office for overload and conflict cases.<sup>1</sup>
2. Direct the Public Defender and Conflict Criminal Defense Administrator to continue working together to identify and implement changes that will result in cost reductions and report back annually at Proposed Budget.
3. Direct the Conflict Criminal Defender Administrator to implement a pilot program for felony representation in one court with a limited panel of attorneys and assigned investigators at an increased rate for C felony cases for up to one year to study the cost effectiveness of this model for representation.

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<sup>1</sup> A “conflict” refers to cases in which the primary public defender organization has a conflict of interest (for example, cases involving codefendants or cases in which a witness against the defendant was previously represented by the public defender). An “overload” occurs when a caseload/workload prevents the public defender attorney from providing effective assistance of counsel. At this point the attorney is duty bound to decline taking any excess cases.

**BACKGROUND:**

Over two decades, Sacramento County has performed several analyses of the way indigent defense is provided. In 1992, complaints from the Court regarding quality representation and uncontrolled costs by the Indigent Defense Panel prompted an in-depth analysis. The analysis resulted in the development of a contract Program Administrator position with basic duties that included assignment of cases to attorneys; review and approval of funding requests for investigators and other ancillary service providers; supervision of Court staff to review and process payments to attorneys and ancillary service providers and development of policies and procedures. The creation of the program administrator position resulted in greater visibility and accountability for both costs and quality of the program; however, there were no clear lines of authority which hampered the administrator's ability to manage personnel, assure performance measures were met and accomplish program goals.

In 1997, further analysis resulted in a reorganization of the Indigent Defense Program (IDP) that included consolidating program staff and expenditures into one unit under the management of the Program Administrator and the addition of two clerical positions and one contract Supervising Criminal Investigator position to assist with oversight of ancillary service providers. The analysis envisioned a gradual movement toward a closed panel consisting of a limited number of contract attorneys who would represent all IDP cases. This type of an arrangement can be beneficial by allowing for better management of attorney caseloads; however, it does reduce the opportunity for private attorneys to gain experience in criminal defense.

In 1999, a new administrator was hired and initiated several changes. The Program moved into office space out of the Courthouse, certain staff became County employees, and the Program became responsible for its own personnel and office management. The Program also assumed responsibility for training panel attorneys and enhancing communication, coordination and working relationships between panel attorneys, the Bench and the Bar Association. An important new direction in billing practice was implemented with an electronic billing system available on a 24 hour a day basis. The new process expedited payments and reduces the opportunity for fraud and over-billing errors, thereby increasing efficiency and accuracy in the claiming process.

During Fiscal Year 2001-02 final budget hearings, the Sacramento County Indigent Defense Program presented a request to increase the rates paid to panel attorneys. The request was submitted too late for an analysis and recommendation to be made to the Board as part of the budget hearings. County staff was directed to evaluate the proposal, look at other methods of providing indigent defense, and report back to the Board at mid year.

At the Fiscal Year 2001-02 mid year budget report back to the Board, staff detailed findings of the analysis and the Board approved staff recommendations to:

- Increase attorney and investigator rates

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- Approve linking increases in cost of living and salary rates authorized for Public Defender attorneys and investigators to Indigent Defense Program attorneys and investigators, effective July 1 of the year increases are given.
- Approve changing the name of the Indigent Defense Program to Conflict Criminal Defender and direct County Counsel to amend the ordinance.
- Approve the concept of a misdemeanor program within the Indigent Defense Program and direct the Program Administrator to return to the Board with contracts for the equivalent of 1.5 private attorneys and 2 half time certified law students for the purpose of creating the unit.

In November 2006, the Board approved a one-tier rate schedule and rate increase for attorney and investigator services, eliminated the automatic cost of living increase for panel attorneys and investigators, required that the hourly rates be reviewed regularly and recommendations for increases be made as necessary to stay competitive.

**DISCUSSION:****Economy of Scale**

The current structure provides budget predictability and overall cost savings through lower per-case expenditures. Sacramento County's Public Defender Office provides organizational structure for training and shared institutional knowledge, proper oversight and accountability mechanisms, and necessary resources for investigation, case management, and administrative support. The Public Defender utilizes an economy of scale to provide quality legal representation to thousands of clients annually in a legally, fiscally and practically efficient and effective manner in cases ranging from the simplest to the most complex and difficult. This is accomplished via the following means:

- Expertise in the legal areas of law in which Public Defender attorneys practice, e.g., criminal, juvenile delinquency, mental health, conservatorship and appropriate family law matters. Public Defender attorneys are specialists in these areas of law and maintain their legal acumen via internal and external training.
- Expertise and specialization in the criminal justice system and its processes.
- Quality and quantity control by proactive supervision of all staff, i.e., attorneys, investigators, legal secretaries, clerical support, legal research assistants and administrative staff.
- Internal streamlined systemic approach to representing thousands of clients which allows them to quickly review and close those cases requiring such action and actively pursue litigation in those that necessitate it, e.g. units specializing in: intake, trial, death penalty, state prison offenses, juvenile, mental health, probate, contempt, research and training, law clerks, investigators, information technology and support.
- Internal and external accountability.
- Collaborative efforts and partnerships with other criminal justice system entities.

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Conflict Criminal Defenders is a structured program that provides oversight and accountability in order to ensure effective representation of all CCD clients. The CCD Administrator is responsible for the following:

- Reviewing billing for accuracy and that the services rendered and the hours claimed provide effective assistance and comport with a general standard based on how long it should take a reasonably experienced attorney at the level required by the case to competently accomplish the task.
- Ensuring the quality of representation through review, mandated training and qualification analysis.
- Assigning counsel to appropriate level cases depending on experience and expertise, caseload, trial status, and panel classification level.
- Regularly reviewing rates and recommending adjustment to ensure quality of panel attorneys and fair compensation rates.

#### **Cost Saving Measures**

Over the last several years, the Public Defender and Conflict Criminal Defender have worked together to strategize and implement cost saving measures. The two work as partners to implement system and process improvements and continue to look for additional ways to increase efficiencies. Staff consistently suggest and implement cost saving measures throughout the organization.

In addition, the following changes have been implemented by CCD to further contain or reduce costs:

- Created greater efficiency by hiring contract staff and law students to handle all misdemeanor cases instead of assigning the cases to lesser experienced private counsel. This saved money and time in handling cases. 95% of cases are settled with only one or two court appearances while the other 5% are assigned to private counsel. This led to more effective representation at a lesser cost to the County.
- Arranged an agreement with the Jail Commander to allow legal assistants to bring CDs and DVDs of discovery to inmates once a week, at a rate of \$15/hr. instead of attorneys and investigators spending hours of time doing the same work at \$40-\$90/hr.
- Changed the process for using court interpreters. The Department now has a contract with AT&T language line services and can utilize the services 24 hours a day at a much reduced cost.
- Brought duplication services for DVDs and CDs in house, as well as transfer of VHS to DVD or CD format.

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- Worked with the Office of Communication and Information Technology for access to Department of Motor Vehicle records and property and background searches. This saved significant fees and investigative costs.
- Developed a roster of capable, experienced experts and vendors willing to accept assignments on CCD cases at the hourly rate schedule developed. Exceptions are made for experts not available through the roster of experts. They are currently improving their policies and practices related to the retention of experts. This will result in cost saving measures.
- Reduced educational and training costs by partnering with the Public Defender to provide a DNA training academy. Two academies have resulted in 6 highly trained DNA attorneys, who provide effective and efficient DNA representation in all CCD cases requiring their services.

The Public Defender has implemented numerous changes in its office culture to enhance its ability to most efficiently conduct business; effectively use methodical and systematic approach to providing legal representation in quantity while maintaining quality; increase accountability and oversight and allow for a uniform implementation of standards for all staff.

The Public Defender is restructuring the felony caseloads/workloads to increase efficiencies. The result will be a decrease in the number of overloads declared from 1,500 to 500 cases per year. In 2009, the overloads declared in Homicide cases will decrease by a minimum of 15 cases, and the Felony cases will decrease by a minimum of 100 cases.

The Public Defender has also been a part of creating, and is benefitting from, several cost saving measures discussed above including AT&T language line, DNA training, expert services and staff innovation. In addition, the Public Defender, District Attorney and Courts have streamlined processing of cases to ensure justice and due process that also rapidly concludes criminal cases.

**Survey of Other Jurisdictions**

In response to the Board's direction to compile information on how other Counties provide indigent defense, the 12 largest counties were contacted regarding their method of providing conflict and overload services. In addition to the largest counties, also surveyed were counties that had a system differing from the 12 largest. The fourteen counties most representative of the various service models were then contacted for more detailed information.

The fourteen jurisdictions that were contacted for information on the handling of conflict cases are the counties of Alameda, Butte, Contra Costa, Fresno, Los Angeles, Orange, Placer, Riverside, San Bernardino, San Diego, San Joaquin, San Mateo, Santa Clara and Ventura.

- Five utilize an alternative Public Defender office; of these five, one uses a local Bar Association for third level conflicts, one uses an Associate Defender’s office, two use individual contracts with attorneys and one uses a conflict panel managed by County Counsel as its third level defense.
- Five utilize a county Public Defender as the primary defense and private attorney associations, Bar Association or individual contracts with private attorneys as second and third level defense.
- One utilizes an attorney firm as its Public Defense, with two contracts for overloads and conflicts.
- One utilizes a local Bar Association defender program for all levels of defense.
- Three counties (including Sacramento) utilize a county Public Defender as primary defense and a conflict program or Bar Association for second and third level defense.

**Indigent Defense Models**

After reviewing indigent defense programs, staff concluded that three primary service models emerged: (1) contracting with private attorneys, (2) administering assigned counsel programs, and (3) establishing second Public Defender offices.

Method	Benefits	Potential Drawbacks
Contracting With Private Attorneys	<p>Provide services at a fixed rate unaffected by increased workloads or other variable costs.</p> <p>Provides an incentive for attorneys to work efficiently since their payment is based on a fixed cost for providing indigent defense rather than an hourly rate per case.</p>	<p>Special fees and ancillary costs (death penalty costs, investigative services, DNA costs, expert witnesses, etc.) cannot be predicted and are open for request throughout the year.</p> <p>Possibility of promoting inadequate representation by firms trying to live within the contracted allocation.</p>
Administering Assigned Counsel Programs (i.e., Conflict Criminal Defenders)	<p>Separate panels for different case types allows an Administrator to assign cases to attorneys pre-qualified to handle them.</p> <p>Elimination of all potential conflicts by drawing from a panel of private attorneys rather than needing a third level panel.</p>	<p>This program can lack accountability and cost effectiveness without a strong Administrator.</p> <p>Costs will be more variable and difficult to predict.</p>
Second Public Defender Office	<p>Takes advantage of the Public Defender system without creating an entirely new and duplicative management structure.</p>	<p>Cases with multiple defendants require a third level program.</p>

**Closed Panel (similar to Federal Panel):**

In addition to the models in the table above, delivery of non-public defender Federal indigent defense services is provided by a “closed panel” of attorneys in some jurisdictions. In this type of system the panel is made up only of attorneys who are invited to participate. In general, invited attorneys are those considered to be able to provide the most effective and cost-effective representation. While the Federal panel pays higher hourly rates, which is necessary in a closed panel system, it is believed that because a closed panel has very experienced and highly competent attorneys, the representation is not only more effective, but also more cost effective.

Pursuant to Board directive to research and develop additional cost reduction programs, the Administrator of the Conflict Criminal Defenders is studying the feasibility of implementing a pilot program to determine the cost effectiveness of providing representation for felony cases with a limited panel of attorneys and assigned investigators. Typically, attorneys are paid \$70 per hour for level 2 cases, \$80 per hour for level 3 cases and \$90 per hour for level 4 cases. In order to attract private attorneys to join a closed panel, a higher rate per hour is offered. Given our current rate structure, the higher rate would be \$90 per hour for all cases. We cannot justify a rate that high given our current fiscal status. Instead, we recommend a rate of \$80 per hour for level 2 and level 3 cases and continuing the current rate of \$90 per hour for level 4 cases.

The experience of other jurisdictions using a closed panel has been an increase in productivity which more than offsets the higher rates paid to the panel attorneys. The County Executive’s Office will monitor the performance and cost effectiveness of the pilot program. An evaluation of the pilot will be included in annual updates to the Board.

**Cost Comparison Of Various Models**

There are several Indigent Defense models, and there are several variations within each model. It would be costly and time consuming to do a system by system, dollar by dollar, case by case analysis that accurately shows the most cost effective system. However, the jurisdictions we surveyed provided actual budget expenditures for Fiscal Year 2007-08 and the actual number of cases assigned for Fiscal Year 2007-08. This way we are able to average each jurisdiction in the same manner and be consistent in our methodology. Several factors can affect the outcome of such a review including the number and types of various cases (more homicides, death penalty and special circumstances cases result in higher costs). Resolution of some cases span several years making it difficult to calculate average case costs in any particular year. Major cases are typically assigned one year and usually are actively worked two or three years later, incurring a majority of the costs in the middle to end stages of the proceedings.

The chart in Attachment A represents new cases assigned/opened during the year which does not necessarily mirror the number of existing cases incurring costs. In selecting the Counties for this cost comparison, jurisdictions with populations close to ours were used as well as a jurisdiction that provides indigent defense solely through contracting out. This is a very cursory analysis and does not take into account significant differences between the counties. Sacramento County does compare favorably especially with the county closest in population and number of cases,

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Alameda County. Our review indicates that Sacramento County's current structure is both cost effective and provides appropriate representation.

**CONCLUSION:**

Sacramento County is not the only jurisdiction reviewing Indigent Defense models and searching for the most efficient and cost effective system. Nationwide counties and states are struggling with budgetary issues, a lack of adequate funding, oversight and standards; excessive caseloads, lack of quality controls and lack of sufficient resources and staff. Nationwide there are multiple lawsuits against Public Defense agencies for wrongful conviction or inadequate representation. These lawsuits range from a few hundred thousand dollars to over a hundred million dollars.<sup>2</sup> There is no clear line to determine reasonable and adequate representation; however, Sacramento County currently provides Indigent Defense in an effective manner that has withstood legal challenge.

After analysis of the gathered data, Sacramento County's indigent defense expenditures are within the lower-end of surveyed jurisdictions. Staff will conduct periodic reviews of cost effectiveness.

It is recommended that the Board:

- Continue the current model utilizing a Public Defender Office for primary defense and a conflict office for overload and conflict cases.
- Direct the Public Defender and Conflict Criminal Defense Administrator to continue working together to identify and implement changes that will result in cost reductions and report back annually at Proposed Budget.
- Direct the Conflict Criminal Defender Administrator to implement a pilot program for felony representation in one court with a limited panel of attorneys and assigned investigators at an increased rate for C felony cases for up to one year to study the cost effectiveness of this model for representation.

Respectfully submitted,

APPROVED:  
TERRY SCHUTTEN  
County Executive

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JIM HUNT, Acting Agency Administrator  
Countywide Services Agency

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<sup>2</sup> Source: USA Today (2005); Los Angeles Times (2001/2004)



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The State Bar of California “Guidelines On Indigent Defense Services Delivery Systems. (2006)”

The National Law Journal (2004)

American Bar Association “Ten Principles Of A Public Defense Delivery System. (Feb. 2002)”

The Spangenberg Group “Contracting For Indigent Defense Services: A Special Report. (April 2000)”

National Association of Criminal Defense Lawyers “Rights Of Defense (Jan. 2007)”

## Attachment A

County	Primary Defense		Conflict and Overload Defense				Total Indigent Defense Actual Budget 2007-08	# of Cases 2007-08	Cost Per Case
	County Public Defender	Private Attorney Association	County Alternate Defender	Bar Association	Independent Program	Other County Defense			
Alameda 1,543,000	X				2nd level		43,267,000	46,800	925
Contra Costa 1,051,674	X		2nd level	3rd level			18,505,400	18,639	993
Sacramento 1,424,415	X				2nd level		37,916,533	47,471	799
San Bernardino 2,055,766	X				2nd level		41,783,268	60,534	690
San Mateo 739,469		All levels					16,059,864	23,350	688
Santa Clara 1,837,075	X		2nd level			3rd level	40,688,231	33,212	1,225

Note: In selecting the Counties for the cost comparison, jurisdictions with populations close to Sacramento were contacted as well as a jurisdiction that provides all levels of indigent defense by contracting out. The number of cases represents new cases assigned/opened during the year and does not consider the number of existing cases, the severity of cases or the prosecutorial practices of the District Attorney. These factors vary considerably between jurisdictions and significantly impact costs incurred. A much more detailed and costly analysis would be required to adjust for those variables.