

**COUNTY OF SACRAMENTO
CALIFORNIA**

For the Agenda of:

To: Board of Supervisors
From: Department of the Public Defender
Subject: Report Back on May 13, 2009 Workshop Questions
Contact: Paulino Duran, 874-8890

BACKGROUND

During the May 13, 2009, Workshop, the Board raised the following questions and requested a report back:

1. What is the average caseload per Deputy P.D compared to Deputy D.A.? (In total and by case type?)
2. Is it possible to incorporate means testing for Public Defender clients? Then where possible require Public Defender clients to reimburse the County for legal services? How/by whom is eligibility determined?

DISCUSSION

- 1. What is the average caseload per Deputy P.D compared to Deputy D.A.? (In total and by case type?)**

Given the Home Court Calendaring System used by the Superior Court of Sacramento County in conjunction with the policies and practices of the Court, District Attorney, Conflict Criminal Defender and the Public Defender, criminal cases are effectively and efficiently handled in a manner that has allowed the Public Defender to represent a higher number of cases per attorney than the recognized national standard. The caseload and workload of each Assistant Public Defender is carefully and consistently monitored to insure that effective assistance of counsel is provided to each client. The District Attorney does not maintain general statistics on caseloads and workloads for its attorneys. The following are examples of the general caseloads and workloads of Assistant Public Defenders in Sacramento County.

MISDEMEANOR INTAKE & TRIAL UNITS

Misdemeanor Caseloads and Workloads

- Total Misdemeanor Attorneys + LRAs = 1,000 cases per year
- OR**
- Intake Attorneys + LRAs = 1,471 cases per year
 - +
 - Trial Attorneys = 165 cases per year

FELONY INTAKE & TRIAL UNITS

General Felony Caseloads and Workloads

- Total Felony Attorneys = 194 cases per year
- OR**
- Intake Attorneys = 392 cases per year
 - +
 - Trial Attorneys = 60-70 cases per year

Violation of Probation = 1,500 cases per year

Drug Court/Proposition 36 = 800 cases per year

CONSERVATORSHIPS/PROBATE/CONTEMPT UNIT

Attorneys = 2,500 cases per year

OR

Attorneys + LRA = 1,667 cases per year

JUVENILE UNIT

Juvenile Caseloads and Workloads

- Attorneys = 385 cases per year
- LRAs = 1,250 Detention Hearings per year

- 2. Is it possible to incorporate means testing for Public Defender clients? Then where possible require Public Defender clients to reimburse the County for legal services? How/by whom is eligibility determined?**

In 2008, the Brennan Center for Justice published a report entitled "Guidelines for Appointing Defense Counsel." The report determined that:

“For more than four decades, the Supreme Court has been clear: the Constitution requires states to provide a lawyer to people facing criminal charges who are unable to afford their own counsel. Unfortunately, neither the Supreme Court, nor any other source, has detailed how communities should determine who can afford counsel and who cannot. As a result, eligibility is determined differently almost wherever one looks: some communities don’t have any official screening processes at all, while others apply widely varying criteria and procedures.” (Emphasis added.)

The Brennan Center report presents information regarding the best practices for determining financial eligibility for free counsel. (The report is attached.)

In California, pursuant to Penal Code §987.8, the Court is responsible for assessing court appointed counsel fees. This Penal Code Section establishes the process for accomplishing this task. However, to follow this process requires that a hearing be held in each case to establish: (1) appointed counsel’s costs in representing the client, and (2) the client’s ability to pay the assessed fees.

The Public Defender provides legal representation in 40,000 cases each year. This makes it highly impractical for a hearing to be conducted pursuant to Penal Code §987.8 in each case where appointed counsel is provided.

The Public Defender’s ability to determine and bill for the exact costs of providing legal representation to each of his clients is at best illusory. Unlike private law firms, the caseloads and workloads and the rapidity with which most cases move through the Criminal Justice System make it impractical to bill each employee’s time spent on each case. Moreover, the Public Defender has no system in place to capture such information and tabulate it. In addition, without additional staff, the time capturing the actual costs would diminish their ability to handle the present caseloads/workloads with no realistic probability that the amount collected would increase.

As a means of readily assessing court appointed counsel costs upon closure of a case, at the Court’s request, the Public Defender and the Administrator of Conflict Criminal Defenders developed a Court Appointed Counsel User Fee Schedule as an alternative to the Penal Code Section 987.8 process. The Sacramento County Superior Court put this User Fee Schedule into effect on September 21, 2004. An updated User Fee Schedule became effective in October 2008. (Attached.)



Court Appointed
Counsel Fees August

Respectfully submitted,

PAULINO G. DURÁN, Public Defender
Department of Public Defender

APPROVED:
TERRY SCHUTTEN
County Executive

By: _____
JAMES W. HUNT, Acting Administrator
Countywide Services Agency