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March 28, 2016

To: Supervisor Hilda L. Solis, Chair
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From: Sachi A. Hamai
Chief Executive Officer

ANALYSIS OF THE COUNTY'S JUVENILE INDIGENT DEFENSE SYSTEM

Attached is the final report on the Juvenile Indigent Defense System. On February 11, 2014, the Board directed the Chief Executive Officer, in collaboration with the Auditor-Controller, to hire an outside consultant to conduct an analysis of the County's juvenile indigent defense system in an effort to improve the current system and report on the findings for consideration by the Board. The Warren Institute on Law and Social Policy at UC Berkeley School of Law (Consultant) was selected to perform the analysis.

Summary of Findings

The County's juvenile indigent defense system was created over twenty years ago. Since that time, juvenile defense has evolved; defense attorney's roles have expanded; and attorneys are required to serve their client not only during all phases of the delinquency process, but including representation of the juvenile once his/her case has concluded. Defense attorneys are now expected to provide post-disposition representation which ensures the youth receives services ordered by the court, such as educational, medical and psychological; representation at post-disposition meetings; assisting with the sealing or expunging of records; and appealing of cases. Unfortunately, the County's system has not changed nor kept up-to-date with these new and expanding defense requirements. The aforementioned concerns and other system improvements are discussed in more detailed below and in the attached consultant's report.

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Juvenile Indigent Defense System Overview

Pursuant to California Government Code Section 27706, the County of Los Angeles is required to provide complete legal defense services for all indigent juvenile defendants when the Los Angeles County Public Defender and the Alternate Public Defender are unavailable or declare a conflict of interest. To ensure this obligation is met, the Chief Executive Office contracts with 8 panel attorneys to provide qualified representation to indigent youth in juvenile delinquency proceedings in 8 Superior Court locations as follows: Eastlake, Pasadena, Sylmar, Pomona, Compton, Inglewood, Los Padrinos (Downey), and Long Beach. The panel attorneys are paid a one-time flat fee per petition. The panel contract system was created in the mid-1990s.

Filing Trends and Total Cost of Juvenile Defense

There has been a steady decline in the number of juvenile delinquency petitions filed in Los Angeles for over a decade. From 2010 to 2014, new petitions in Los Angeles dropped by almost half. Distribution of the petitions has remained static over the years with 67% being assigned to the public defender and 28% assigned to the panel attorneys.

From 2010 to 2014, the County expended, on average, approximately \$19.5 million on indigent defense services which includes costs for the Juvenile Division (\$16.3 million) of the Public Defender's Office and the costs for the panel attorneys (\$3.2 million).

Public Defender and Panel Resources

The County's Public Defender's Office has on-staff social workers, investigators, resource attorneys, appellate attorneys, an immigration attorney, and administrative support. The panel attorneys, on the other hand, must either pay for these resources from the per petition flat fee they receive or seek access to social workers and other 730 experts via the Court.

Comparative Rate of Resource Use

The report found that the County Public Defender's Office uses more resources (i.e., investigators, social workers, doctors and/or experts and education attorneys) than panel counsel. Rate of resource use is detailed bellows:

- Investigators: PD 26%; Panel Counsel 9%
- Social Workers: PD 32%; Panel Counsel 1%
- Doctors and Experts: PD 20%; Panel Counsel 9%
- Education Attorneys: PD 2%; Panel Counsel less than 1%

Per-Case Costs Borne by Counsel

The panel counsel must bear a number of costs from the per petition flat fee, such as training, investigators and other costs associated with representing their clients. Public Defender's Office provide training, social workers, investigators and other resources to all of deputy public defenders assigned to the Juvenile Division.

Neither panel counsel nor public defenders bear the cost of 730 experts paid through the County's Professional Appointee Court Expenditures (PACE) System. Social workers, therefore, can be obtained by panel counsel at no cost. Data was not available to quantify the actual per-case costs for either the Public Defender or panel counsel. However, the report determined, for comparison purposes only, that by measuring the annual costs against the number of new petitions or the number of dispositions that on average the Public Defender expended \$2,912 per disposition; while the panel counsel expended, on average, \$751 per disposition.

Transfer Cases

The report found that indigent juveniles facing transfer to adult court are more often assigned to a panel counsel. Over the past five years, panel counsel was assigned 71% of the fitness motions and public defenders were assigned 29%. Panel counsel clients were more likely to be found unfit and transferred to adult court. Over the past five years, 25% of panel clients were found unfit and transferred to adult court, but only 15% of public defenders clients were found unfit and transferred to adult court. It was also determined that panel counsel consulted less often with experts, provided less documentation to support client and filed fewer motions. Panel counsel also resolved these unfit cases faster than public defenders – the average was 9.4 months for public defenders, but only 4.9 months for panel counsel.

National Standards

National and State standards state that the:

- County should provide investigators to panel counsel;
- County should ensure that training is available without cost to all counsel for indigent defendants;
- County should establish a qualified oversight body for panel counsel to ensure that substantive oversight, supervision and quality control are provided to the panels.
- Flat-fee contracts are strongly criticized in California and that at least since 2006 the State Bar has stated that they should not be used.

The report determined after surveying other counties:

- Los Angeles is the only county that does not pay for investigators for their panel counsel.
- Los Angeles is the only county that has no centralized mechanism for quality control nor has an experienced attorney or committee that provides supervision or oversight to panel attorneys.
- Los Angeles is the only county that compensates panel counsel with a per petition flat-fee rate. In other counties, panel attorneys are compensated by salary, on an hourly basis or via an event-based flat fee structure that provides different flat fees for different activities for different types of cases.

Recommendations from County Guidelines

The consultant found that the Public Defender objected to the draft Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court and the final Guidelines (issued in 2014) were not endorsed by the Public Defender. Many of the objections arose from differences in opinion regarding the scope of the Public Defender's role, not from a lack of funding. Thus, not all objections would be resolved even if the County fully funded the Public Defender's identified costs to implement the Guidelines.

Conclusion

The report findings were shared and discussed with the Public Defender, Alternate Public Defender and Panel Attorneys. The Chief Executive Office, as always, is ready to work with the impacted County departments to resolve/address the findings identified in the report. Our office is committed to ensuring that excellence in juvenile defense is achieved and justice for juveniles is promoted through zealous and well-resourced legal representation.

If you have any questions, please contact me, or your staff may contact Sheila Williams at (213) 974-1155.

SAH:JJ:SW:cc

Attachment

c: Executive Office, Board of Supervisors
County Counsel
Public Defender
Alternate Public Defender

Los Angeles County Juvenile Indigent Defense System

Report to the Los Angeles County CEO and
Los Angeles County Auditor/Controller
March 1, 2016
Final

Prepared by the Warren Institute on Law and Social Policy, UC Berkeley School of Law

MARCH 1, 2016
WARREN INSTITUTE ON LAW AND SOCIAL POLICY
UC BERKELEY SCHOOL OF LAW

FINAL

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Introduction

On February 11, 2014, the Los Angeles County Board of Supervisors passed a motion directing the Chief Executive Officer to review the County's juvenile indigent defense system.¹ The County is considering major reforms to its juvenile indigent defense system and was interested in a comprehensive review by an independent, neutral consultant to review the current structure and to provide recommendations for system improvements. The Chief Justice Earl Warren Institute on Law and Social Policy at UC Berkeley School of Law was chosen to perform the analysis.

One of the questions underlying the Board motion – that is, the relative benefits and drawbacks of institutional public defenders and court-appointed private panel counsel -- has long been debated in jurisdictions across the country.² This report does not resolve that much-debated question, nor does it determine whether public defenders or panel counsel in Los Angeles are doing a “better” or “worse” job for their clients. Criminal cases, especially those involving juveniles, can be complicated and a full outcome analysis that appropriately accounted for the vast variety of cases, the differing prior histories of each juvenile, and the fact that the benefits of high quality representation can be felt years after the representation ceases, was well beyond the scope of this review. This report looks at the Los Angeles County juvenile indigent defense system, as it exists now. The report identifies strengths and weaknesses in Los Angeles' existing indigent defense system based on data, stakeholder input, national and local standards, and comparisons with other California counties. It is hoped that the report provides the Board with a relevant and timely assessment as it considers a variety of changes to the current juvenile indigent defense system in Los Angeles County.

In the course of conducting this assessment, two threshold issues became clear. First, although the County uses contracts to compensate panel counsel, contracts for panel counsel should not be examined as if they were contracts for other goods or services. The obligation to provide effective counsel for indigent criminal defendants is rooted in the Constitution, and the contours of the obligation should be guided by the Constitution and by national and state laws and standards regardless of the means by

¹ Statement of Proceeding for the Regular Meeting of the Board of Supervisors of the County of Los Angeles, February 11, 2014.

² See, e.g., Pauline Houlden and Steven Balkin, “Quality and Cost Comparisons of Private Bar Indigent Defense Systems: Contract vs. Ordered Assigned Counsel,” 76 *J. Crim. L. & Criminology* 176 (1985); Roy Flemming, “Client Games: Defense Attorney Perspectives on Their Relations with Criminal Clients,” *American Bar Foundation Research Journal* 253 (1986); and Norman Lefsein, “Criminal Defense Services for the Poor,” Chicago: American Bar Association Standing Committee on Legal Aid and Indigent Defense (1982).

which counsel is compensated. As noted most recently in a September 2015 bill signed by Governor Brown, “competent legal representation by defense attorneys is needed to preserve the integrity of the juvenile justice system, prevent wrongful judgments, reduce unnecessary incarceration, and help ensure that minors receive the care, treatment, and guidance upon which the juvenile justice system is premised.”³ The County should ensure that indigent juveniles are provided with competent and effective attorneys whether those attorneys are working within a public defender office or operating by contract; the quality of a defendant’s representation should not be a function of random attorney assignment. The question is thus not what the current contract allows, but rather whether the County’s indigent defense structure enables high-quality and effective representation for indigent juveniles no matter which attorney is assigned. Among other things this means that the issue is not the CEO’s administrative oversight of the contract, which has been quite capable, but whether having the CEO responsible for ensuring effective counsel is the best way to meet the County’s obligation.

Second, it became clear while conducting interviews and outreach for this report that most of the attorneys representing indigent youth in the County do so because they care about their clients, whether those attorneys are public defenders or contracted panel counsel. To allege otherwise does a disservice to many hardworking and committed professionals. At the same time, however, juvenile defense is not like adult defense because juvenile defenders, unlike adult defense attorneys, fulfill a dual role: juvenile attorneys must defend their clients against the allegations just as all criminal defense attorneys must, *and* they must advocate for their clients’ broader “care, treatment, and guidance” both before and after disposition of the criminal charges.⁴ This expanded scope includes “the thorough mental health, substance abuse, educational and developmental evaluations and services and treatment necessary in the modern era of proper Juvenile Delinquency Court administration.”⁵ Such extended representation is not only modern – and both ethically and legally required – it is smart, as research shows that youth receiving more comprehensive wraparound

³ AB703, signed into law by Governor Brown on September 30, 2015.

⁴ “Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court”, Superior Court of California County of Los Angeles, Juvenile Division, p. 2 citing to Rule 5.663 of the California Rules of Court, adopted by the California Judicial Council in 2004. Section 5.663(d)(1-2) further clarifies that juvenile counsel is not required to “assume the responsibilities of a probation officer, social worker, parent or guardian,” or otherwise provide non-legal services to the child. Section 5.663(d)(3) limits the scope of representation to those proceedings pertaining to the juvenile delinquency matters. See also AB 703, signed on September 30, 2015, which requires that attorneys provide post-dispositional representation.

⁵ State Bar of California, Guidelines on Indigent Defense Services Delivery Systems, p.22 (2006). Communication with the State Bar on July 10, 2015 confirmed that the Guidelines are still an active publication of the California State Bar. www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

representation have better outcomes in areas including emotional and behavioral health, family functioning, educational outcomes, delinquency, and police contact.⁶ Providing expanded representation is thus not only better for the youth who come before the Court, but can also lower the County's long term cost if those children and adolescents are able to break the cycle of crime and incarceration.

The County set up its juvenile indigent defense system more than twenty years ago and the basic structure remains unchanged today. Although the expanded scope discussed above is no longer new, it came about almost a decade after the County's current system was established. Termed a "revolution" at the time, it is now the standard of practice.⁷ The question for the County is whether the current system continues to serve its youth. It is hoped that this report can assist the County in answering that question.

⁶ See Wilson, Kate, "Literature Review: Wraparound Services for Juvenile and Adult Offender Populations. A Report Prepared for: California Department of Corrections and Rehabilitation." Center for Public Policy Research, University of California Davis (2008); Carney, M. M., and Buttell, F., "Reducing Juvenile Recidivism: Evaluating the Wraparound Services Model," *Research on Social Work Practice*, 13, 551-568 (2003); and Pullmann, M. D., Kerbs, J., Koroloff, N., Veach-White, E., Gaylor, R., and Sieler, D., "Juvenile Offenders with Mental Health Needs: Reducing Recidivism Using Wraparound." *Crime and Delinquency*, 52, 375-397 (2006).

⁷ State Bar of California, Guidelines on Indigent Defense Services Delivery Systems, p.3 (2006). <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=fwTzyTmupEY%3D&tabid=2326>

Methodology

Methodology

Information in this report was compiled from a variety of sources, both quantitative and qualitative. Efforts have been made to be inclusive of various stakeholder groups including the Office of the Public Defender, the Alternate Public Defender, panel heads, panel counsel, and judges. Stakeholder input was obtained through numerous one-on-one interviews, group meetings, email communications, and two on-line surveys. In addition, the Office of the Public Defender, the Alternate Public Defender, and panel heads provided the Warren Institute with extensive written information.

Although community members and juveniles involved in the delinquency system are undoubtedly stakeholders and their input is extremely valuable, obtaining their input was beyond the scope of the Warren Institute's review. It is strongly recommended that the County seek contributions from community members, families, and juveniles as it considers changes to the current system.

Stakeholder input in this report reflects:

- Multiple interviews, emails, and conversations with representatives from the Public Defender;
- Multiple interviews, emails, and conversations with representatives from the Alternate Public Defender;
- Multiple interviews, emails, and conversations with the eight panel heads;
- Multiple interviews, emails, and conversations with various court entities, including judges, court staff knowledgeable about JAI, and PACE system managers;
- An on-line survey that was distributed to all panel attorneys asking about resources, training, and expenses, among other topics. Seventy-five percent (34 of 45 panel counsel) answered some or all of the questions, representing all eight courthouse branches with contracted panel counsel;
- An on-line survey that was distributed to the delinquency court judges asking about attorney performance and potential system improvements. Over three-quarters (78%, or 18 of 23 judges) completed the survey (see Appendix A for selected highlights from the survey of judges);
- Information provided by the Office of the Public Defender including staffing levels, budget, caseloads, policies and procedures, training, and referrals;

Methodology

- Information provided by the Alternate Public Defender including staffing levels, budget, caseloads, policies and procedures, training, and referrals; and
- Interviews and emails with representatives of juvenile indigent defense systems in ten selected California counties.

Multiple site visits to Los Angeles County were conducted by the Warren Institute team for in-person meetings with the Office of the Public Defender, the Alternate Public Defender, judges, panel heads, court staff, and other stakeholders.

In addition to input and information from stakeholders, relevant data was extracted from the County's JAI system, the County's PACE system, and the panel counsel invoicing and payment system when possible.

JAI System. The Juvenile Automated Index (JAI) system is a computerized record-keeping system used by many agencies in Los Angeles including law enforcement, Probation, Superior Court-Juvenile, the District Attorney, the Public Defender, and the Department of Children and Family Services. For Juvenile Delinquency Court, the JAI system serves as a calendaring system based on minute orders associated with particular court appearances. JAI was not designed to be used as a data tracking and analysis system and the reliability of some of the data elements is questionable. However, data from the system can generally be utilized to compare the distribution of types of events. For example, the absolute number of new juvenile petitions per year might be inaccurate but the percentages of new petitions that are assigned to panel counsel as compared to public defenders are generally reliable. For the purposes of this study, JAI data was used as one source to examine petitions, dispositions, transfer cases, first-time camp commitments, and DJJ commitments.⁸

PACE System. The Professional Appointee Court Expenditure (PACE) system is used to process court payments. For the purposes of this evaluation, it provided information about rate of use of doctors, expert witnesses, exam experts, and social workers. The PACE system categorizes the available resources and experts into a few broad, ambiguous categories. The County does not maintain definitions regarding what types of experts fall into which categories, and interviews confirmed that experts obtained

⁸ Because it is a calendaring system, JAI codes as "disposition" any event that ends part or all of an issue before the court, sometimes including disposition of the petition, dispositions of motions, disposition of any violations, and conclusion of the case. Creating a file of dispositions to use in this report therefore required some manipulation of the data in a way that was not required for other files. For this report, disposition data were associated with court appearances during which the original 601 or 602 petition would be resolved (starting with arraignment and proceeding through adjudication and disposition), using only one disposition for each petition and using the latest event in that range. Events that normally occur after disposition of the initial petition, such as 777 violation hearings, were not included in the count of dispositions for this report, even if JAI coded them as "disposition."

Methodology

through PACE (called 730 experts) use different methods to determine their category type.⁹ Therefore, PACE cannot provide reliable data regarding the specific *types* of 730 experts used by public defenders or panel counsel or the rate of use. However, data was available for PACE requests as a whole, and some estimates can be made by narrowing the PACE categories.

Panel Counsel Billing and Payment. The CEO provided the Warren Institute with copies of detailed quarterly panel counsel invoices covering a three-year period from February 2012 through January 2015, as well as data on payments made by the County panel counsel for the five-year period February 2010 through January 2015.¹⁰

Fitness Case Files. An in-person review of case files in which a fitness motion had been filed was conducted. The review was conducted for cases in which the fitness motion was filed, whether or not the youth was ultimately transferred to adult court.

What is a “case”?

In delinquency court, juveniles are assigned a unique case number at the time of their initial contact with the court. The allegations against the child are contained in a petition that is tracked by its filing date. Multiple petitions can be filed over time if the juvenile is alleged to have committed new delinquent acts, but the case number will stay the same. This is different than adult court, where a new case number is assigned when new charges are filed. Whereas multiple cases against a particular defendant in adult court would have multiple case numbers, in juvenile delinquency court the case number would remain the same but new petition filing dates would be added. The delinquency court therefore tracks not only the case numbers, but also the petition filing dates for the juveniles appearing before it.

For purposes of this report, a “case” was considered to be the combination of the juvenile’s unique case number and the unique petition as recorded by the petition filing date. Thus a statement in this report about “50 cases” will refer to 50 different proceedings, some of which will have the same case number if the same juvenile was involved.

⁹ The categories are: Attorney-Conflict, Attorney-No PD, Attorney-Other, Investigator, Doctor, Expert Witness, Laboratory, Interpreter, Translator, Examination Expert, Court Reporter, and Legal Runner.

¹⁰ Differences in a billing year (November through October) for panel counsel and a fiscal year for the PD (July through June) and a calendar year means that in some places in this report the 12 –months included in a year are out of sync.

Executive Summary

Executive Summary

The summary below documents the highlights from each section of the report, organized around the questions posed by the Board of Supervisors. The findings in this report are complex, and readers are encouraged to read these highlights in conjunction with the background, context, and explanations provided in the body of the report.

REPORT HIGHLIGHTS

System Overview

The County has eight different contracts with eight different groups of private panel lawyers, in eight of the nine juvenile delinquency branches. These panel lawyers represent youth if the Public Defender has a conflict. The contracts provide for a one-time flat fee of \$340 to \$360 per petition.

In the ninth branch, the Alternate Public Defender represents the youth if the Public Defender has a conflict.

The panel contract system was created in the mid-1990s and has not substantively changed since then. The panel attorneys who bid on the contracts twenty years ago are still working as juvenile delinquency panel lawyers in the County, and very few new attorneys have been added.

Each branch contract is signed by a panel head on behalf of the group of attorneys in that branch. The panel heads take a percentage or per-petition amount from each quarterly payment from the County, which reduces the per-petition amount paid to the other panel lawyers in that branch.

Although the County's contracts are with groups or associations, there are no formal associations and there are no written agreements between the attorneys in each branch. Other than the attorneys who sign the contracts, therefore, it appears that the County's panel lawyers may be acting without written agreements with the County.

In one branch, the attorney signing the contract no longer represents youth in delinquency court, and has not done so for at least three years. That attorney continues to sign the contract, but a different panel head manages the attorneys in that branch.

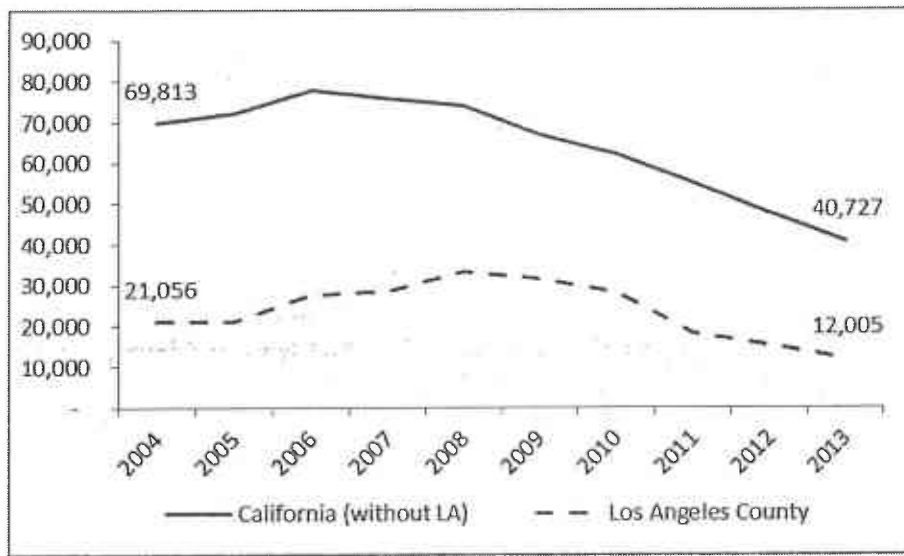
Executive Summary

Panel attorneys invoice for each new 601 and 602 petition (new alleged offenses), but they also invoice for 777 petitions (post-disposition violations), 778 petitions (changes in status), witness appearances, and AB12/212 matters. Some of these matters can be resolved quickly but the flat fee is the same; panel lawyers use the income from these smaller matters to subsidize their more complex cases.

Filing Trends and Total Cost of Juvenile Defense

Juvenile delinquency petitions have been dropping in Los Angeles as well as in the rest of the state for the past decade (see figure below).

Juvenile Delinquency Petitions, Los Angeles County vs. California, FY 2004 - FY 2013



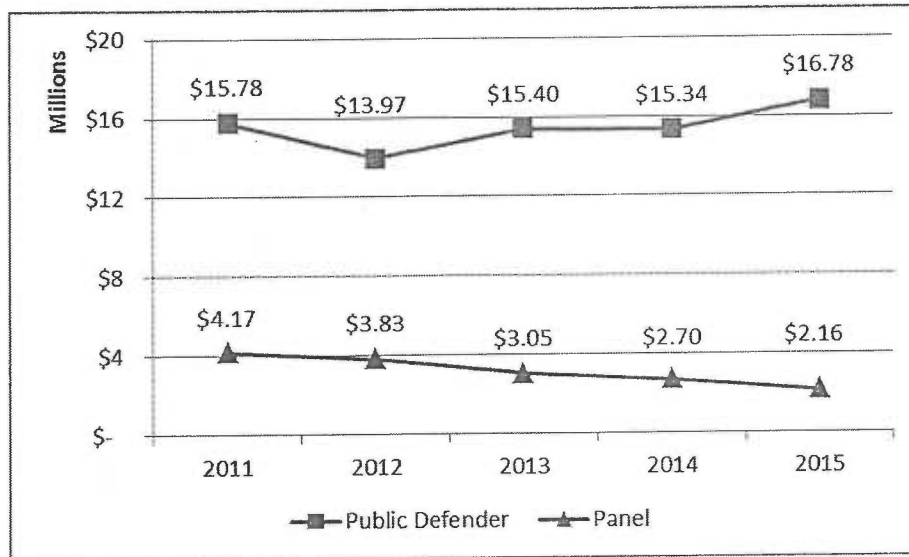
From 2010 to 2014, new petitions in Los Angeles dropped by almost half. Distribution of those petitions has remained roughly the same over the five years, with about 67% initially assigned to public defenders and about 28% initially assigned to panel counsel.

The total number of dispositions has also dropped but the distribution has changed. The share of dispositions handled by public defenders rose from 49% to 56% between 2010 and 2014; panel counsel's share of dispositions dropped from 43% to 36%.

From FY 2010-11 to FY 2014-15 the actual costs of the Juvenile Division of the Public Defender rose from \$15.8 million to \$16.8 million. The amount paid to contracted panel counsel in the eight branches with panel contracts dropped from \$4.2 million to \$2.2 million.

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Public Defender Actual Costs and Payments to Panel, FY 2011-2015



Public Defender and Panel Resources

Public defenders have on-staff social workers, investigators, resource attorneys, appellate attorneys, an immigration attorney, and administrative support. The County does not provide these resources free of charge to panel attorneys, who must instead pay for these resources from their flat fee or rely on parents, Probation, other County agencies, or community organizations.

For example, if a Public Defender client needs an IEP, Public Defender social workers and resource attorneys work with parents, help prepare for the hearing, and attend the hearing with the parent. In contrast, most panel attorneys give the client's parents a form letter for the school; the obligation is on the parents to follow through and most panel attorneys do not attend the hearing with the parents.

Panel heads state that they do not need the same resources as public defenders because their experience provides them with sufficient knowledge about community resources to which they can connect their clients.

Under the current contract, the County does not pay for investigators for panel attorneys and panel attorneys are not permitted to utilize the court-paid investigators otherwise available to attorneys for indigent clients. The cost of investigators must

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come from the flat fee paid to panel attorneys or the panel attorneys must find an investigator to work free of charge.

Seven of the eight panel heads maintain a pooled fund that attorneys in their branch can use to hire an investigator. However, the pooled fund comes out of the flat fees paid to panel counsel, thus reducing attorney compensation.

Other than investigators, public defenders and panel attorneys have equal access to 730 experts/resources, including social workers.

Comparative Rate of Resource Use

Although both public defenders and panel counsel have access to court-paid social workers, panel counsel utilization is so low that many judges are unaware that panel counsel have access to social workers.

Public defenders use more resources than panel counsel. As a percentage of their 2014 dispositions:

- Investigator use: PD 26%, panel counsel 9%¹¹
- Social worker use: PD 32%, panel counsel 1%
- 730/PACE doctors and experts: PD 20%, panel counsel 9%
- 317(e) education attorneys: PD 2%, panel counsel less than 1%

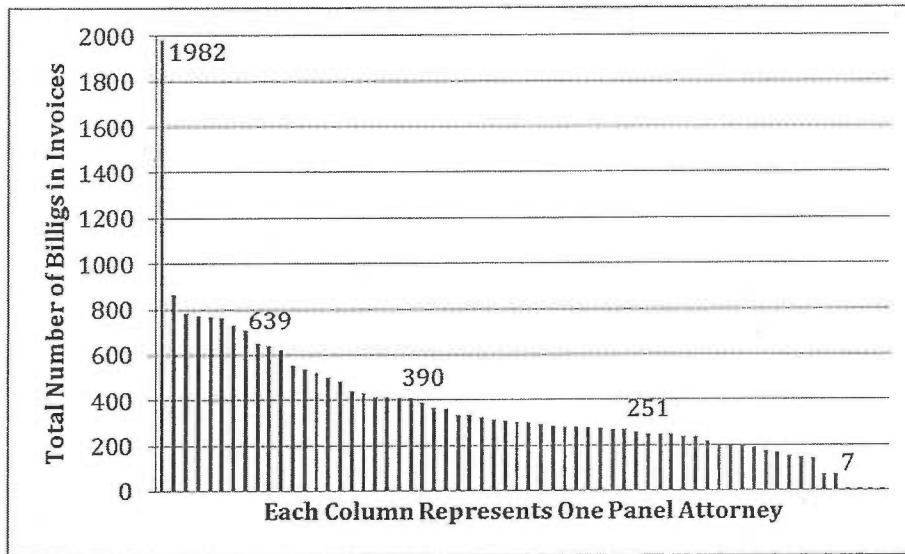
Resource use appears to differ greatly amongst the individual panel lawyers. For example, over a three-year period one panel attorney resolved 15% of his/her new 601 and 602 petitions within the same billing quarter, while another resolved 80% of his/her new 601 and 602 petitions within the same billing quarter. Resource use is likely much higher for the attorney who is taking longer to resolve cases.

Resource use may also be reflected in caseloads. Over three years, for example, one panel attorney billed for 1,982 petitions, or about 661 a year. This would be about two new matters a day, every work day of the year, for three years. Resource use would be expected to be quite low for an attorney handling this large of a caseload. The next highest three-year total was 867, and the average for all panel counsel was 289.

¹¹ No objective data was available regarding panel counsel use of investigators. The number above is based on panel counsel self-generated estimates about frequency of investigator use.

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Individual Panel Attorneys' Total Number of Billings, 2012-2014



Public defenders handled 49% of the felony dispositions from 2010 to 2014, but were responsible for only 23% of the DJJ commitments and only 29% of the camp commitments. Panel counsel handled 43% of the felony dispositions from 2010 to 2014, but were responsible for 54% of the DJJ commitments and 63% of the camp commitments. The full meaning of this disproportionality is unknown. It is possible that the difference in outcomes is a result of different resource use and attorney practices. It is also possible, however, that the difference in outcomes is a result of different types of clients; in other words, panel counsel may have more clients sentenced to DJJ and camp because panel counsel have more clients facing the possibility of DJJ and camp. It is also possible that the difference in outcomes is a result of both attorney practices and the types of clients.

Per-Case Costs Borne by Counsel

Panel counsel bear a number of costs that are not borne by individual public defenders, including the costs of their own training, the costs of investigators, and other costs associated with representation of their clients.

The Office of the Public Defender provides training, social workers, investigators, and other resources for all deputy public defenders.

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Neither panel counsel nor public defenders bear the cost of 730 experts paid through the County's PACE system. Social workers, therefore, can be obtained by panel counsel without cost.

Data was not available to quantify the actual per-case costs for either the Public Defender or panel counsel.

Measuring annual actual costs against the number of new petitions or the number of dispositions does not provide a per-case cost. However, as a means of comparison over the past five years, annual actual costs measured against number of dispositions shows an average of \$2,912 per disposition for the Public Defender and an average of \$751 per disposition for panel counsel. This is a means of comparison only; it is not the per-case cost.

Transfer Cases

Indigent juveniles facing possible transfer to adult court are more often assigned panel counsel. Over the past five years, as between panel and public defenders, panel counsel were assigned to 71% of the fitness motions and public defenders were assigned to 29% (for all fitness motions 56% were assigned to panel and 21% to public defenders; the remainder were mostly retained counsel).

Panel counsel clients are more likely to be found unfit and transferred to adult court. Over the past five years, 26% of panel clients were found unfit and transferred to adult court, but only 13% of public defender clients were found unfit and transferred to adult court. This is a statistically significant difference.

The youth are presumed to be similarly situated because they all have pending fitness motions. The differences in outcomes could therefore be a result of different attorney types. However, a causal relationship cannot be definitively determined because information about other potential causes is unknown.

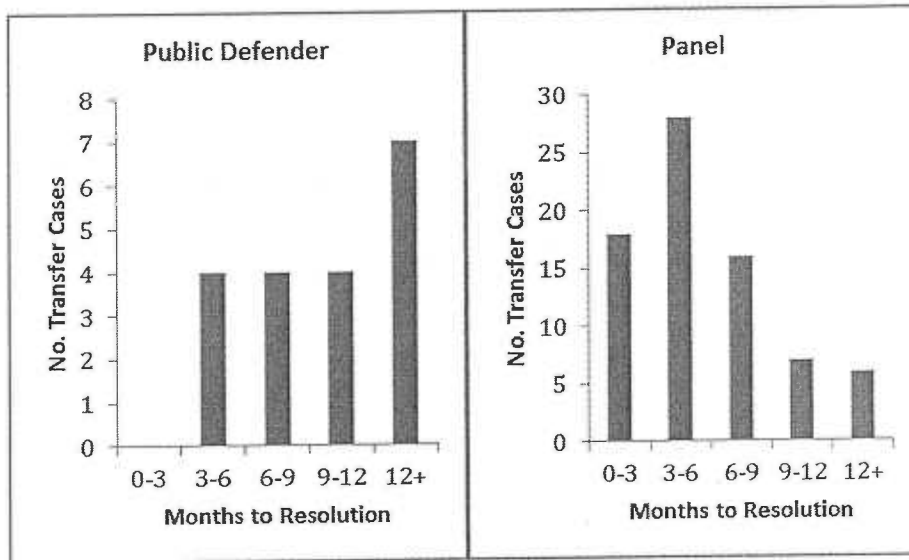
Out of 114 fitness cases examined in detail, four were resolved in less than one month, and all four resulted in a finding of unfitness and transfer to adult court. Three of the four were panel cases and one was retained counsel.

For cases examined in detail that resulted in transfer to adult court (66 in total), panel counsel consulted less often with experts, provided less documentation to support the client, and filed fewer motions. Panel counsel also resolved these unfit cases faster than public defenders – the average was 9.4 months for public defenders but only 4.9 months for panel counsel.

Executive Summary

Twenty percent of the panel attorneys responding to the survey indicated that conceding unfitness occasionally, sometimes, or often makes sense for the client.

Time to Resolution for Fitness Motions Examined in Sample, by Attorney Type



National Standards and County Methods for Specialized Training and Continuing Legal Education; Evaluation, Supervision, Mentoring and Support; Accountability and Quality Assurance; and Compensation and Incentives

The County's current contract with panel counsel does not allow panel counsel to access court-paid investigators; panel counsel must pay for investigators from their flat fee or they must find an investigator to work pro bono. National and state standards state that the County should provide investigators for panel counsel.

Both panel attorneys and public defenders have annual training, but panel attorneys are required to organize and pay for their training out of pocket. Standards state that the County should ensure that training is available without cost to all counsel for indigent defendants.

Because the County has not established a qualified oversight body for panel counsel, substantive oversight, supervision, and quality control have been provided, if at all, by the panel heads. This leads to inconsistency and an inability of the County to ensure quality. It is also inconsistent with standards. In at least two instances, panel attorneys have been constitutionally ineffective and either the County was not informed, or the

Executive Summary

County was informed but had no structure that allowed for a response.

Relying on the judges to provide oversight of panel counsel is problematic, lacks consistency, and is not recommended.

Flat-fee contracts such as those used in Los Angeles are strongly criticized in California and even barred by law in other states; since at least 2006 the State Bar has stated that they should not be used.

Compensation Models and Systems in Other California Counties

Among the counties surveyed:

Los Angeles is the only county that does not make county-paid investigators available to panel counsel.

Los Angeles is the only county that has no centralized mechanism for quality control. It is the only county that contracts directly with private attorneys and does not fund a qualified office or agency to monitor quality.

Los Angeles is the only county in which no experienced attorney or committee provides supervision and oversight of panel counsel.

Los Angeles is the only county that compensates panel counsel with a uniform per-case flat fee. In other counties, panel counsel are compensated by salary, on an hourly basis, or via an event-based flat fee structure that provides for different flat fees for different activities and different types of cases.

Recommendations from County Guidelines and Public Defender Cost to Implement

The Public Defender objected to the draft Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court, and the final Guidelines (issued in 2014) were not endorsed by the Public Defender. Many of the objections arose from differences of opinion regarding the scope of the Public Defender's role, not from a lack of funding. Thus, not all objections will be resolved even if the County fully funds the Public Defender to implement the Guidelines.

Executive Summary

There are some areas where the Public Defender could come closer to full compliance with increased funding, in particular by expanding the CARE program which provides social workers and resource attorneys for Public Defender clients. The Public Defender believes that expansion of the CARE program would require a very substantial increase in funding. No further specification was provided, on the grounds that to do so would be speculative.

The remainder of this report discusses each section in detail. The report begins with a brief overview of the Los Angeles County juvenile indigent defense system and an examination of the existing contracts between the County and panel counsel. The report is organized around the specific items identified in the Board's February 2014 motion, including filing trends, resource availability and rate of use, costs, training, compensation, quality assurance, and comparison with other California counties. The report concludes with a short discussion of the Public Defender's position regarding the Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court, promulgated by the Los Angeles County Superior Court in 2014.

PART I: System Overview

Highlights

The County has eight different contracts with eight different groups of private panel lawyers, in eight of the nine juvenile delinquency branches. These panel lawyers represent youth if the Public Defender has a conflict. The contracts provide for a one-time flat fee of \$340 to \$360 per petition.

In the ninth branch, the Alternate Public Defender represents the youth if the Public Defender has a conflict.

The panel contract system was created in the mid-1990s and has not substantively changed since then. The panel attorneys who bid on the contracts twenty years ago are still working as juvenile delinquency panel lawyers in the County, and very few new attorneys have been added.

Each branch contract is signed by a panel head on behalf of the group of attorneys in that branch. The panel heads take a percentage or per-petition amount from each quarterly payment from the County, which reduces the per-petition amount paid to the other panel lawyers in that branch.

Although the County's contracts are with groups or associations, there are no formal associations and there are no written agreements between the attorneys in each branch. Other than the attorneys who sign the contracts, therefore, it appears that the County's panel lawyers may be acting without written agreements with the County.

In one branch, the attorney signing the contract no longer represents youth in delinquency court, and has not done so for at least three years. That attorney continues to sign the contract, but a different panel head manages the attorneys in that branch.

Panel attorneys invoice for each new 601 and 602 petition (new alleged offenses), but they also invoice for 777 petitions (post-disposition violations), 778 petitions (changes in status), witness appearances, and AB12/212 matters. Some of these matters can be resolved quickly but the flat fee is the same; panel lawyers use the income from these smaller matters to subsidize their more complex cases.

Part I: System Overview

Los Angeles County has nine branch courthouses handling juvenile delinquency cases: Eastlake, Pasadena, Sylmar, Pomona, Compton, Inglewood, Los Padrinos (Downey), Long Beach, and Lancaster.¹² There are 23 judges and courtrooms spread amongst those nine branches. Youth who are detained while their cases are pending are confined in one of three juvenile halls, located in Eastlake, Sylmar, and Los Padrinos.

In general, proceedings are initiated against a child or adolescent through the filing of a 601 petition or a 602 petition, named for California's Welfare and Institutions Code Sections 601 or 602. The petition alleges that the youth has committed a particular offense. A youth may have one or more petitions pending against him or her at a time; each petition will contain allegations regarding conduct on a particular date or in a particular set of circumstances, and each petition is tracked separately in the County's JAI data system. Terminology and the legal ramifications are different than in adult court: In juvenile delinquency court the youth are "adjudicated delinquent" (rather than "found guilty"), and the case is resolved through "disposition" rather than "sentencing." More critically, unlike in adult court, the obligations of the child's attorney extend beyond defending against the charges in the petition, and representation does not cease when the petition reaches disposition. Instead, the attorney is obligated to advocate for his or her client in areas such as education, mental health, substance abuse, and developmental needs, and this obligation can extend well beyond adjudication and disposition.¹³

Office of the Public Defender

In all nine branches, the Juvenile Division of the Office of the Public Defender represents indigent youth who appear in delinquency court. The Public Defender is a County agency and its attorneys and staff are salaried County employees.

Deputy public defenders working in the Juvenile Division are assigned to a particular branch and supervised by a Deputy-In-Charge (DIC) in that branch. The deputy public defenders in the Juvenile Division tend to be less experienced attorneys; they cannot begin in the Juvenile Division but they can transfer to the Juvenile Division usually after two to three years of practice in adult misdemeanor court. Deputy public defenders generally cycle through the Juvenile Division in 18 to 36 month rotations, although some are permitted to stay within the Juvenile Division if they request it, if their performance

¹² A tenth branch, Kenyon, closed in mid-2013.

¹³ "Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court", Superior Court of California County of Los Angeles, Juvenile Division, p. 2 citing to Rule 5.663 of the California Rules of Court, adopted by the California Judicial Counsel in 200; State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 22. www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

Part I: System Overview

is acceptable, and if staffing needs allow for it. The DICs remain in the same branch for an extended period of time; they are intended to be consistent points of contact for parents as well as for the court, district attorneys, probation officers, and panel counsel. The DICs are responsible for daily mentoring, training, and supervision of the deputy public defenders. In addition, two Head Deputies in the downtown office are responsible for supervising all deputy public defenders in the Juvenile Division.

As of March 2015, the Juvenile Division had 49 full-time deputy public defender positions and nine DICs representing clients in the nine branches. The Office also has a number of attorneys and other staff providing services for their clients; these resources are described in the section on resources below.

Conflict of Interest

An indigent juvenile who comes before the court will be assigned an attorney from the Office of the Public Defender unless the Office has a conflict of interest that could affect the child's right to effective representation.¹⁴ This might happen, for example, if multiple youth are arrested together or if one youth might be a witness against another. If one attorney within the Office has a conflict, that conflict applies to all attorneys in the Office.

Currently, the Public Defender's policy states that, if the juvenile's public defender is pursuing post-dispositional advocacy, then the juvenile is considered a currently-represented client and the Office will declare a conflict¹⁵ (see Appendix B for a copy of the conflict policy). If the attorney is not pursuing post-dispositional advocacy but the juvenile is still subject to court supervision, the Office may or may not declare a conflict for that juvenile. It is also the Public Defender's policy that the juvenile, if committed to the Department of Juvenile Justice (DJJ), remains in the status of currently-represented client until he or she is discharged from physical custody of the DJJ. In addition, when an adult is arrested along with a minor, the Public Defender will ordinarily represent the adult (in the absence of other bases for a conflict regarding that adult) and will declare a conflict as to the minor. Finally, the Office's policy states that "[o]ther conventions and

¹⁴ The threshold for conflict or potential conflict is a record that supports "an informed speculation" that the defendant's right to effective representation could be prejudicially affected. Proof of an "actual conflict" is not required. The same principles apply when counsel represents clients whose interest may be adverse even when they are not co-defendants in the same trial (*People v. Mroczko* (1983) 35 Cal. 3d 86, 105). The Los Angeles County Public Defender will not represent more than one defendant in any multiple-defendant case, absent extraordinary circumstances. Los Angeles County Public Defender Policies and Procedures; Conflicts of Interest in Representation (2010).

¹⁵ Los Angeles County Public Defender Policies and Procedures; Conflicts of Interest in Representation § F (2010).

Part I: System Overview

protocols regarding conflict unique to juvenile court practice are not included within this policy.”¹⁶

Alternate Public Defender

In the Lancaster branch only, the Alternate Public Defender (APD) represents juveniles when the Public Defender has a conflict. Like the Public Defender, the APD is a County agency and APD attorneys and staff are County employees.

The APD has two experienced attorneys working full time in the Lancaster juvenile court, as well as one full-time attorney at the mental health court in Eastlake. The APD incorporates its juvenile attorneys in its overall supervision and training regime, and provides the same in-house administrative, legal, and investigative support that it provides for its attorneys working in adult court. Except for the Eastlake mental health court, the APD does not represent juveniles in any branch other than Lancaster.

If both the Public Defender and the APD are conflicted from a case in Lancaster, the court will appoint a private attorney from a roster of three attorneys. These attorneys are paid directly by the court as if they were outside experts or consultants appointed by the court. They are paid a flat fee of \$250 per case.¹⁷ In this report, the term “panel counsel” does not include these three Lancaster attorneys and is intended to refer only to the panel counsel in the other eight branches, described below.

Panel Counsel

In all branches except Lancaster, a private panel attorney will represent the juvenile when the Public Defender has a conflict.¹⁸ The panel attorneys are private attorneys who usually operate as sole practitioners. Because the panel attorneys are independent practitioners, there should not be a conflict from one panel attorney to another, unlike with the Public Defender’s Office.

¹⁶ Los Angeles County Public Defender Policies and Procedures; Conflicts of Interest in Representation (2010).

¹⁷ In special circumstances, the court can raise the amount paid to the panel attorneys in Lancaster. In three instances the court approved flat fees of \$1000 per case. Confirmation was never received about the time period covering these \$1000 payments.

¹⁸ Recollections were different regarding the reason why Lancaster is different. Most people recalled that a Request for Proposals (RFP) was issued in Lancaster for the conflict cases, but the bids were considered to be too high so the APD was asked to take the Lancaster conflict cases. Others did not recall an RFP being issued. Whatever the reason, this current system has been in place since the late 1990s.

Part I: System Overview

The panel attorneys within each branch stay in that branch; they do not usually move from branch to branch. Other than natural attrition, there has been virtually no turnover among panel counsel over the past 25 years. The current panel attorneys have many years of experience: they have been representing juveniles in delinquency court for an average of 24 years, including many years prior to the time they became panel counsel, ranging from a low of eight to a high of 40 years.¹⁹ For much or all of that time, these attorneys have been paid by the County to represent youth in delinquency court, either through the current contract, or on an hourly basis prior to the current contract system.

The panel structure in these eight branches has been the same since the mid-1990s. Each branch has a panel head, who is him- or herself a member of the panel and who represents youth in that branch along with the other panel members. Each panel head signs a contract with the County. The panel contracts provide for a per-petition flat fee that is paid on a quarterly basis upon receipt of the petition. The flat fees are different in each branch. They have risen slightly since the contracts were originally signed; these increases have tracked cost of living increases given to County employees. As of 2015, these flat fees ranged from \$340 to \$360 per petition; there is no provision for the panel attorney to receive additional funding no matter how much work is required on a particular case including any post disposition work or services, and there are no further transactions between the County and the panel attorneys once the flat fee is paid.²⁰

What is a "Petition?"

The panel contracts refer to the number of "cases" per attorney, but the panel attorneys bill the County for each "petition." The word "petition" is not defined in the contract. Billing invoices indicate that panel attorneys bill for each new 601 or 602 petition, as well as for each new 777 (probation violation) or 778 (change of status) petition.²¹ They also bill for AB 12/212 cases when appointed by the court to represent youth in those proceedings, for drug court, and for witness cases when panel counsel is appointed to represent a witness at an adjudication. Approximately 34% of annual billings are for 777 and 778 petitions.

There is some lack of consistency amongst panel heads about billing. One panel head, for example, bills for every 778 petition regardless of the time involved. Others do not bill for 778s if the matter is resolved quickly in a one-time court appearance without any out-of-court work.

¹⁹ Based on survey responses.

²⁰ As of 2015 the contracts provide for the following per-petition flat fees: Compton: \$340, Eastlake: \$347, Inglewood: \$347, Long Beach: \$360, Los Padrinos: \$347, Pasadena: \$360, Pomona: \$345, Sylmar: \$347.

²¹ 602 petitions are the charging documents that initiate a case against a juvenile if the juvenile is alleged to have done something that would be a crime if the juvenile were an adult. 601 petitions are the charging documents that initiate a case against a juvenile if the juvenile is alleged to have committed status offenses such as truancy or curfew violations.

Part I: System Overview

The ability of panel counsel to bill for these other matters means that the oft-quoted "\$340 per case" is not entirely accurate, as the billings in these other matters (some of which can be resolved quickly) generate income that can be used to compensate attorneys for additional time needed on more substantive matters. However, as noted in the section on comparison counties below, panel counsel in Los Angeles are still paid less than panel counsel in other counties.

Each quarter, the panel heads submit invoices to a Principal Analyst within the County CEO listing the number of new petitions in each branch for that quarter.²² The Analyst reviews the invoices for billing inaccuracies and then processes the payment. All of the panel heads take either a percentage of each quarterly payment or a flat fee from each petition,²³ then distribute the remainder of the quarterly revenue to the other panel attorneys in that branch.²⁴

Each branch has between three and 11 panel attorneys.²⁵ As of the beginning of 2015, there were 45 different panel attorneys receiving conflict cases in the eight branches; three of them billed in more than one branch during that billing quarter so the invoices submitted reflected 48 attorneys. Almost all supplement their juvenile delinquency panel cases with juvenile delinquency retained cases, adult panel cases, adult retained cases, and/or civil cases. A few of the current panel attorneys work only on juvenile delinquency panel cases.

Panel Contracts

The panel contracts originated after the County issued a series of Requests for Proposals (RFPs) in the mid-1990s. Groups of private lawyers came together to submit bids in response to the RFPs. Compton was first with a combined juvenile/adult contract which later became a juvenile delinquency contract in approximately 1995. Pasadena was signed in 1993, the next two (Eastlake and Sylmar) in 1996, and the remaining four were

²² One panel head submits invoices when the case reaches disposition, not when panel counsel are appointed.

²³ Not all panel heads agreed to disclose how much they take from each quarterly invoice. The ones who answered take between 5 and 10% of each quarterly payment, or a flat fee of \$25 - \$30 per petition.

²⁴ In seven of the eight branches, the money is distributed on a per petition basis; in other words, each attorney receives an amount reflecting the number of petitions that the particular attorney handled in the quarter. In one branch, the panel head attempts to maintain a consistently equal distribution of cases amongst the panel attorneys throughout the year, then divides each quarterly payment equally between the attorneys.

²⁵ Panel heads reported the following number of attorneys in each branch as of the end of 2014 and early 2015: Compton 4; Eastlake 6; Inglewood 6; Long Beach 6; Los Padrinos 11; Pasadena 5; Pomona 3; Sylmar 7. Three attorneys are counted twice because they each work in more than one branch.

Part I: System Overview

signed in 1998. The contracts have been renewed every year or every two years since then with no major changes.²⁶ The panel heads state that they were the most qualified bids; some also stated that they believe they may have been the lowest or the only bidders at the time (see Appendix C for a sample contract).

Notably, all eight contracts are between a group or association and the County CEO, and the County's checks are made out to these group entities. However, although the panel heads sign their contracts on behalf of the group and the panel heads maintain bank accounts in the names of the groups, in fact there are no formal associations and there are no written agreements between the panel attorneys who constitute the group in each branch. Only one contract – the Compton contract – contains the names of the attorneys in the branch, and those names have not been updated in the contract since 1998. None of the other seven contracts identify any attorneys by name. The panel heads state that they identified all the attorneys in their groups in their bids in response to the RFPs, but those names are not incorporated into the contract and the other attorneys do not sign the contract. Other than the panel heads, therefore, it appears that some of the attorneys representing youth in delinquency court on behalf of the County have been doing so without any written legal agreement with the County.²⁷

The panel contracts have been marked by a remarkable degree of informality and autonomy on the part of the panel heads. Attorneys not identified in the original RFP bids have represented panel clients over the past twenty years, sometimes on a permanent basis and sometimes to temporarily pitch in when the existing attorneys were unavailable. Although it does not appear that there have been many new attorneys, panel heads have notified the CEO about new attorneys in their branches inconsistently and notification, when it occurred, was often after-the-fact and informal.

The high degree of informality extends to the signatories to the contracts. In six of the eight branches, the original person who signed the contract on behalf of the group in the 1990s is still the person signing the contract. In one of those six, however, the person signing the contract no longer represents clients in delinquency court and has not done so for at least three years. Although he still signs the contract, he appears to play no role in the panel. Instead, a panel head from a different branch manages the panel and submits the invoices to the CEO.

²⁶ All of the updated contracts added an updated termination agreement that prohibits the County from terminating for convenience in the first year but permits termination at any time in the second year. The updated contracts also streamlined payment to attorneys.

²⁷ The original contracts were with: Pomona Juvenile Defenders, Rene Ramos Attorney at Law, South Central Indigent Juvenile Panel, Long Beach Juvenile Defenders, Antonio Govea and Associates, Inglewood Juvenile Defense Association, Juvenile Delinquency Defense Association, and Los Padrinos Juvenile Defense Association.

Part I: System Overview

In the seventh branch, the original signatory is now the panel head in a different branch, and a different attorney now signs the current amendments on behalf of the group. The panel heads state that the attorney currently signing the contracts was identified in the original bid for the RFP so changing the signatory is not a problem.

In the eighth branch, the original panel head left the panel in approximately 2011, and an entirely new person (who had not been identified in the RFP bid) began signing the contract. They sent the County an after-the-fact email at the time of the switch, but the County did not notice until the end of 2014, when the CEO asked each branch to identify their panel members. It is the County's position that the informal email was not the appropriate way to notify the County that a new person was taking over the contract in that branch.

The eight contracts have some similarities and some differences. All of the contracts include lengthy and similar provisions regarding the County's lack of liability, insurance coverage requirements, the fact that the attorneys are not eligible for benefits, and billing processes. Although minimum qualifications were set out in the original RFPs, none of the signed contracts mention necessary qualifications and training for the panel attorneys, nor do they detail performance requirements other than the fact that the contractors (the panel heads) are to uphold the same services as a public defender, and the fact that the panel heads "are responsible for complying with all applicable professional standards and shall be responsible for the internal monitoring of his/her employees' work."²⁸ The panel heads have been clear that the other panel members are not their employees so the meaning of this clause is murky.

As noted above, the contracts differ in the amounts paid for each petition, which is a result of the fact that the bids submitted in response to the RFPs proposed different payment rates. The contracts also differ in the enforceability of oversight in the case of a performance violation. Five of the contracts allow the County to require changes and impose penalties in the case of a violation. In these five (Pasadena, Compton, Los Padrinos, Inglewood and Long Beach):

"The county or its agent will evaluate contractor's performance under this agreement on not less than an annual basis. Evaluation includes assessing contractor's compliance with all contract terms and performance standards. Monitoring may include, but is not limited to, verifying that the program is operating in accordance with the project specifications and regulations, the law, and applicable professional standards.

²⁸ Agreement for Defense Services at \$16 for Pasadena, Compton, Los Padrinos, Inglewood, and Long Beach and \$15 for Pomona, Sylmar-San Fernando, and East Lake.

Part I: System Overview

Improvements are suggested and if not followed then termination of agreement or penalties may be imposed.”²⁹ (Emphasis added)

In the other three, the County does not appear to have the authority to require any modification. In these three (Pomona, Sylmar, and Eastlake):

“County through its project director shall monitor the progress and effectiveness of contractor’s performance under this contract. Monitoring may include but not limited to, verifying that the program is operating in accordance with the project specifications and regulations, the law, and applicable professional standards. County may hire someone to monitor the work but this personnel has no authority over the work of the contractor.”³⁰ (Emphasis added)

The difference between the contracts may not be material, however, as it does not appear that the County has monitored the substantive performance of the panel heads or panel attorneys since 2006. This issue is discussed more fully in the section on quality assurance and accountability below.

Comparison with the Los Angeles Adult Criminal Panel

Los Angeles County is unusual in that the juvenile indigent defense structure bears no resemblance to its adult indigent defense structure. While the juvenile indigent defense structure in Los Angeles is unlike anything reviewed in other counties, the adult indigent defense structure is consistent with much of the rest of the state.

For indigent adults charged with a crime in Los Angeles, as in many other counties, the APD represents the defendant when the Public Defender has a conflict. This is true across all adult court branches in the County. Also as in many other counties, a panel attorney is appointed if there is a further conflict beyond the Public Defender and the APD.

Adult panel attorneys in Los Angeles are not paid a contractual flat fee as they are in juvenile delinquency court, and the panel attorneys do not oversee themselves. Instead, as in many other counties, Los Angeles delegates management and oversight of the adult panel to the County Bar Association, which runs the Indigent Criminal Defense Appointments Program (ICDA). ICDA has about 330 panel lawyers who handled 16,000 cases in 2012 (about 48 cases per attorney, per year). ICDA is operated by an administrator and five full-time program assistants, and is supervised by a full-time directing attorney with experience in criminal defense. The directing attorney, in conjunction with an executive committee, handles member qualifications, discipline, financial audits, rules and procedures, new member

²⁹ Agreement for Defense Services Contract 1993 – 1998 at §22 for the court houses of Pasadena, Compton, Los Padrinos, Inglewood, Long Beach.

³⁰ Agreement for Defense Services Contract 1993 – 1998 §21 for the court houses of Pomona, Sylmar-San Fernando, and Eastlake.

Part I: System Overview

trainings, and CLE seminars. Panel attorneys are classified into six grades (misdemeanors and felonies grade I (minor cases) through grade V (murder with special circumstances)). They are compensated on a graduated hourly rate: \$74 an hour for misdemeanors, \$80 an hour grade I, \$86 an hour grade II, \$93 an hour grade III, and \$106 an hour grade IV. Grade V cases (death penalty) are handled by a smaller, separate group of attorneys and paid on a specialized flat fee contract.³¹

³¹ Information obtained from the Los Angeles County Bar Association website, last accessed October 28, 2015. <http://www.lacba.org/showpage.cfm?pageid=24>

Part II: Filing Trends

PART II: Filing Trends and Total Cost of Juvenile Defense

Response to Supervisor Antonovich's friendly amendment:

"...include what the trend of the filings [has] been in the last 5 years and its impact on the County's cost of defense for juveniles for the Public Defender, the Alternate Public Defender and the Panel Attorneys."

Highlights

Juvenile delinquency petitions have been dropping in Los Angeles as well as in the rest of the state for the past decade.

From 2010 to 2014, new petitions in Los Angeles dropped by almost half. Distribution of those petitions has remained roughly the same over the five years, with about 67% initially assigned to public defenders and about 28% initially assigned to panel counsel.

The total number of dispositions has also dropped but the distribution has changed. The share of dispositions handled by public defenders rose from 49% to 56% between 2010 and 2014; panel counsel's share of dispositions dropped from 43% to 36%.

From FY 2010-11 to FY 2014-15 the actual costs of the Juvenile Division of the Public Defender rose from \$15.8 million to \$16.8 million. The amount paid to contracted panel counsel in the eight branches with contracts dropped from \$4.2 million to \$2.2 million.

Filing Trends

Total Number of Petitions

Juvenile delinquency petitions have dropped significantly over the past decade nationally, in California, and in Los Angeles.

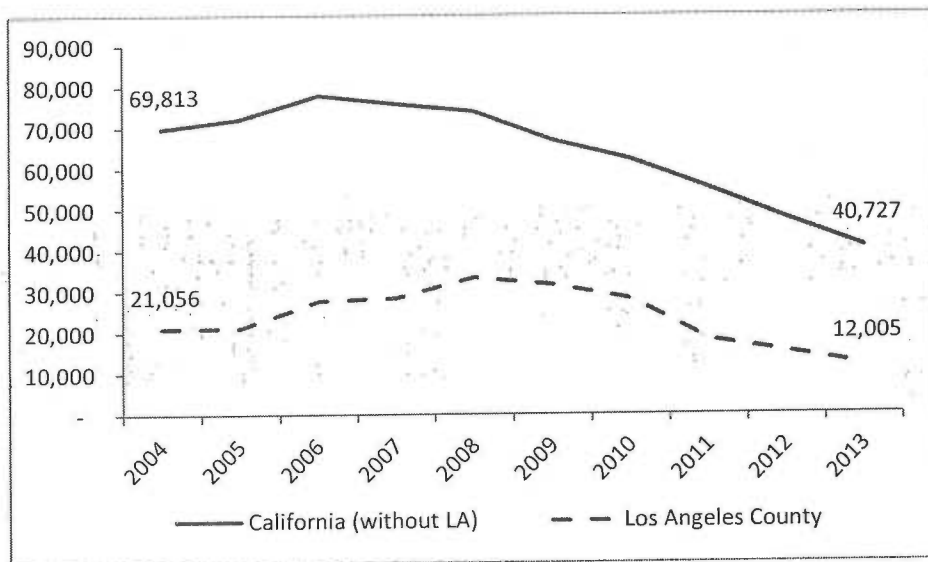
As shown in Figure 1, between FY 2004 and FY 2013 total juvenile delinquency petitions declined by 43% in Los Angeles (from 21,056 to 12,005) and by 42% in the rest of the

Part II: Filing Trends

state (from 69,813 to 40,727). Nationally, the juvenile commitment rate dropped 53% from 2001 to 2013.³²

Data was not available to determine whether the decrease in juvenile petitions in Los Angeles was uniform across all types of crime. It is possible that in Los Angeles, as in some other jurisdictions, the drop in juvenile petitions has not been distributed equally across crime types. A reduction in number of cases, in other words, does not shed light on the seriousness of caseloads or the workload of each attorney. If the drop in petitions was mainly a drop in petitions for minor or status crimes such as truancy, for example, each attorney's caseload dedicated to violent crime may have stayed flat even while the total number of cases dropped, and the workload of each attorney may not have changed significantly.

Figure 1. Juvenile Delinquency Petitions, Los Angeles County vs. Rest of California, FY 2004 - FY 2013³³



In the past five years, from 2010 to 2014, the annual number of 601 and 602 petitions in Los Angeles dropped by almost half from 16,036 to 8,245.³⁴ The downward trend has

³² Pew Charitable Trusts, November 9, 2015: <http://www.pewtrusts.org/en/multimedia/data-visualizations/2015/juvenile-commitment-rate-drops-53-percent>

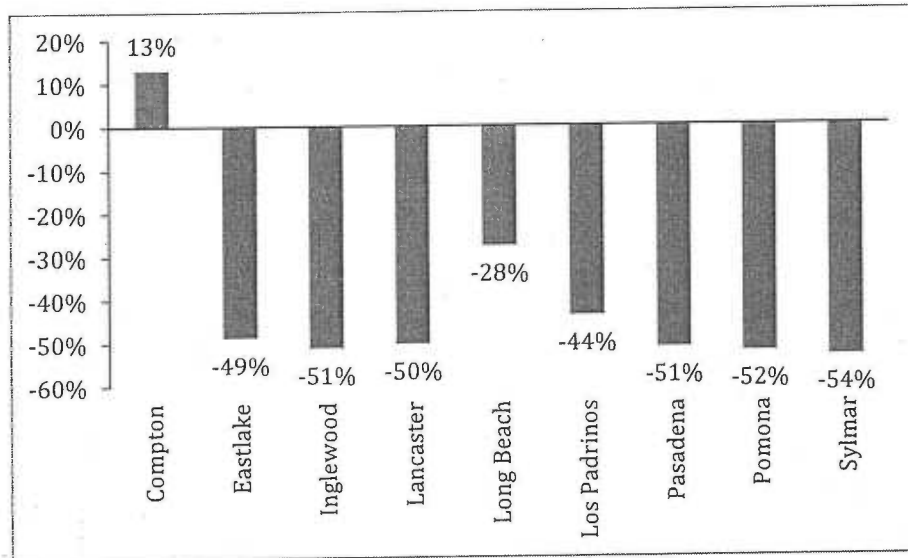
³³ Data from annual Court Statistics Report (CSR) published by the Judicial Council of California. Juvenile Delinquency Petitions include original and subsequent filings. Reports are available at: <http://www.courts.ca.gov/13421.htm>.

³⁴ 602 petitions are the charging documents that initiate a case against a juvenile if the juvenile is alleged to have done something that would be a crime if the juvenile were an adult. 601 petitions are the charging documents that initiate a case against a juvenile if the juvenile is alleged to have committed

Part II: Filing Trends

been seen in eight of the nine branches, as shown in Figure 2. The increase in the ninth branch (Compton) is likely due to the closure of the Kenyon branch in 2013, as many cases that were previously in Kenyon were brought instead to Compton after the closure. Figure 3 shows the distribution of new petitions across courthouses in 2014, which ranges from a low of seven percent in Pasadena to a high of 15% in Eastlake.

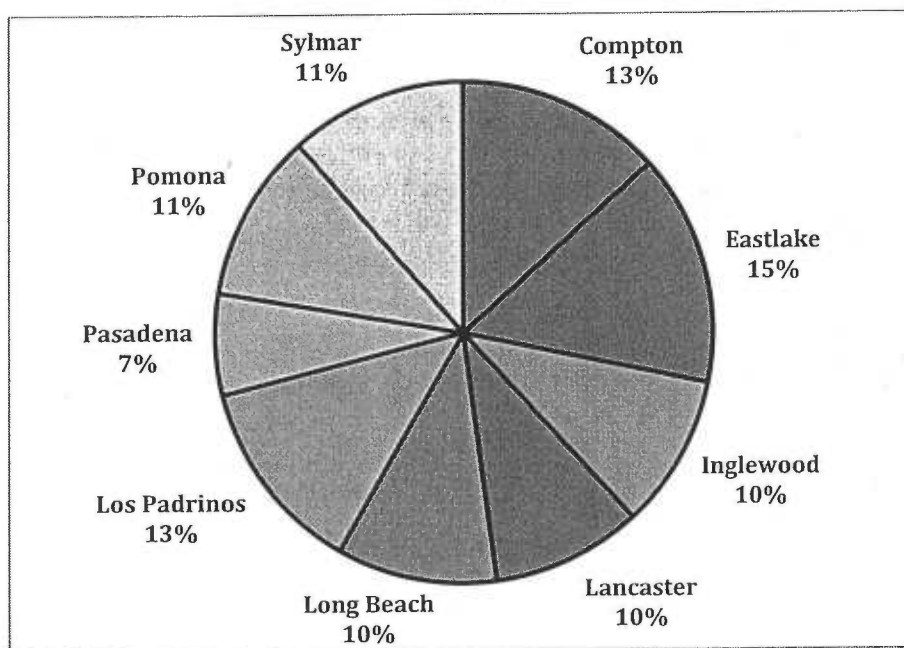
Figure 2. Percent Change in # of New Petitions by Branch, 2010-2014



status offenses such as truancy or curfew violations. The County counts only 601 and 602 petitions as new petitions. The total number of new petitions counts both first-time petitions (i.e., the first time a juvenile has a petition filed against him or her), as well as subsequent petitions (i.e., a new petition alleging new conduct, for a juvenile who had a previous petition filed against him or her for different conduct).

Part II: Filing Trends

Figure 3. Distribution of New Petitions by Courthouse, 2014



Distribution by Attorney Type

Although the total number of new petitions has dropped, the distribution of those petitions among juvenile indigent defense attorneys in Los Angeles has remained roughly the same. Between 2010 and 2014, 67% to 69% of the new petitions each year were assigned to public defenders at arraignment or initial assignment, 27% to 29% to panel counsel, and about 2% to other attorneys – APD and private counsel (see Figures 4 and 5).

Part II: Filing Trends

Figure 4. New Petitions by Attorney Type at Initial Assignment, 2010-2014

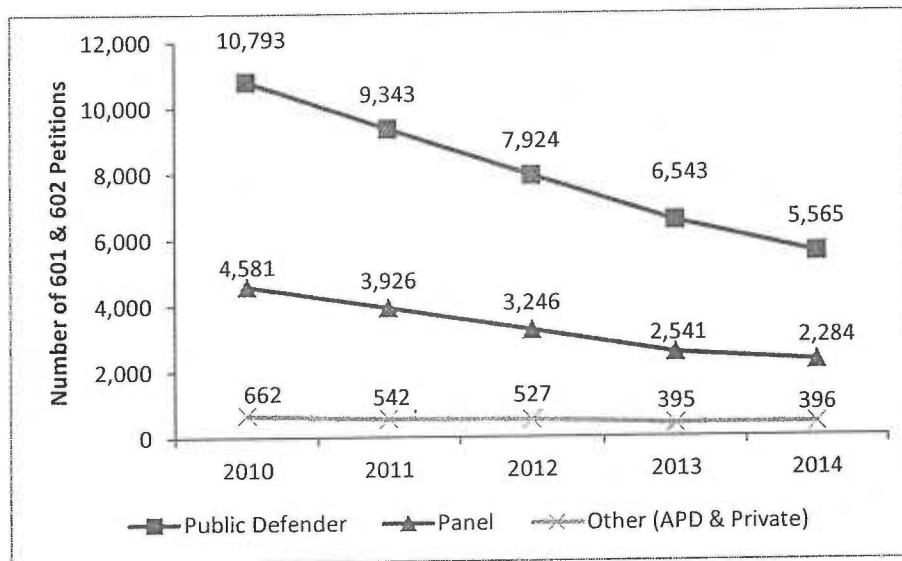
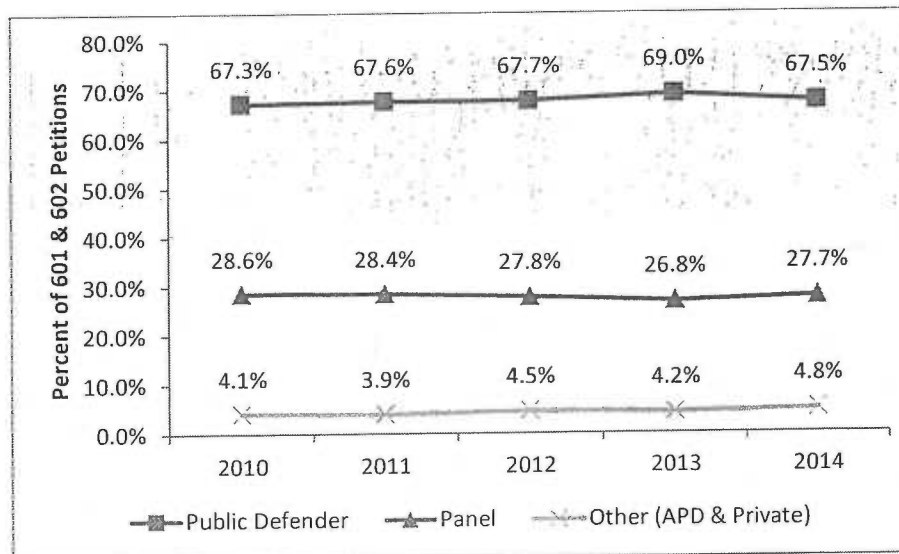


Figure 5. Distribution of New Petitions by Attorney Type at Initial Assignment, 2010-2014



The total number of dispositions has also dropped over the last five years, from 12,399 in 2010 to 8,672 in 2014. However, during that time the share of dispositions handled by public defenders rose from 49% in 2010 to 56% in 2014. The share of dispositions

Part II: Filing Trends

handled by panel counsel dropped from 43% in 2010 to 36% in 2014.³⁵ The share of dispositions handled by other attorneys (APD, private counsel, and unknown) stayed at around 8% (see Figures 6 and 7).

Figure 6. Total Dispositions by Attorney Type, 2010-2014

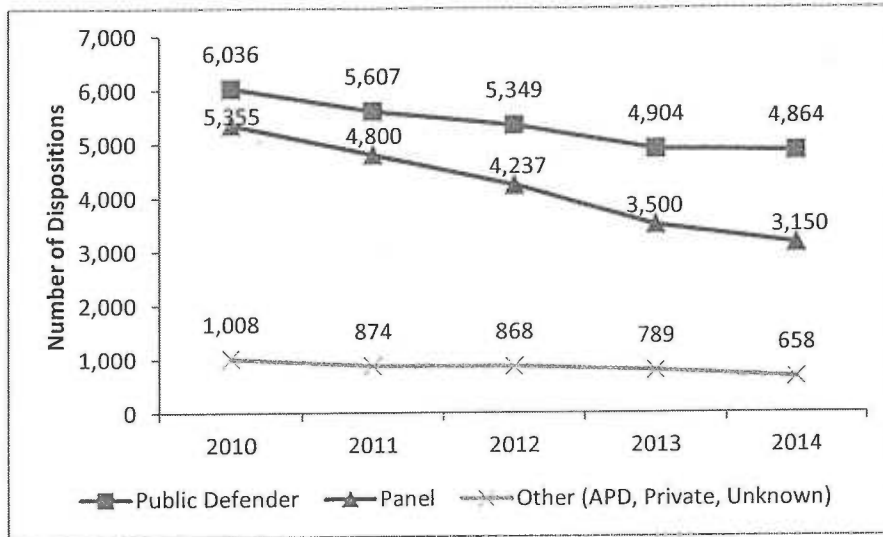
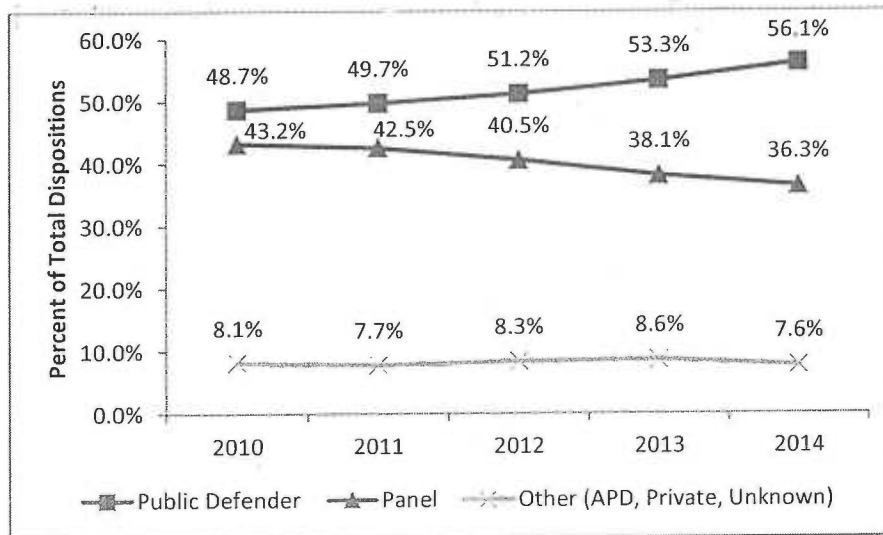


Figure 7. Distribution of Dispositions by Attorney Type, 2010-2014



³⁵ Much of the data in this report was pulled from the County's JAI system, which is a calendaring system. As noted in the methodology section, data received regarding dispositions, unlike data received in other areas, was not usable without manipulation because the JAI system codes multiple events as "disposition." The data can be considered reliable as it relates to proportion and distribution, but the raw numbers should be considered a close approximation.

Part II: Filing Trends

Examining only new petitions as recorded by JAI leaves out a significant portion of the work performed by juvenile defense attorneys, in large part because JAI does not count probation violations (777 petitions) or changes in status (778 petitions) as new petitions. However, both the Public Defender and panel counsel consider 777s and 778s to be new petitions, and both record their own numbers of 777 and 778 petitions. Based on this data, the number of 777 and 778 petitions has also been dropping over the past five years. For public defenders, 777 and 778 petitions dropped from 5,750 in 2010 to 3,416 in 2014. For panel counsel, 777 and 778 petitions dropped from 3,058 in 2012 to 2,209 in 2014.³⁶

Time to Disposition

While the number of new petitions has dropped, the average time from petition date to disposition date for felonies has risen. This has been seen across all attorney types. For public defenders, it was 2.7 months in 2010 and 6.7 months in 2014. For panel counsel, it was 2.1 months in 2010 and 6.2 months in 2014. This could indicate that all attorneys are carrying more serious caseloads, that attorneys now have time to adequately represent their clients, that the entire system is moving more slowly (including Probation, the District Attorney and the Court), or it could be a reflection of a change in the way the branch clerks are calendaring disposition dates. Further clarity would require additional research.

County Cost

From FY 2010-11 to FY 2014-15, the actual cost for the Juvenile Division of the Public Defender rose from \$15.8 million in FY 2010-11 to \$16.8 million in FY 2014-15 (see Figure 8).

The County does not determine a budget solely for contracted panel counsel in each fiscal year.³⁷ Rather, panel counsel submit quarterly invoices that are paid by the County upon receipt. From 2010 to 2014, the total payments made to panel counsel, as calculated by these invoices, dropped from \$4.2 million in 2010, to \$2.2 million in 2014.³⁸ The County carries additional costs related to panel counsel (in particular, the

³⁶ Data was not obtained for 777s and 778s from panel counsel in 2010 and 2011.

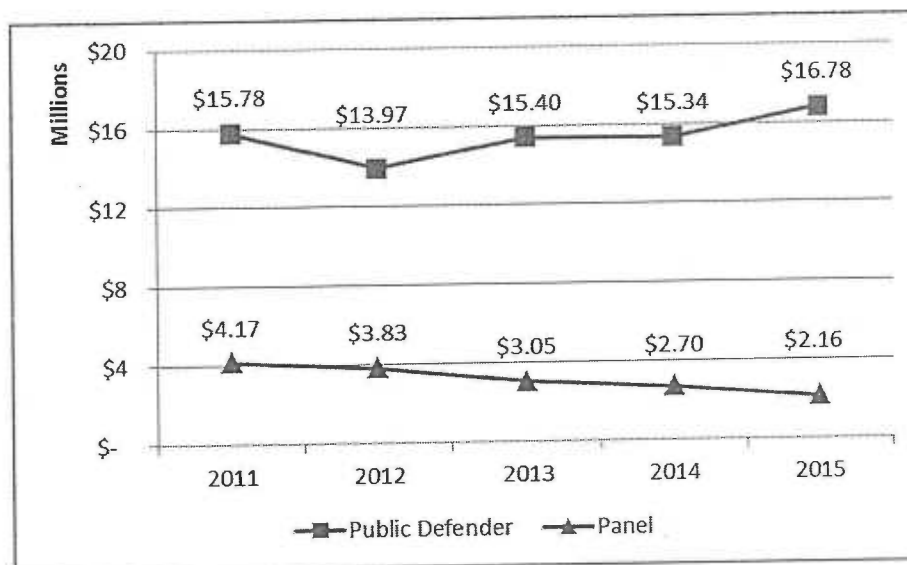
³⁷ The annual budget for contracted panel counsel is included within the Trial Courts Indigent Defense Budget in the amount of \$4.8 million. However, this includes Lancaster Court and the budget for Lancaster Court cannot be disaggregated from the budget for contracted panel counsel.

³⁸ Totals reflect closest approximation of PD fiscal year (July 1 – June 31) to panel billing year (November 1 - October 31). A more accurate comparison to PD was impossible because payment data for panel counsel was provided by panel billing year and the PD maintains data by fiscal year.

Part II: Filing Trends

cost of a Principal Analyst in the Office of the CEO to oversee the panel invoices and payments, as well as a portion of a supervisor); those additional costs are not reflected here.

Figure 8. Public Defender Actual Costs and Payments to Panel, FY 2011-2015



To some extent, the differences in Public Defender and panel counsel actual costs reflect the different caseloads, different resources available, and the different services provided by public defenders and panel counsel.³⁹ Those differences are discussed in the next sections.

³⁹ Between 2010 and 2014, the Public Defender added the SB 9 unit, the SB 260 unit, and a full-time trainer.

Part III: Public Defender and Panel Resources

PART III: Public Defender and Panel Resources

Responses to items 1) a. in the motion:

“A summary of the resources available to attorneys in the Los Angeles County Public Defender and court appointed indigent defense attorneys to assist them in representing juvenile clients (including, but not limited to, Attorneys, Social Workers, Resource Attorneys, Deputies in Charge, Investigators, Administrative Support, Welfare and Institutions Code (WIC) 730 Evaluators, and WIC 317(e) Education Attorneys).”

Highlights

Public defenders have on-staff social workers, investigators, resource attorneys, appellate attorneys, an immigration attorney, and administrative support. The County does not provide these resources free of charge to panel attorneys, who instead must pay for these resources from their flat fee or rely on parents, Probation, other County agencies, or community organizations.

For example, if a Public Defender client needs an IEP, Public Defender social workers and resource attorneys work with parents, help prepare for the hearing, and attend the hearing with the parent. In contrast, most panel attorneys give the client's parents a form letter for the school; the obligation is on the parents to follow through and most panel attorneys do not attend the hearing with the parents.

Panel heads state that they do not need the same resources as public defenders because their experience provides them with sufficient knowledge about community resources to which they can connect their clients.

Under the current contract, the County does not pay for investigators for panel attorneys and panel attorneys are not permitted to utilize the court-paid investigators otherwise available to attorneys for indigent clients. The cost of investigators must come from the flat fee paid to panel attorneys or the panel attorneys must find an investigator to work free of charge.

Seven of the eight panel heads maintain a pooled fund that attorneys in their branch can use to hire an investigator. However, the pooled fund comes out of the flat fees paid to panel counsel, thus reducing attorney compensation.

Part III: Public Defender and Panel Resources

Other than investigators, public defenders and panel attorneys have equal access to court-paid 730 experts/resources, including social workers.

Public Defender Resources

The Juvenile Division of the Office of the Public Defender has 49 deputy public defenders positions spread amongst the nine branch courthouses, a supervising attorney called a Deputy in Charge (DIC) in each branch, and two Head Deputies who oversee all juvenile public defenders in the County. To help its attorneys provide the expanded representation required for juveniles, the Office of the Public Defender has on-staff social workers, resources attorneys, investigators, appellate attorneys, an immigration attorney, and administrative support and paralegals (see Figure 9). These resources are available to all deputy public defenders and DICs. In addition to the trial attorneys and DICs working in the branch courthouses, the Office also has specially assigned staff including one attorney and one paralegal in the DJJ unit in Inglewood, an attorney and social worker in the juvenile mental health court in Eastlake, an attorney in the STAR court in Compton, and three attorneys and a social worker in the SB9 and SB260 units. The roles and responsibilities of the various types of staff members are summarized below.

Figure 9. Summary of Juvenile Division Resources, as of March 2015

- Attorneys: 49
- Social Workers: 13 in courts, 2 supervising
- Resource Attorneys: 7
- Deputies in Charge: 9 at the 9 courthouses plus 1 who is the Collaborative Justice DIC
- Head Deputies: 2
- Appellate Attorneys: 2
- Appellate Immigration Attorney: 1
- Investigators: Roster of public defender investigators, 9 investigators in charge
- Administrative Support: 16 administrative support, 4 paralegals, 1 supervising paralegal
- WIC 730 Evaluators
- WIC 317(e) Education Attorneys
- DJJ Unit: 1 attorney, 1 paralegal
- SB 9 and SB 260 Units: 3 attorneys, 1 social worker

Part III: Public Defender and Panel Resources

Attorneys, Deputies in Charge, Head Deputies

The deputy public defenders in the Juvenile Division tend to be less experienced attorneys; they cannot start in the Juvenile Division but can transfer after two to three years of practice in adult misdemeanor court.⁴⁰ The DICs have an average of 15 years of experience in criminal defense. They assign cases, monitor workloads, observe the attorneys in court and consult on cases; they also carry a reduced caseload. The Head Deputies evaluate each attorney's performance annually, looking at courtroom advocacy, motion practice, and use of social workers, resource attorneys, investigators, and outside experts.

Investigators

All attorneys in the Juvenile Division have access to on-staff investigators. Each juvenile branch refers its investigation requests to an investigator-in-charge who distributes them to the team of investigators who work for the Office as a whole (adult and juvenile). The investigators work on all types of cases, from minor misdemeanors to homicides. The investigators locate witnesses, visit crime scenes, prepare reports, take photographs or other evidence that may be useful in defending the case, serve subpoenas, and testify in court. They analyze and develop additional evidence.

Social Workers and Resource Attorneys

Both the psychiatric social workers and the resource attorneys working with the Public Defender identify, interview and assess clients' needs; obtain and analyze past psychiatric, medical, education and dependency court records; identify services that will allow the juvenile to remain in the community if possible; connect the juvenile and his or her family to services; and make recommendations to ensure that any out of home recommendations made in the juvenile delinquency courts are narrowly tailored to meet the clients' specific needs.

Thirteen social workers provide services in all nine branches. They conduct psychosocial assessments to identify mental health issues and cognitive impairment, including suicidal ideation and other mental health issues. They evaluate psychiatric, medical, education, dependency, and DCFS⁴¹ records. They schedule and attend IEP⁴² hearings at

⁴⁰ Public Defender data show that the average criminal defense experience for the deputy public defenders, including resource attorneys, is 10.7 years, with an average of 3.4 years juvenile criminal defense experience. These averages include both trial attorneys and resources attorneys, however, and because those resource attorneys generally have significantly more experience than the 49 deputy public defenders, these averages cannot be used to calculate the experience of the deputy public defenders only.

⁴¹ Department of Children and Family Services

Part III: Public Defender and Panel Resources

schools or in juvenile halls to advocate for the juveniles. They assist in Regional Center referrals and appointments.⁴³ They develop individual treatment and disposition recommendations, and they refer clients and their families to community-based services.

Seven resource attorneys within the Public Defender's Office work in all nine courthouses although they are physically located in only seven of the nine. None are located in Pasadena or Lancaster but the other resource attorneys are available for cases in both. Resource attorneys specialize in community entitlement. They review psychological reports, medical records, and educational records to determine whether a child may be developmentally disabled or require special education services. They schedule and attend IEP hearings at schools and juvenile halls, where they appear with the juvenile and help the family advocate for their child's rights. For juveniles who are developmentally disabled, the resource attorneys assist in connecting those families with the Regional Centers. They attend the Regional Center intake appointments along with the juvenile and his or her caretakers. They obtain and present special education, mental health, and regional center alternatives to the court and courtroom participants, including Probation.

Public Defender clients receive a social worker or a resource attorney if the deputy public defender makes a referral. To determine when a referral is necessary, deputy public defenders are trained to look for a history of child abuse and neglect, developmental disabilities including intellectual disabilities, serious learning disabilities, significant mental health diagnoses, psychiatric hospitalization, suicide attempts, and addiction. Clients who receive a referral are generally clients with serious mental health problems, school failures, or traumatic family histories. The deputy public defender can refer the case to a psychiatric social worker, a resource attorney, or both depending on the need.

⁴² Individualized Education Program. The IEP defines the child's disability and establishes the educational objectives for that child; it is tailored to each child's need.

⁴³ Regional Centers serve individuals with developmental disabilities and their families.

Part III: Public Defender and Panel Resources

Individualized Education Program (IEP)

When a child has an educational disability, the Individuals with Disabilities Education Act (IDEA) gives parents the right to review education records, request independent evaluations, participate in decisions about their children's education placement, and make complaints to the school district about education concerns.⁴⁴ The IDEA mandates that a collaborative team of teachers, parents, school administrators, psychologists, and other professionals work together to determine appropriate educational services for the child, and that the plan be memorialized in an Individualized Education Program (IEP).⁴⁵ Although the law brings parents and education professionals together to determine child's educational services, it does not give them guidance on how they are to work together to determine the terms of an appropriate education. When disagreements arise and the parent believes that the school is not providing appropriate services, the parent has a right to a due process hearing.⁴⁶ Although parents may proceed to a hearing without an attorney or advocate for the child's needs, the likelihood of success is usually not high for parents who are inhibited by low levels of education, limited language proficiency, and limited knowledge of the law.⁴⁷

Parents often need assistance in navigating the complex system. They do not necessarily know their rights and may not know that they can challenge decisions made by the school's IEP committee.⁴⁸ The school is responsible for communicating to parents their legal rights, including by providing understandable documents.⁴⁹ However, schools do not always make these documents accessible to parents, especially when the parents have little formal education, often because the readability levels in the documents are too high or because the documents use acronyms that make them difficult to read.⁵⁰ In addition, parents can feel intimidated and may not feel competent to be equal team members in an IEP meeting.⁵¹ Parents are outnumbered in the meeting, and they may not trust the school.⁵² In a survey of parent-administrator interactions, many parents described themselves as "terrified and

⁴⁴ Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, § 1 (1975) (current version at 20 U.S.C. § 1400 (2000 & Supp. IV 2004)), Section 615 (b)(1) (1975).

⁴⁵ 20 U.S.C. §1414 (d)(2), §1414 (d)(2), §1414 (a)(5) (2000 & Supp. IV 2004).

⁴⁶ David M. Engel, *Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference*, 1991 Duke L.J. 166, 188 (1991).

⁴⁷ *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 127 S. Ct. 1994, 2007 (2007); Stefan R. Hanson, Buckhannon, *Special Education Disputes and Attorneys' Fees; Time for a Congressional Response Again*, 2003 BYU EDUC.C. & L.J. 548-49.

⁴⁸ Patricia A. Massey & Stephen A. Rosenbaum, *Disability Matters: Toward a Law School Clinical Model for Serving Youth with Special Education Needs*, 11 Clinical L. Rev. 271, 278 (2005).

⁴⁹ Advocacy Institute, *Schools Not Communicating with Parents about Special Education Legal Rights*, Advocacy in Action, Sept. 2006 at 1, 5.

⁵⁰ *Id.* at 2-3.

⁵¹ Stephen A. Rosenbaum, *When it's not Apparent: Some Modest Advice to Parent Advocates for Students with Disabilities*, 5 U.C. Davis J. Juv. L & Policy 159, 166 (2001).

⁵² *Id.* at 194.

Part III: Public Defender and Panel Resources

inarticulate” when addressing school administrators, and felt disempowered by the process rather than respected and influential.⁵³ In addition, they often felt ill-qualified to make educational decisions for their children and instead deferred to the school.⁵⁴

As a result, some research has shown that parents in high-poverty majority minority communities are not exercising their rights to enforce the provisions of the IDEA, while parents in wealthy, white majority school districts use special education laws to gain additional resources, accommodations, and assistance for their children with disabilities.⁵⁵ It is not known if this is an issue in Los Angeles County.

Appellate Lawyers

The Public Defender has two designated juvenile appellate lawyers who are available as a resource to all public defenders. The appellate attorneys assist deputy public defenders and DICs in brainstorming and researching legal issues, preparing motions, and preparing trial defenses. The appellate lawyers also research, draft, and file writs and habeas petitions. In addition, they review every case in which a client has been found unfit by the juvenile court, to determine if there are grounds to file a writ. This is a critical step, as a finding of unfitness cannot be subsequently appealed so the writ is the only avenue by which to preserve the client’s rights. The juvenile appellate lawyers also participate in the training of every new public defender coming into the Juvenile Division.

Appellate Immigration Lawyer

The attorneys in the Juvenile Division have access to an appellate immigration lawyer who is housed within the Adult Division of the Public Defender's Office. The immigration attorney conducts in-depth training on the additional issues faced by undocumented youth, focusing not only on the legal issues but also on legal services that may be available. The immigration attorney and the Juvenile Division work collaboratively with immigration advocacy organizations and legal aid offices in Los Angeles, including the Immigrant Legal Resource Center, Public Counsel, Southwestern Law School, and other nonprofit organizations.

⁵³ Id. at 166.

⁵⁴ Id.

⁵⁵ Robert S. Garda, *Untangling Eligibility Requirements Under the Individuals with Disabilities Education Act*, 69 Mo. L. Rev. note 28, at 1084 (2004)(Citing: Comm. on Minority Representation in Special Education of the National Research Council, *Minority Students in Special and Gifted Education 1-2*, 18 (2002)); Daniel J. Losen & Kevin G. Welner, *Disabling Discrimination in our Public Schools: Comprehensive Legal Challenges to Inappropriate and Inadequate Special Education Services for Minority Children*, 36 Harv. C.R.-C.L.L.Rev. 407.408 (2011).

Part III: Public Defender and Panel Resources

SB 9 and SB 260 Units

The Public Defender has two specialized units serving incarcerated adults who were juveniles at the time of the offense. The SB 9 unit was established in December 2013 after a new law, Senate Bill 9, permitted the filing of requests for resentencing under Penal Code 1170(d)(2) for incarcerated adults who had been sentenced to life without the possibility of parole for crimes that were committed before the defendant was 18. The unit files SB 9 petitions and also petitions for writs of habeas corpus based on *Miller v. Alabama*. SB 260, which went into effect on January 1, 2014, allows for a different parole process for individuals who were under 18 at the time of the offense, in recognition of the different cognitive processes and abilities of teenagers. SB 261, signed by Governor Brown in 2015, raises the age to 23.

There are three lawyers and a dedicated social worker in the SB 9 and SB 260 units. They reconstruct cases that can be over 20 years old, collect court records, transcripts, and interviews, and piece together missing case files. They obtain medical, educational, and other background information to present a complete picture of the juvenile as of the time of the original sentencing. They also present demonstrated rehabilitation to the court and assist the court in understanding how juvenile offenders are different from adults.

DJJ Unit

The DJJ Unit, comprised of one attorney and one paralegal, was established following the implementation of SB 459 in 2004.⁵⁶ SB 459 expanded the role of juvenile defense attorneys beyond disposition; juvenile defense attorneys are now required to monitor their clients in DJJ, determine whether they are receiving intended programs and services, and advocate for clients who are not getting what they need. As of the writing of this report there are 46 Public Defender clients committed to DJJ.⁵⁷ The DJJ Unit monitors and advocates for the Public Defender clients currently committed to DJJ. They remain updated on the status of the consent decree, inspector general reports, special master reports, and related legislation pertaining to DJJ; they visit clients in DJJ at least once a year and clients housed in the Ventura facility are visited approximately three times a year. They advocate for the clients' educational and mental health treatment, and they file petitions in juvenile court on behalf of clients who are not receiving adequate treatment. They can also file motions in the sentencing court arguing for the

⁵⁶ See California Welfare and Institutions Code Section 731 et. seq.

⁵⁷ As of the end of 2014, the DJJ population that was committed from Los Angeles County was 210. Public Defender clients thus accounted for about 20% of all the DJJ commitments from the County. http://www.cdcr.ca.gov/Reports_Research/docs/research/Characteristics/12_2014_Characteristics.pdf.

Part III: Public Defender and Panel Resources

removal of clients from DJJ due to lack of rehabilitation, or request that the court order DJJ to provide services. The Unit consults on cases where a DJJ disposition is being sought by the District Attorney, helps with preparations for contested dispositions, educates attorneys on conditions and programs available at DJJ, negotiates fitness withdrawals for DJJ, and advises on legal issues relating to DJJ commitments.

For youth who are leaving DJJ, the DJJ Unit prepares them for reentry while they are still in the institution, represents the youth in the DJJ reentry court in Eastlake, and represents the youth once they have been released. They serve approximately 25 youth a year who leave DJJ and return to the County under supervision. The DJJ attorneys continue to represent the youth at all court appearances including progress reports and probation violation hearings, and they advocate for necessary services such as housing, transportation, and other needs.

730 Evaluators and Experts

Public defenders have access to court-paid 730 evaluators and experts just as panel attorneys, APDs, and private attorneys do.⁵⁸ Requests for 730 resources are made to the court any time the attorney needs an expert or resource. The list of individuals available for juvenile defense attorneys includes experts for disputed trial issues such as eyewitness identification and video enhancement, as well as psychologists, psychiatrists, doctors, and social workers covering topics such as substance abuse, mental health, placement issues, psychotropic medication, competency, special education, gang affiliation, developmental disabilities, fitness, psychosocial assessments, competency, fitness, and LGBTQ issues. 730 evaluators and experts are paid through the court's PACE system.

317(e) Education Attorneys

Youth with particular education needs may be eligible to have a 317(e) education attorney appointed by the Court. These appointments are handled by the Presiding Judge, not by the individual judge assigned to the youth's case. Any attorney representing a youth in juvenile delinquency court can request a 317(e) education attorney, and all counsel (public defenders, panel counsel, alternate public defenders, and private counsel) have done so. Requests can also be made by attorneys in dependency court, but those dependency court requests are not addressed here.

⁵⁸ 730 refers the Welfare and Institutions Code 730; most attorneys and the Court use the shorthand "730" to refer to the various evaluators and experts that can be obtained upon request to the Court.

Part III: Public Defender and Panel Resources

Alternative Courts

The Los Angeles County delinquency court has some additional resources for certain juveniles. Chief among these are the mental health court, the STAR court, and the drug court. The scope of this report did not include an outcome analysis of these three alternative courts, but it is worth noting that counsel, the judges, and advocates were uniform in their praise of these courts and commented only on the restricted capacity and their desire to expand the services provided.

The mental health court in particular follows a best practices model by focusing holistic and intensive resources on youth who have been identified as having significant mental health challenges. Youth from all nine branches can be referred to the mental health court, which is located in Eastlake. The Public Defender staffs the mental health court with one experienced resource attorney and one psychiatric social worker. If the Public Defender has a conflict, youth are represented by a dedicated attorney with the Alternate Public Defender. For the most part, panel attorneys do not represent clients in mental health court unless both the Public Defender and the Alternate Public Defender have a conflict.

Another notable model is the STAR (Succeed Through Achievement and Resilience) Court located in Compton. STAR provides wraparound services and specially trained social workers, mentors, advocates, and probation officers for underage girls who have been the victims of sex trafficking. Girls from all nine branches can be referred to the STAR court. It is staffed by a senior deputy public defender and, if the Public Defender has a conflict, by the Compton panel head or another panel member.

The County also has three drug courts, located in Sylmar, Eastlake, and Inglewood. Youth in these courts are represented by the Public Defender or, if the Public Defender has a conflict, by the panel attorneys in that branch.

Los Angeles County also has a relationship with Loyola Law School's Juvenile Justice Clinic (JJC) and the Juvenile Innocence & Fair Sentencing Clinic (JIFS). The JJC provide *pro bono* holistic representation for about 30 youth a year in the delinquency courts. All delinquency clients are assigned a social worker and education advocate. The JIFS represents about 40 post-disposition clients in SB 9, *Miller*, and SB 260 matters; these clients were generally represented by panel counsel in their original disposition but panel counsel do not continue their representation for SB 9, *Miller*, and SB 260 matters. Clients are represented by a law student and a supervising attorney; supervising attorneys are professors and experienced attorneys. Clients are referred to JJC and JIFS by community organizations, not by the Public Defender.

Part III: Public Defender and Panel Resources

Panel Counsel Resources

Attorneys

In general, because they are sole practitioners who operate independently, panel attorneys do not have any on-staff resources, including social workers, appellate attorneys, investigators, resource attorneys, or immigration attorneys. Instead, panel counsel often depend upon others. In interviews and survey responses, panel counsel indicated a reliance on probation officers, school systems, county agencies, and parents to support their representation of their clients. Panel heads state that they meet their clients' needs at no cost by using these resources in addition to the 730 experts.

For example, when asked in the survey how they obtain school records in cases in which the records are needed, the most frequent responses by panel attorneys were that they ask the Probation Department or parents to provide them. Only a few panel attorneys indicated that they obtain the records themselves by contacting the school directly. Similarly, when asked about general practice when a client needs an IEP, most panel attorneys indicated that they provide the client or parent/guardian with a form letter to take to the school. Panel attorneys rely on the parents to go through the process and provide the information back to the attorney. Only one panel attorney responded that they participate in the IEP process with the client and/or parent/guardian.

Appellate and Immigration Attorneys

For specialized knowledge such as appellate issues and immigration issues, panel heads contend that their experience makes them aware of when these issues arise. For immigration questions in particular, panel heads stated that they often have the knowledge they need but they seek outside guidance from pro bono or unpaid immigration attorneys when necessary. Guidance is usually sought from Public Counsel and/or the Southwestern Law School immigration clinic. In addition, one panel head explained that two of the panel attorneys specialize in immigration and appellate work, and that all panel attorneys can consult with these two attorneys.

Investigators

Although the Los Angeles Superior Court has a list of investigators who are available as court-paid 730 experts, the existing panel contracts prohibit panel members from using those investigators. Panel heads have repeatedly requested that they be permitted to access court- or county-paid investigators. The CEO's position has been that this would be a change to the contract requiring that the contracts go back out to bid. Panel heads have chosen to renew the existing contracts rather than send the contracts back out to

Part III: Public Defender and Panel Resources

bid; panel heads also dispute the CEO's assertion that providing investigators would require a new contract.

All eight panel heads take a percentage or a per-petition amount from each quarterly payment; they put this money into a fund that they use for their own expenses as well as some expenses for the attorneys in their branch. Seven of the eight allow the attorneys in their branch to use the pooled fund for investigators.

In the survey 80% of panel counsel reported using the shared pool of funds for an investigator. However, in interviews at least two panel heads also described situations in which they personally took pictures or otherwise investigated a case for their client because they did not have investigator access and they did not want to pay for an investigator. This could create a problem if their client chose to litigate the case, because the attorney could not be both the advocate for and the witness for their client.⁵⁹ In addition, although panel attorneys insist that they investigate their cases when needed, it is worth noting that the County's structure creates a financial disincentive to investigate, and "the failure to investigate can amount to ineffective assistance of counsel, even when counsel may believe his or her client will confess or plead guilty short of trial."⁶⁰

Social Workers and Resource Attorneys

Panel heads contend that they do not need resource attorneys because they are aware of the resources in their area. They state that their experience qualifies them to determine when a client needs a service such as a referral to the Resource Center, and that they know where those Resource Centers are as well as other services. They also state that, for the most part, they do not pull together the records for the intake interview and they do not attend the intake interview with the family. Half of the panel attorneys who responded to the survey question about the Resource Center said they make these referrals about once a month, and an additional 30% reported making referrals every other month.

Social workers are considered 730 experts and have been available to panel attorneys through PACE since 2013.

⁵⁹ The National Juvenile Defense Center strongly criticizes exactly this practice: "It is important for counsel to be aware of the limitations on his or her role with regard to the ability to independently investigate a crime. Because, in most jurisdictions, counsel is not able to testify on behalf of his or her client, it will be necessary to have another person conduct or at least accompany counsel on investigations so that person will be able to testify at trial." National Juvenile Defense Center Standards, p. 69. <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

⁶⁰ National Juvenile Defense Center Standards, p. 69. <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

Part III: Public Defender and Panel Resources

730 Evaluators and Experts

With the explicit exception of investigators, panel attorneys have access to court-paid 730 evaluators and experts just as public defenders do.

Administrative

Seventy percent of survey respondents indicated that they pay for a secretary, law clerk, or paralegal (most of those pay for a secretary only), while 30% indicated that they do not pay for secretary, paralegal or law clerk.

Specialized Units

Panel attorneys do not represent SB 9, SB 260, or *Miller* clients in parole or resentencing proceedings, but instead refer clients to a legal clinic or other County-based, university-based, or non-profit source of pro bono assistance.⁶¹ It should be noted that these resources generally receive more referrals than they can handle.

Regarding DJJ, most of the panel heads could not recall how many of their clients were currently in DJJ, and none visit their DJJ clients unless they are notified of a need to do so. As of the end of 2014 there were 210 youth from Los Angeles in DJJ.⁶² Panel counsel are responsible for about 50% of all DJJ commitments from the County. This could mean that panel counsel collectively have about 105 clients in DJJ, which would be roughly two or three DJJ clients per panel attorney.

Panel heads state that, if requested by the court or if notified of an issue by Probation, they would fully represent their clients in DJJ despite the fact that they would not receive any additional compensation for that work.

⁶¹ Senate Bill 9, Senate Bill 260, and the Supreme Court case of *Miller v. Alabama* all address parole hearings and eligibility for currently incarcerated adults who committed crimes as juveniles and were sentenced to state prison, including those who were sentenced to life or life without parole. The new laws and precedent require that these individuals be either resentenced or granted a parole hearing, if certain conditions are met. Without advocacy, these individuals may remain in custody when they could have been released.

⁶² As of the end of 2014, the DJJ population that was committed from Los Angeles County was 210. http://www.cdcr.ca.gov/Reports_Research/docs/research/Characteristics/12_2014_Characteristics.pdf.

Part III: Public Defender and Panel Resources

317(e) Education Attorneys

Panel attorneys, like public defenders and any other attorney representing a juvenile in delinquency court, can seek the appointment of a 317(e) education attorney through a request to the Presiding Judge.

Alternate Public Defender Resources

The APD as a whole includes investigators, supervisors, paralegals, and administrative support. Staff devoted to juvenile delinquency cases include three full-time attorneys (two in Lancaster and one at the mental health court in Eastlake), a portion of an appellate attorney, a portion of the division chief, a portion of the on-site supervisor in Lancaster, investigators as needed, and one full-time paralegal.

As with the Public Defender, the Juvenile Division of the APD benefits from an on-staff APD appellate attorney. This attorney is particularly involved when a juvenile has been transferred to adult court after a finding of unfitness. In Los Angeles, the APD Adult Division represents juveniles who have been transferred to adult court after being represented by panel counsel in juvenile court. The APD adult attorneys look for cases in which the panel attorney submitted or stipulated to unfitness, the attorney waived fitness, the attorney did not call any witnesses or experts, or there were no social workers. If issues are found, the APD appellate attorney researches the unfit case and files a writ or a habeas petition as needed. This level of review is critical, as a finding of unfitness is not appealable at a later date, so this writ or habeas petition can be the client's only avenue to contest inadequate representation by the juvenile panel attorney.

Part IV: Comparative Rate of Resource Use

PART IV: Comparative Rate of Resource Use

Responses to item 1) b. in the motion:

“A summary of the rate at which Public Defenders and panel attorneys utilize the resources identified in section (a).”

Highlights

Although both public defenders and panel counsel have access to court-paid social workers, panel counsel utilization is so low that many judges are unaware that panel counsel have access to social workers.

Public defenders use more resources than panel counsel. As a percentage of their 2014 dispositions:

- Investigator use: PD 26%, panel counsel 9%
- Social worker use: PD 32%, panel counsel 1%
- 730/PACE doctors and experts: PD 20%, panel counsel 9%
- 317(e) education attorneys: PD 2%, panel counsel less than 1%

Resource use appears to differ greatly amongst the individual panel lawyers. For example, over a three-year period one panel attorney resolved 15% of his/her new 601 and 602 petitions within the same billing quarter, while another resolved 80% of his/her new 601 and 602 petitions within the same billing quarter. Resource use is likely much higher for the attorney who is taking longer to resolve cases.

Resource use may also be reflected in caseloads. Over three years, for example, one panel attorney billed for 1,982 petitions, or about 661 a year. This would be about two new matters a day, every work day of the year, for three years. Resource use would be expected to be quite low for an attorney handling this large of a caseload. The next highest three-year total was 867, and the average for all panel counsel was 289.

Public defenders handled 49% of the felony dispositions from 2010 to 2014, but were responsible for only 23% of the DJJ commitments and only 29% of the camp commitments. Panel counsel handled 43% of the felony dispositions from 2010 to 2014, but were responsible for 54% of the DJJ commitments and 63% of the camp commitments. The full meaning of this disproportionality is unknown. It is possible

Part IV: Comparative Rate of Resource Use

that the difference in outcomes is a result of different resource use and attorney practices. It is also possible, however, that the difference in outcomes is a result of different types of clients; in other words, panel counsel may have more clients sentenced to DJJ and camp because panel counsel have more clients facing the possibility of DJJ and camp. It is also possible that the difference in outcomes is a result of both attorney practices and the types of clients.

Comparison between Public Defender and panel counsel resource use is difficult, as the two sets of attorneys do not have the same resources and, even where similar resources are used, most of the data comes from different sources. The Public Defender maintains internal contemporaneous data tracking systems. Panel counsel do not have any such system, so most information about panel counsel resource use was gleaned from survey responses and, because it is self-reported, cannot be verified.⁶³

⁶³ For example, one of the survey questions asked about AB 12/212 billings. Nineteen panel attorneys said they had counted work with AB 12/212 clients as new petitions in their invoices to the CEO in the past year. They were asked how many AB 12/212 clients they had in the past year; 24 panel attorneys gave an answer between 1 and 15, and the total was 123 clients. A review of the panel invoices submitted in 2014, however, showed only nine panel attorneys billing for AB12/212 in 2014, for a total of 37 petitions. It is possible that panel attorneys were not consistently recording their AB 12/212 billings on the invoices or were not identifying AB 12/212 matters on the invoices, so the discrepancy may be a result of unclear billing practices rather than over-estimation in the survey.

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Figure 10. Summary of Public Defender Juvenile Division Resource Use

	FY 2011-2012	FY 2012-2013	FY 2013-2014
Investigators - total cases	Unavailable	1,826	1,264
Investigators – total hours	Unavailable	9,239	6,465
Social workers - total referrals	1,449	1,136	1,537
Resource attorneys - total referrals	526	427	718
Unique youth served by social workers and resource attorneys ⁶⁴	1,275	1,196	1,680
Social worker - monthly average extended service caseload	21.8	22	24
Resource attorney - monthly average extended service caseload	30.5	29	29.5

Investigators

Public Defender data indicate that investigators provided assistance on 1,264 juvenile cases in FY 2014, down from 1,826 in FY 2013. Total hours worked on juvenile matters were 9,239 in 2012-13, and 6,465 in 2013-14 (see Figure 10).

Panel counsel survey respondents estimated that they use investigators between zero and 20 times per year, with the average being six times per year per attorney. The seven panel heads who maintain pooled investigator accounts were asked more than once to review their records (or to have their accountants review the records) and determine the exact number of times an investigator was obtained through the panel head's pooled account in 2014. Only one panel head responded and in that branch in 2014 the average was two investigators per year per attorney.

⁶⁴ The number of unique youth served are tallied by quarter and then summed for an annual total, so in a small number of cases these statistics may over count some youth. This may occur if a juvenile receives services in one quarter but then is charged in a new petition later that year, or a juvenile may be referred to a social worker in one quarter and then referred again for a different reason later that year, or may be referred to a resource attorney in the next quarter, or a social worker may perform an extended service in one quarter and then a brief service in the next quarter.

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Based on panel counsel survey responses, an extrapolation to all 45 panel attorneys would translate to investigator assistance for 270 panel juvenile clients per year, as compared to 1,264 for the public defender.

If the average rate of use of investigators as self-reported in the survey was applied to 2014 dispositions, panel attorneys would have used an investigator in 9% of their dispositions, while public defenders used investigators in 26% of their dispositions.

Appellate Attorneys

In 2014, the juvenile appellate lawyers in the Office of the Public Defender handled approximately 1,539 consultations for public defender clients in juvenile delinquency court. From 2012 through 2014, these same attorneys filed 18 appellate court documents on behalf of juvenile clients.

It is not known whether or how often panel counsel file writs or habeas petitions on behalf of their clients.

Appeals, Writs, and Habeas Petitions

Appeals, writs, and habeas petitions are means by which to pursue legal challenges against the actions of the trial court. In California, all indigent defendants (juveniles and adults) who have an appealable issue have access to appellate attorneys through the state Court of Appeals and the Administrative Office of the Courts.⁶⁵ In Los Angeles the California Appellate Project (CAP) manages and oversees the court-appointed appellate counsel program and performs quality control functions and oversight for those attorneys.⁶⁶ CAP attorneys are generally paid \$95 an hour.

Public defenders, APD, and panel counsel were all clear that appeals for their juvenile delinquency clients are handled by the CAP attorneys. For general consultation about appellate issues, the Public Defender and the APD have in-house appellate attorneys, and there is one attorney amongst the panel attorneys who specializes in appellate issues and is available for consultation. For writs and habeas petitions, however, the answers were less clear.

CAP attorneys are generally limited to appeals, and do not represent clients with writs and habeas petitions. For the Public Defender and the APD, the in-house appellate attorneys are tasked with filing writs and petitions for juvenile delinquency clients, and they have done so. For panel counsel, however, the answer is unknown. Panel heads could not recall a writ or habeas petition that they had filed recently, and most did not know if the flat-fee is intended to cover writs and habeas petitions, or whether a writ or habeas would be a new petition resulting in a new payment. Although writs are mentioned in the contract, the CEO did not know.

⁶⁵ <http://www.courts.ca.gov/4201.htm>

⁶⁶ www.lacap.com.

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whether writs and habeas petitions would be considered new petitions under the contract; the question had apparently not been raised in recent memory. This could mean that panel counsel are not filing writs or habeas petitions on behalf of their clients.

This is a potentially critical issue, as there could be instances in which the client is significantly harmed by the failure to file a writ or habeas petition, or in which the client loses a right or an argument because of failure to file.

Immigration Attorneys

The Public Defender estimates that approximately 10% of the cases in which assistance is provided by the PD appellate immigration lawyer are juvenile cases. In 2014, the immigration attorney provided expert assistance and consultation on 1,820 cases. Based on the Public Defender's estimate, this would mean that the appellate immigration lawyer provided assistance in approximately 182 juvenile delinquency cases in 2014.

Panel attorneys were asked to estimate their use of immigration resources in the survey. About half of survey respondents (56%) said they seek immigration guidance six or seven times a year, and 30% said they seek immigration guidance once or twice a year. They work with different sources, including immigration legal clinics, immigration attorneys who work pro bono, and attorneys paid through PACE.

Social Workers

Public defenders made 1,537 referrals to social workers in FY 2014, 1,136 in FY 2013, and 1,449 in FY 2012. Approximately half of all referrals were for extended services and half for brief services.⁶⁷ Public Defender data show that, in FY 2014, the 13 psychiatric social workers in the Public Defender's Office carried an average monthly caseload of 24 extended service clients, and the seven resource attorneys carried an average monthly caseload of 29.5 extended service clients.⁶⁸

Although panel counsel do not have on-staff social workers, since 2013 panel counsel have been able to request that the court appoint and pay for a social worker through

⁶⁷ Brief referrals are for issues that can be resolved in 90 minutes or less; extended referrals are those for issues that can take anywhere from a few days to a year or longer.

⁶⁸ The Public Defender tracks recidivism for its clients who receive extended services from the social workers and resource attorneys. They define recidivism as an arrest for a new offense within a year after the case reaches disposition. The clients were tracked in both the juvenile and adult systems, in Los Angeles County only. Cases are not counted if a public defender did not represent the client through disposition. In 2013-14, 123 youth were rearrested for a new offense in either juvenile and adult court, or 21%. In 2012-13, 155 youth were rearrested for a new offense in either the juvenile or adult systems, or 23%. In 2011-12, the recidivism rate for these clients was 22%.

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the PACE system. Four social workers are identified on the approved PACE list. According to records pulled from PACE, 43 requests were made for those four social workers in FY 2013-14. However, some of these requests were made by the APD in Lancaster, because the APD does not have on-staff social workers. The APD believes that ten of these requests originated from their office. This would mean that, in FY 2013-14, there were 33 non-APD requests for the four social workers identified on the 730/PACE list.

This estimate of 33 requests in FY 2013-14 will both overstate and understate the actual number of 730 requests for social workers made by panel counsel. It may overstate the number of panel requests because some of the requests may have originated from retained counsel with indigent clients, or from the panel attorneys in Lancaster who are not part of the contract system. At the same time, it will understate the number of requests because panel attorneys can use court-paid social workers in addition to the four who are identified on the PACE list. One panel head indicated that they used a social worker not on the list on multiple occasions in 2014, and those additional requests were not included in the list of 43 that was obtained from PACE.

However, even if the PACE data undercounts the number of requests, it can be definitively said that panel counsel utilize social workers much less often than public defenders. **When viewed as a percent of 2014 dispositions, panel counsel requested PACE social workers in 1% of their dispositions,⁶⁹ while public defenders requested internal Public Defender social workers in 32% of their dispositions.**

Although panel heads contend that they are no different from public defenders because they can obtain social workers through PACE, it is notable that their use of social workers is so low that many judges are unaware of it. In the anonymous survey, the judges were asked an open-ended question soliciting their thoughts and suggestions about public defenders and panel counsel. The judges' responses included:

- "Giving the panel lawyers greater access and utilization of social workers;"
- "The panel should be held to higher expectations and they should be paid to meet those expectations. The current rate of pay should be quadrupled and the panel attorneys should have access to social workers;"
- "They could do more if they had social workers and were paid for their out of court work;" and

⁶⁹ Even if all 43 requests were from panel counsel, the percentage of dispositions would still be 1%.

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- “Panel attorneys should be provided equal resources such as social workers and resource attorneys.”

Panel counsel, however, have had access to court-paid social workers since 2013. The problem is one of utilization, not access.

730 Evaluators and Experts

As noted in the methodology section, PACE is the means by which 730 experts are obtained and paid. The PACE system categorizes the available resources and experts into the following categories: Attorney-Conflict, Attorney-No PD, Attorney-Other, Investigator, Doctor, Expert Witness, Laboratory, Interpreter, Translator, Examination Expert, Court Reporter, and Legal Runner. There are no definitions for these categories and it appears that the 730 experts are not consistently categorizing their services when the definition is not obvious. These categories therefore cannot be relied upon to determine the types of resources used by counsel.

For all PACE requests made over the past five years, 56% of the requests were made by public defenders, while 39% of the requests were made by panel counsel.⁷⁰ In 2014, 60% of all requests were made by public defenders, and 36% by panel counsel.⁷¹ This distribution is roughly consistent with the proportion of new petitions assigned to public defenders and panel counsel.

However, looking only at doctors, expert witnesses, and examination experts, 70% of the total requests over five years were made by public defenders, while 24% were made by panel counsel.⁷² In 2014, 75% of the requests in these three categories were made by public defenders and 21% were made by panel counsel.⁷³

When viewed as a percent of 2014 dispositions, panel counsel utilized 730/PACE resources in these three categories in 9% of their dispositions, while public defenders utilized 730/PACE resources in these three categories in 20% of their dispositions (see Figures 11 and 12). Just as with social workers, the issue appears to be one of utilization, not access.⁷⁴

⁷⁰ Percentages are of requests with known attorney types. Attorney type was unknown for 4,289 requests.

⁷¹ Attorney type was unknown for 500 excluded requests.

⁷² Attorney type unknown for 3,245.

⁷³ Attorney type was unknown for 463 requests.

⁷⁴ In the survey, 90% of panel counsel respondents said that their PACE requests are granted “almost always” or “usually.” Only 10% said that the court grants their requests “sometimes” or “rarely.”

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Figure 11. 2014 PACE Requests Relative to Dispositions (Doctors, Experts and Exam Experts only)

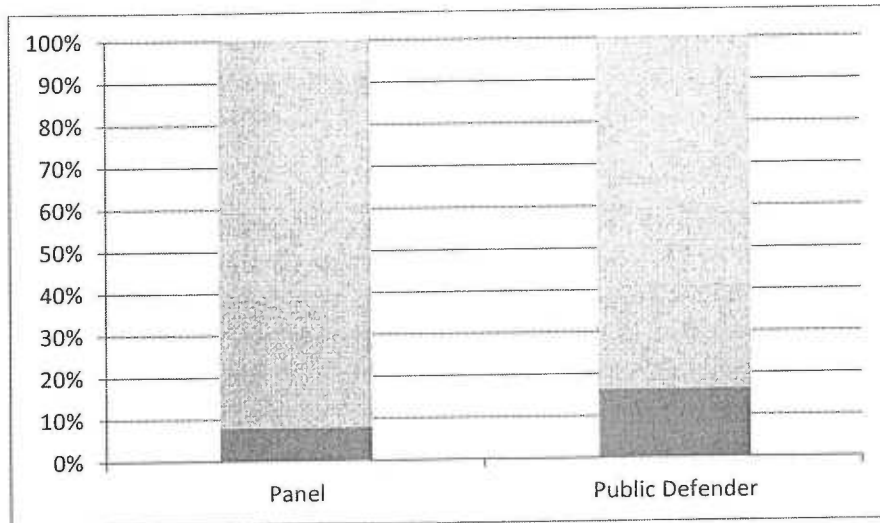


Figure 12. 730 PACE Requests for Doctors, Experts, and Exam Experts Relative to Number of Dispositions

		2010	2011	2012	2013	2014
APD	PACE requests	42	61	45	22	15
	Dispositions	301	257	250	283	211
		14.0%	23.7%	18.0%	7.8%	7.1%
Panel	PACE requests	438	471	351	332	271
	Dispositions	5355	4800	4237	3500	3150
		8.2%	9.8%	8.3%	9.5%	8.6%
Public Defender	PACE requests	1097	1260	1076	1130	954
	Dispositions	6036	5607	5349	4904	4864
		18.2%	22.5%	20.1%	23.0%	19.6%
Private	PACE requests	70	64	58	59	38
	Dispositions	531	452	439	400	325
		13.2%	14.2%	13.2%	14.8%	11.7%

317(e) Education Attorneys

The number of public defender referrals for education attorneys has risen over the past three years, as has the share of requests attributable to public defenders. In 2012, out of 38 total education attorney referrals for delinquency cases, only five (13%) were from

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public defenders. By 2013 that number had risen to 34 out of 86 (39%), and by 2014 it had risen to 79 out of 204 (39%). The Public Defender attributes the increase to better training within the office.

In contrast, both the number and share of panel attorney requests has dropped in the past three years. In 2012, panel attorneys made 14 out of 38 education attorney referrals (37%). In 2013, the number dropped to eight out of 86 referrals (9%), and in 2014 panel attorneys made 23 out of 204 referrals (11%).

Viewed as a share of 2014 dispositions, panel attorneys made a 317(e) request in less than 1% of their 2014 dispositions, while public defenders made a 317(e) request in 2% of their 2014 dispositions.

Alternate Public Defender Resource Use

The Alternate Public Defender is not included in this section on rate of resource use because, with one exception, the APD does not track separate resource use by the juvenile attorneys in Lancaster. The exception is the APD appellate attorney assigned to juvenile matters.

Over the past three years, the APD appellate attorney assigned to juvenile matters has consulted on an estimated 25 to 50 issues per year. In addition, over the past three years the APD appellate attorney or a supervising attorney has reviewed an estimated 50 cases in which a juvenile was transferred to adult court and was subsequently represented by the APD's Adult Division. In that time, the APD has filed two writs or habeas petitions on behalf of such juveniles. Both proceedings were based on inadequate representation by panel counsel in delinquency court. Both writs were granted on the basis of ineffective assistance of counsel (IAC) and new fitness hearings were ordered (see Appendix D for an example of an IAC case). It does not appear that the CEO was notified of these findings or, if the CEO was notified, it does not appear that the CEO did anything in response.

Resource Use Reflected in Practice and Outcome

Although a formal outcome analysis was beyond the scope of this project, some of the data collected suggests differences between public defenders and panel counsel in both practice and outcomes. These differences were seen not only between public defenders and panel counsel, but also between courthouse branches and between individual panel attorneys. These differences may be a reflection of the resources available and the rate at which they are used, as well as factors such as attorney culture.

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Caseloads

There is some difference between the relative caseloads of public defenders and panel attorneys, but the variations within panel counsel are particularly noteworthy.

Based on JAI data and attorneys on staff, on average each juvenile public defender received approximately 103 new 601 and 602 petitions in 2014.⁷⁵ Based on this same data, each APD juvenile attorney received approximately 87 petitions in 2014.⁷⁶ A review of panel invoices showed that each attorney received an average of 80 new 601 and 602 petitions in 2014.⁷⁷

This panel counsel average, however, hides a wide range of one to 274 new 601 and 602 petitions per attorney for the year.

Panel attorney billings – which include 777 and 778 petitions as well as 601 and 602 petitions discussed above – show an even greater range. In 2014, the average number of total billings per panel attorney was 127. But in that year four panel attorneys billed for fewer than ten matters, while one billed for 495. Most panel attorneys fell in the middle of the range with 39% of attorneys billing for 41 to 100 petitions. Removing the highest billing attorney, the 2014 average drops from 127 to 119.

Over the three year period in which invoices were examined in detail, one panel attorney billed the County for a total of 1,982 new petitions of all types over the three years (an average of 661 new petitions per year⁷⁸) – the next highest three-year total was 867. The average number of billings for all panel attorneys was 289 per year (see Figure 13).

⁷⁵ Public defender average is estimated based on the total number of 601/602 petitions assigned to the public defender in 2014, divided by 54 (49 deputy public defenders, plus 9 DICs each with less than a full caseload). Panel counsel number of new petitions per attorney is based on the quarterly invoices submitted by panel counsel.

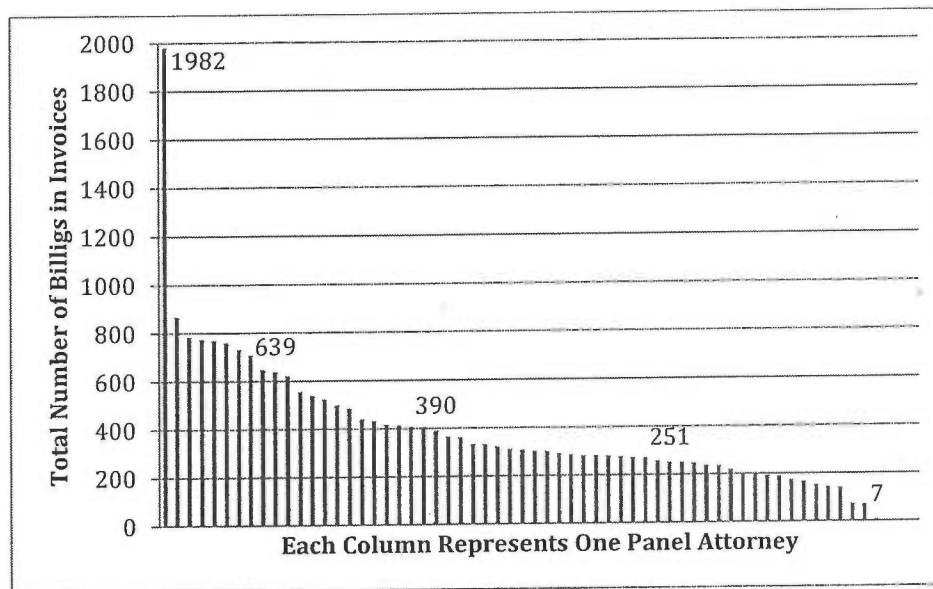
⁷⁶ For all attorney types, these are the numbers as of case assignments at initial appearance; they change somewhat by the time of disposition. For APD, only the two attorneys in Lancaster were included in this calculation.

⁷⁷ Note that, for all attorney types, these numbers do not reflect the attorneys' actual workload at any given time. The workload will be much higher because it includes previously filed matters that are not yet resolved, 777 and 778 petitions, and other matters.

⁷⁸ At \$340 per petition, this would mean income of almost \$225,000 a year for that particular panel attorney.

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Figure 13. Individual Panel Attorneys' Total Number of Billings, 2012-2014



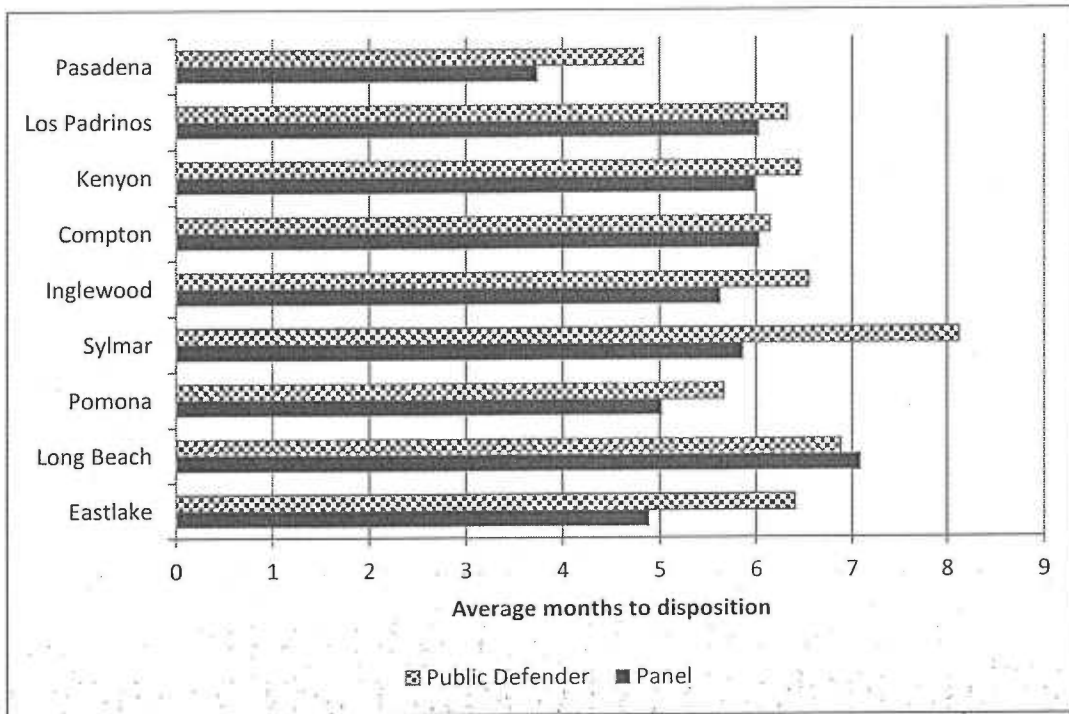
Reasons for the wide billing variations are unknown. Bills are monitored and reviewed by the CEO for accounting errors, double billing, and other administrative or technical concerns. However, the CEO does not have requisite expertise to determine the legitimacy of the billings submitted, nor can the CEO use the billing to identify potential red flags such as caseloads that are too high. Oversight of the panel attorneys by a more qualified agency or group is recommended.

Time to Resolution

Further differences were seen between public defenders and panel counsel, and between courthouse branches, regarding time to resolution (see Figure 14). Long Beach and Compton cases were resolved in roughly the same time whether they were panel counsel or public defenders. Panel counsel cases in Pasadena and Eastlake were among the quickest to be resolved in the County. Public defender cases in Sylmar took the longest in the County. These differences could be a result of caseload composition or other factors rather than attorney type; further clarification would require more research. It is likely, however, that time to resolution affects resource use, as cases resolved quickly would be less likely to use resources such as social workers, investigators, and appellate attorneys.

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Figure 14. Average Months to Disposition by Courthouse and Attorney Type, 2010-2014



Panel counsel quarterly invoices provide further information about time to resolution as applied to panel counsel in particular.⁷⁹ For example, panel counsel in one branch resolved around 61% of their new 601 and 602 petitions within the same billing quarter, while the attorneys in a different branch resolved around 22% of their new 601 and 602 petitions within the quarter.⁸⁰ Differences between individual panel attorneys were even greater: Over the three years reviewed, **one attorney resolved 15% of their new 601 and 602 petitions in the same billing quarter, while another resolved 80% of their new 601 and 602 petitions in the same quarter.**

Dispositional Outcomes

⁷⁹ Three years of panel counsel invoices were reviewed.

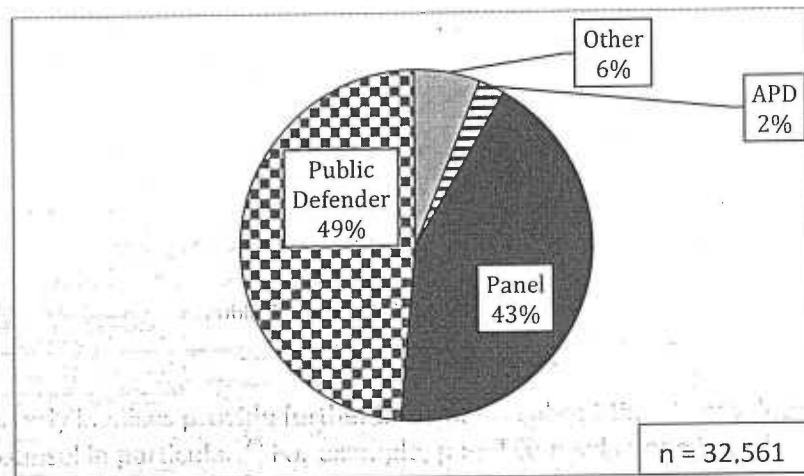
⁸⁰ "Resolved within the quarter" was determined by the presence of a disposition and/or disposition date in panel invoices because they bill at assignment and, if billing correctly, should only have a disposition and/or disposition date when disposition is reached within that same billing quarter.

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Dispositions for youth in delinquency court generally fall into four categories of increasing seriousness: home on probation, suitable placement, camp, and commitment to the Department of Juvenile Justice (DJJ). Examining DJJ commitments and camp commitments reveals potential differences in outcomes between public defenders and panel counsel, although care should be taken not to infer too much from these numbers without further investigation.

Between 2010 and 2014, according to JAI data, public defenders handled 51% of all dispositions and 49% of the felony dispositions, while panel attorneys handled 41% of all dispositions and 43% of the felony dispositions (see Figure 15).

Figure 15. Juvenile Felony Dispositions, 2010-2014



While public defenders handled 49% of the juvenile felony dispositions, they were responsible for only 23% of the DJJ commitments, and only 29% of the camp commitments. Conversely, while panel counsel handled 43% of the felony dispositions, they were responsible for 54% of the DJJ commitments and 63% of the camp commitments (see Figures 16 and 17).

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Figure 16. DJJ Commitments, 2010-2014⁸¹

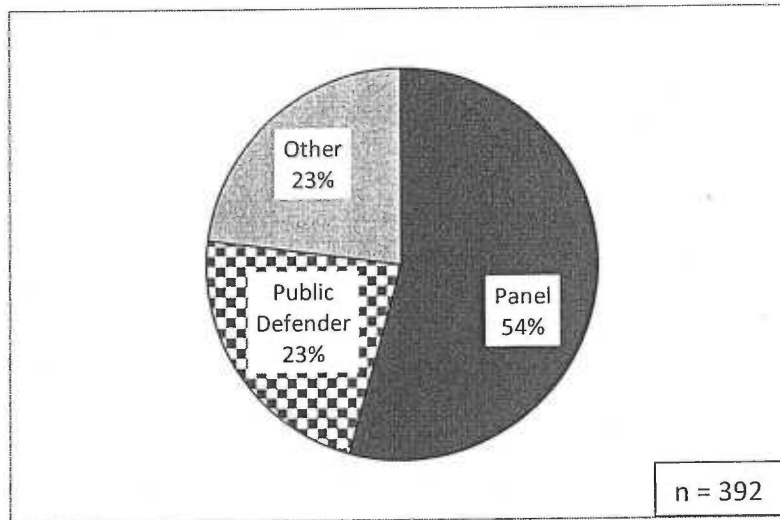
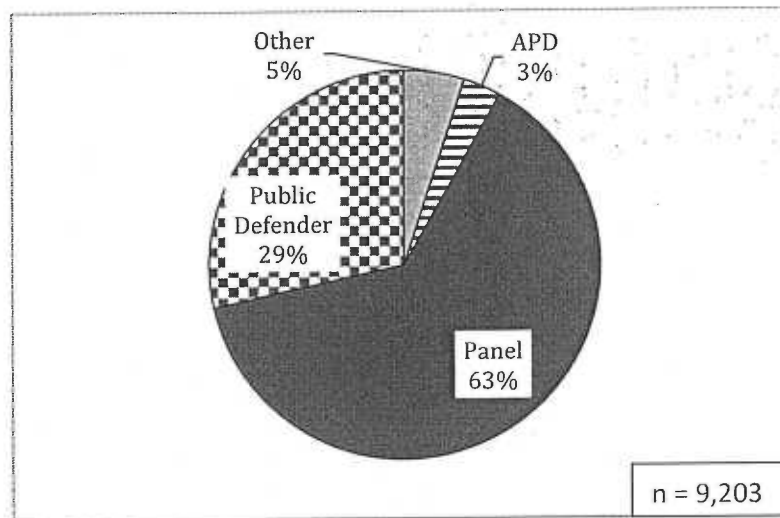


Figure 17. Camp Commitments, 2010-2014



The disproportionality seen above may or may not reflect differences in resource use and attorney practice. It could mean that public defenders' lawyering style and resource use results in clients who are less likely to be sentenced to camp or DJJ. However, it

⁸¹ APD had no DJJ commitments between 2010 and 2014 according to JAI data. A check of APD records revealed that they had one DJJ commitment between 2010 and 2014; it was apparently coded incorrectly in JAI.

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could reflect different caseloads. In other words, panel attorneys may have more clients going to DJJ and camp, because they have more clients facing the possibility of DJJ or camp. If the caseloads are different, the different outcomes may not be a reflection of resource use or lawyering style.

A key question is thus whether public defenders and panel counsel represent similarly-situated clients, such that public defender outcomes and panel counsel outcomes can be compared (at least as applied to DJJ and camp). Unfortunately, the answer to this question is unknown. As a matter of policy, in a multiple-defendant case the Public Defender will take the client facing more serious consequences. However, in many cases the Public Defender has a pre-existing conflict that prevents them from taking the client facing more serious consequences, or the Public Defender represents an adult involved in the same case, so the more serious client ends up with panel counsel. In interviews, panel heads stated their belief that they are more often assigned to the clients facing more serious consequences.

However, the Public Defender represents more juveniles altogether. So it could be true that panel counsel are more often assigned to the juveniles facing camp or DJJ when there are conflicts, and, at the same time, it could be true that panel counsel and public defenders represent the same total number of clients facing camp or DJJ.

In an attempt to shed light on the issue, judges were asked about the relative severity of public defender and panel counsel caseloads in the survey. Judicial opinions were not uniform: 41% responded that panel clients and public defender clients were about equal in terms of severity, 24% responded that public defenders have a greater share of the defendants facing more serious consequences, and 29% responded that it was the panel attorneys who have a greater share of defendants facing more serious consequences.

The data show that panel counsel are responsible for a disproportionate share of DJJ and camp commitments, but the full meaning of this data will require further research.

Scope of Advocacy

Finally, the panel heads and public defenders had different perspectives and practices regarding what it meant to be a good juvenile defense attorney. The difference can be summed up by a comment made by one of the judges:

The PD and panel lawyers define a “win” differently. The PD’s office, as a county institution, has an interest in seeing that the juvenile system works properly. To that end they pursue due process issues and mental health issues thoroughly. The panel attorneys, while very sensitive to the objectives of the juvenile court,

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treat their cases more like a criminal case. That is, they try to get their client the best deal on the charges and disposition. They are less concerned about having their clients receive the love of the court and probation. They want their kids out of the system as soon as possible.

Interviews with public defenders and panel counsel were consistent with the judge's perspective. Public defenders repeatedly emphasized the expanded services they provide to address their clients' needs, especially in the areas of mental health and education support. They prioritize training and supervision that responds to the clients' needs well beyond the narrow criminal charges, and they have resources such as the on-staff social workers and resource attorneys, among others, to do that.

In contrast, in interviews for this report, six of the eight panel heads barely mentioned representation beyond their response to the criminal charges. Instead, the panel heads focused heavily on the positive dispositions they receive for their clients in response to the criminal charges, stressing their belief that they obtain good deals for their clients because of their long experience, as well as the value they provide by resolving cases quickly. Many of them emphasized their own and other panel members' experience as adult criminal defense lawyers. One judge echoed the panel perspective, saying "The average criminal defense experience of my panel is over 25 years. They provide excellent representation up through disposition. [. . .] Post dispo they don't do much – and they are paid nothing."

Consistency of Representation, Case File Management, and Parental Engagement

During interviews and outreach for this report, three potential concerns were raised: (1) that panel counsel stand in for each other, causing clients not to have a consistent point of contact, (2) that panel counsel do not maintain full case files, and (3) that panel counsel do not adequately communicate with their clients' parents or families.

1. Substitution of counsel may not comply with the County's Guidelines, which recommend that "[t]here may be occasions when a stand in attorney is necessary, but these should be exceptions."⁸² The Public Defender objected to this section of the Guidelines, stating its concern that the language "could be interpreted to improperly restrict the Public Defender's power to designate assigned counsel based upon the business needs of our Department. It is important to distinguish here between the Public Defender and private counsel, and to generally outline how they differ. Because our lawyers work under one law firm they can

⁸² *Guidelines for Attorneys Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 10.

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easily and quickly share information . . . There is no conflict in our attorneys sharing such information about the minor when standing in for each other.”⁸³ Panel counsel do not appear to have objected to the Guidelines. In any event, it was impossible to obtain any data regarding the frequency with which attorneys of any type stand in for each other, and the panel heads claimed that it wasn’t their practice. If it occurs to an unacceptable degree, it may be isolated to a few attorneys in particular. No data was available to make any determinations on the subject one way or another.

2. Failure to maintain case files could also fail to comply with standards and guidelines, as “counsel has an obligation to keep and maintain a thorough, organized and current file on each case. Documentation should be clear, up-to-date and orderly, permitting a successor attorney to readily locate all information.”⁸⁴ However, as with substitute counsel, nothing beyond anecdotal information was available. The matter therefore cannot be determined one way or another.

3. Communication with parents is critical, and is strongly emphasized by the Public Defender in its training and supervision of new attorneys. Building a relationship with parents was emphasized in Public Defender interviews for this report. In interviews with panel heads, most never mentioned their clients’ parents, while a few had a perspective very similar to the Public Defender’s. In the survey, when asked an open-ended question about their philosophy about communication with their clients’ families, about three-quarters of the panel attorneys who responded to the question commented on the importance of engaging family members. When asked about the nature of interaction with clients’ family members, 78% of panel survey respondents said the most frequent way was to meet with parents outside the courtroom before and/or after hearings. At the same time, about one-quarter of panel survey respondents noted that family members were not their clients and that they believed confidentiality was very important. According to one panel attorney: “My communication with client’s family is mostly limited to information gathering to assist the case for charges and disposition. I take my client’s privacy and confidentiality seriously. I do try to be nice and civil but I inform them that the minor is my client and confidential nature of discussions with minor and facts discussions must be conducted in private.”

⁸³ Ronald L. Brown, *Response to ‘the guidelines’*, Los Angeles County Public Defender, March 28, 2014, p. 9-10.

⁸⁴ National Juvenile Defense Center Standards at 25 (2012); see also Los Angeles County Guidelines for Attorneys Representing Youth in Los Angeles Juvenile Delinquency Court, p. 9 (2014).

Part V: Per-Case Costs

PART V: Per-Case Costs Borne by Counsel

Response to item 1) c. in the motion:

“A comparative analysis of the itemized per-case costs borne by the Public Defender, the Alternate Public Defender, and juvenile panel attorneys.”

Highlights

Panel counsel bear a number of costs that are not borne by individual public defenders, including the costs of their own training, the costs of investigators, and other costs associated with representation of their clients.

The Office of the Public Defender provides training, social workers, investigators, and other resources for all deputy public defenders.

Neither panel counsel nor public defenders bear the cost of 730 experts paid through the County's PACE system. Social workers, therefore, can be obtained by panel counsel without cost.

Data was not available to quantify the actual per-case costs for either the Public Defender or panel counsel.

Measuring annual actual costs against the number of new petitions or the number of dispositions does not provide a per-case cost. However, as a means of comparison over the past five years, annual actual costs measured against number of dispositions shows an average of \$2,912 per disposition for the Public Defender and an average of \$751 per disposition for panel counsel. This is a means of comparison only; it is not the per-case cost.

Public Defender

The Juvenile Division of the Office of the Public Defender includes the on-staff resources identified in the resources section above:

Part V: Per-Case Costs

- Attorneys: 49
- Social Workers: 13 in courts, 2 supervising
- Resource Attorneys: 7
- Deputies in Charge: 9 at the 9 courthouses plus 1 who is the Collaborative Justice DIC
- Head Deputies: 2
- Appellate Attorneys: 2
- Appellate Immigration Attorney: 1
- Investigators: Roster of public defender investigators, 9 investigators in charge
- Administrative Support: 16 admin support, 4 paralegals, 1 supervising paralegal
- DJJ Unit: 1 attorney, 1 paralegal
- SB 9 and SB 260 Units: 3 attorneys, 1 social worker

While all of these resources are part of the Juvenile Division, not all of them are part of the Juvenile Division budget. The appellate attorneys, immigration appellate attorney, and all investigators are housed within the budget of the Office of the Public Defender, not within the Juvenile Division. The budget of the Juvenile Division includes the deputy public defenders, the DICs, the Head Deputies, the trainer, the social workers, resource attorneys, paralegals, administrative support, and the DJJ, SB 9, and SB 260 units.⁸⁵ All employees are full time.

In addition to staff, the Juvenile Division covers other costs associated with representing its clients such as office supplies, computers, phones, and photocopying. The Juvenile Division also covers the costs of the monthly and ongoing office trainings, as well as the annual training. Out-of-pocket costs borne by individual public defenders include their own parking and their own MCLE if it is not obtained through training that is provided by the Office of the Public Defender.⁸⁶ Malpractice insurance is provided by the County because the attorneys are County employees and it is therefore not an expense of the Public Defender or its attorneys.

Panel Counsel

In the panel attorney survey, a majority (70%) of panel counsel indicated that they pay for a secretary, law clerk, or paralegal (most of those pay for a secretary only), while

⁸⁵ Not all of the Juvenile Division funding comes from the County. In particular, the Public Defender receives a small amount of federal funding through the Juvenile Accountability Block Grants (JABG), and the Juvenile Mental Health Court is funded by the State.

⁸⁶ Public defenders are paid as if it were a work day for the annual juvenile training because they are required to attend (although they must cover their own cost of food at the training).

Part V: Per-Case Costs

30% indicated that they do not pay for secretary, paralegal, or law clerk. Panel counsel survey respondents were asked to identify the out-of-pocket expenses that they incur for juvenile panel clients and responses included: investigators, service of process, office supplies, parking, photocopying, rent, telephone, MCLE and continuing legal education, answering service in English and Spanish, and internet. The out-of-pocket costs differ by attorney and most panel attorneys were unable to estimate their cost when asked in the survey. In addition, almost all panel attorneys (91%) represent clients other than their juvenile panel clients, and many of their costs cannot be disaggregated into costs that are specific to their panel juvenile delinquency cases.

Panel counsel, like public defenders and alternate public defenders, do not have to pay for 730 experts; the court pays for those resources through the PACE system. This means that panel counsel have access to social workers and other resources without cost.

Panel counsel are required to pay out of pocket to attend the annual Public Defender training.⁸⁷ In 2015, the cost per person for panel attorneys to attend the Public Defender training was \$125 plus parking. Panel attorneys are also required to pay the cost of hosting their annual training seminar. The cost per attorney to attend the 2015 seminar hosted by the panel was \$65, plus \$12 for parking.

Alternate Public Defender

Like the Public Defender, the APD is a County office with a County budget. However, the APD does not disaggregate its costs into separate juvenile and adult budgets. In general, the Juvenile Division costs include staff (three full-time attorneys plus one supervising attorney and available investigators and support staff), as well as costs such as office supplies and a case management system. The APD Juvenile Division attorneys are often invited to present at California and national conferences or training sessions, but generally those costs are covered by the inviting agency.

Per-Case Costs and Comparisons

It is not possible to provide an itemized per-case cost for any of the counsel. Neither panel attorneys nor the Public Defender nor the APD itemize their per-case costs: PD and APD do not do so because the costs are subsumed within the larger office budgets, while panel attorneys do not do so because they are compensated at the beginning of the case and therefore there is no need for them to track hours worked and costs incurred on a per-case basis.

⁸⁷ Deputy public defenders do not have to pay to attend this training.

Part V: Per-Case Costs

The closest approximation, and the only means by which the Public Defender and panel counsel can be even roughly compared, is to compare the total actual costs against the total number of dispositions, or to compare the total actual costs against the total number of 601 and 602 petitions assigned at initial appearance.⁸⁸

It is critical to note, however, that the comparison below is *not* the cost per case. Rather, the discussion below is a way to utilize the same information available for both public defenders and panel counsel. As discussed earlier, the services provided and the methods of practice differ widely between panel attorneys and public defenders. Looking only at numbers calculated below cannot tell the complete story for any of the attorneys.

Within those confines, the data show higher County cost for public defenders than for panel counsel, as measured against total dispositions and against total number of new petitions.

In 2014, the public defender reached disposition in 4,864 cases. If the actual cost in FY 2014-15 is distributed over just those dispositions, the “cost” for each disposition in 2014 was \$3,450. The same calculation for panel counsel results in an average “cost” per disposition of \$687 in 2014. Using this same methodology, the five year average per-disposition was \$2,912 for public defenders and \$751 for panel counsel.

Looking at new 601 and 602 petitions at initial assignment (rather than at dispositions), the Public Defender “cost” \$3,015 per new petition in 2014 and panel counsel “cost” \$948. Viewed as a five-year average, the “cost” per new petition was \$2,052 for public defenders and \$967 for panel counsel (see Figures 18 and 19).

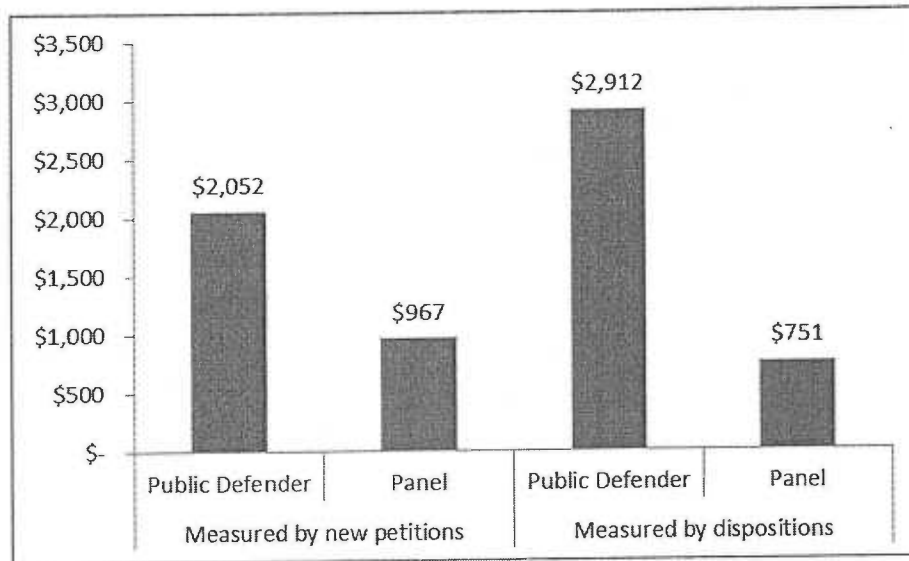
Figure 18. Actual Costs Measured Against Number of Dispositions and Number of New Petitions, 2011–2015

	2011	2012	2013	2014	2015
Measured by number of dispositions					
Public Defender	\$2,615	\$2,491	\$2,878	\$3,128	\$3,450
Panel	\$779	\$798	\$720	\$771	\$687
Measured by number of new petitions at initial assignment					
Public Defender	\$1,462	\$1,495	\$1,943	\$2,344	\$3,015
Panel	\$911	\$975	\$940	\$1,061	\$948

⁸⁸ No such cost can be calculated for the APD, because the APD does not maintain a separate juvenile budget.

Part V: Per-Case Costs

Figure 19. Actual Costs Measured Against Petitions and Dispositions, Five-Year Average



It is critical to recognize that this methodology folds all annual expenses into the “per-case” calculation even if the expenditures are not related to resolution of the case. The numbers above in no way represent a “per-case cost.”

For example, as discussed above, the Public Defender’s actual annual costs include the costs of social workers, resources attorneys, the DJJ unit, the SB 9 unit, and the SB 260 unit. Many of the services provided by these staff are distinct from the disposition of a particular petition, but the expenses for these services are nonetheless included in the “per disposition” calculations above. Many of these actual costs also represent services that are not provided by panel counsel.

Public defenders also incur costs for court appearances and client services in situations that do not usually apply to panel counsel. For example, public defenders appear for juveniles who are arrested but have cases pending in other jurisdictions, and for juveniles arrested on a warrant.

In addition, both public defenders and panel counsel provide services for clients after disposition, including appearances for 777 petitions (probation violation), 778 petitions (change in status), psychotropic medication hearings, and status appearances. Measuring actual annual cost against the number of dispositions does not take these post-disposition activities into account. To address this issue, the Public Defender tracks the total number of court appearances made by its attorneys, for appearances that are

Part V: Per-Case Costs

not connected to routine representation between initial appearance and disposition. This system tracks court appearances for juveniles who do not become Public Defender clients, as well as post-disposition court appearances. In fiscal year 2013-2014, the Office counted 30,332 such appearances, or more than ten court appearances a week for each of the 49 deputy public defenders in the nine juvenile branches. The cost of representing clients in these post-disposition and other proceedings is folded into the “per disposition” cost above although these costs are incurred after disposition.⁸⁹

Finally, looking only at the annual actual expenditures for the Public Defender and for panel counsel ignores numerous other costs related to juvenile delinquency. For example, the calculations above ignore the costs of camp and Probation -- those costs are borne by the County and they might increase or decrease depending on the nature of the representation provided by counsel.

⁸⁹ According to their quarterly invoices, 777 and 778 petitions made up about 34% of panel billings over the past three years. According to PD data, 777 and 778 petitions made up about 32% of their total petitions between 2010 and 2014.

PART VI: Transfer Cases

Response to item 1) g. in the motion:

“A comparative analysis of the juvenile cases represented by the Public Defender, the Alternate Public Defender (in the Lancaster juvenile courts), and juvenile panel attorneys, which are transferred to adult criminal court pursuant to WIC 707 (a) and (b).”

Highlights

Indigent juveniles facing possible transfer to adult court are more often assigned panel counsel. Over the past five years, as between panel and public defenders, panel counsel were assigned to 71% of the fitness motions and public defenders were assigned to 29% (for all fitness motions 56% were assigned to panel and 21% to public defenders; the remainder were mostly retained counsel).

Panel counsel clients are more likely to be found unfit and transferred to adult court. Over the past five years, 26% of panel clients were found unfit and transferred to adult court, but only 13% of public defender clients were found unfit and transferred to adult court. This is a statistically significant difference.

The youth are presumed to be similarly situated because they all have pending fitness motions. The differences in outcomes could therefore be a result of different attorney types. However, a causal relationship cannot be definitively determined because information about other potential causes is unknown.

Out of 114 fitness cases examined in detail, four were resolved in less than one month, and all four resulted in a finding of unfitness and transfer to adult court. Three of the four were panel cases and one was retained counsel.

For cases examined in detail that resulted in transfer to adult court (66 in total), panel counsel consulted less often with experts, provided less documentation to support the client, and filed fewer motions. Panel counsel also resolved these unfit cases faster than public defenders – the average was 9.4 months for public defenders but only 4.9 months for panel counsel.

Twenty percent of the panel attorneys responding to the survey indicated that conceding unfitness occasionally, sometimes, or often makes sense for the client.

Part VI: Transfer Cases

Transfer cases, in which a fitness motion is filed and the District Attorney seeks to transfer a juvenile in adult court, constitute a critical part of the juvenile defense attorney's job. Attorneys must advocate for their clients to avoid the risk of the more serious and long-standing consequences that can accompany an adult criminal record. As requested by the County, the Warren Institute obtained JAI data for all transfer cases, and examined a sample of transfer cases in detail. This analysis revealed critical differences in transfer case distribution, practice, and outcomes.

Outcome Analysis

Using JAI data for all fitness motions filed in the past five years, the Warren Institute conducted an outcome analysis comparing the results of fitness motions by attorney type. The analysis was performed by Su Li, Ph.D, Research Methodologist and Statistician of Empirical Legal Studies at UC Berkeley, School of Law.⁹⁰ Dr. Li examined five years of JAI data from 2010 through 2014 reflecting cases in which a fitness motion was filed and the client was assigned panel counsel or a public defender. There were a total of 771 such fitness motions over the five years.⁹¹

Dr. Li determined that:

- Over the past five years, panel counsel were assigned to 71% of the fitness motions and public defenders were assigned to 29% (these percentages do not count assignments to APD or retained counsel).
- Twenty-six percent (25.9%) of panel clients with fitness motions were found unfit and transferred to adult court, but only 13.4% of public defender clients with fitness motions were found unfit and transferred to adult court.
- The difference is statistically significant.

The methodology is worth noting:

⁹⁰ Among other degrees, Dr. Li holds a Ph.D in Sociology and a M.S. in Mathematical Methods for Social Science, both from Northwestern University in 2006 and 2002, respectively.

⁹¹ During the on-site file review, it was learned that JAI was accurate in relation to a finding of unfitness. Cases with a "U" were cases in which the youth had been found unfit. Cases without a "U," however, were sometimes still pending. To check for any error, the statistical analysis was re-run without any 2014 cases. The cross-tab showed 27.8% with panel counsel coded as unfit, and 16.6% public defender cases coded as unfit. This result is also statistically significant and is consistent with the result found when the 2014 cases were included.

Part VI: Transfer Cases

- The original Excel file provided to the Warren Institute by the County contained all JAI entries from 2010 through 2014 with a hearing coded as “FIT,” meaning that the matter had appeared on calendar for a fitness motion. JAI codes for type of attorney (DPD for public defender, CRT for panel counsel, APD for alternate public defender, PRI for private counsel). Cases where the youth is found unfit are marked with a “U.”
- Because JAI is a calendaring system, the initial data file contained an entry for every appearance made by a youth when the fitness motion was on calendar, even if the matter was on calendar multiple times for status and continuance. The original file thus reflected multiple entries for almost every petition. Multiple entries were eliminated so that each combination of a case number and petition date appeared only once in the analysis. The most recent court appearance was kept for each case number/petition date in the JAI file. The resulting file contained 1,486 rows of data.
- If a case number appeared multiple times with different petition dates, the attorney type was checked. Fifteen cases had changed attorney types. These 15 cases were eliminated.
- During the individual on-site file review (described later in this section), it was learned that JAI sometimes contained error when a youth had more than one petition pending. Occasionally, clerks would code all pending petitions as “FIT” even if a fitness motion had not been filed against all pending petitions. Youth with multiple petitions sometimes have more than one fitness motion pending, but not always, and in that situation JAI data could not be used to determine which of the pending petitions had fitness motions and which did not. In other words, JAI sometimes indicated that a youth with multiple petitions also had fitness motions pending for each petition, when in fact the youth had fewer (or only one) fitness motion pending.
- JAI was reliable as it related to at least one pending fitness motion. That is, JAI never indicated that a youth had a fitness motion when the youth did not have any pending fitness motions.
- To eliminate error associated with multiple petitions, cases with multiple entries (i.e., multiple pending petitions) were consolidated.
- After this step, 1,044 data records remained. Among the 1,044 data entries, 983 had valid attorney types. 771 of those 983 were coded as DPD or CRT.

Case File Review

At the request of the County, the Warren Institute visited all nine courthouse branches in August and September 2015 and reviewed a number of individual court files on site for cases in which fitness motions were filed. A random selection of files would have resulted in a large number of files in which the youth remained in juvenile court,

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WARREN INSTITUTE ON LAW AND SOCIAL POLICY, UC BERKELEY SCHOOL OF LAW
REPORT TO THE LOS ANGELES CEO AND AUDITOR/CONTROLLER ON JUVENILE INDIGENT DEFENSE

FINAL

Part VI: Transfer Cases

because this is the more frequent result. In order to gain an understanding of cases in which the youth were found unfit, cases with findings of unfitness were oversampled. This means that the files reviewed are not a random sample, and attributes associated with findings of unfitness will be more heavily weighted in the result. Thus, while the information below presents a detailed description of the files reviewed, it should not be extrapolated to all fitness motions without a statistical analysis that corrects for the oversampling. Such an analysis was beyond the scope of this review.

In order to identify the cases to be reviewed, a list was compiled of the 90 most recent cases where the juvenile was found unfit (i.e., transferred to adult court) and the 90 most recent cases where the juvenile was found fit or remained in juvenile court. Two additional cases were added because they involved juveniles with multiple petitions.

Out of these 182 cases, 26 files had been archived and could not be accessed for inclusion in this report; 14 files did not in fact have a fitness motion pending against the petition that had been identified in JAI; and 12 files were unavailable or could not be located by branch clerks. The detailed case file review thus consisted of 130 separate fitness motions filed by the District Attorney.⁹² However, the analysis below reflects only 114 cases because eight motions were still pending at the time of review and therefore could not be categorized as fit or unfit, and eight had a change of attorney while the motion was pending that made it impossible to assign the result to one attorney or another. The distribution of cases in the file review by attorney type is shown in Figure 20.⁹³

Figure 20. Distribution of Sample Cases in Transfer Case File Review

Counsel Type	Fit	Unfit	Total
Public defender	13	6	19
Panel	25	50	75
APD	0	4	4
Private	10	6	16
Total	48	66	114

⁹² As noted in the methodology section, these are called 130 “cases” but are actually 130 combinations of a case number and unique petition. If a juvenile had more than one petition pending at a time and fitness motions were filed in relation to more than one of those petitions, that juvenile would be included more than once in the list of 130.

⁹³ Note that, because the files went back to 2012, the data includes cases from the Kenyon courthouse branch that closed in mid-2013.

Part VI: Transfer Cases

Notably, 27% (31 out of 114) of the cases included a petition to prescribe psychotropic medication to the youth. The degree to which that number is higher than should be expected is a subject that the County may wish to investigate in the future.⁹⁴

Possible Differences in Practice

Time to Resolution

For all 114 cases reviewed, the average length of time between the filing of a fitness motion and resolution was 7.1 months. Public defender cases took longer than average (10.5 months) and panel attorney cases took less time than average (5.8 months). APD cases resolved in an average of 10.2 months and private attorney cases averaged 8.2 months.

For cases in the sample that resulted in a finding of unfitness, the average length of time to resolution was 5.7 months. Public defenders took longer on average (9.4 months) than panel attorneys who took 4.9 months. APD's average was 10.2 months and private attorneys averaged 5.1 months.

For cases in the sample in which the juvenile remained in juvenile court, the average length of time to resolution was 9.1 months. Again, public defenders took longer – 11 months – than panel attorneys who took 7.7 months. Private attorneys averaged 10.1 months.

Some cases were resolved remarkably quickly. Indeed, out of the 114 cases examined, four fitness motions were filed and resolved in less than one month. All four resulted in the juvenile being transferred to adult court. Three of these were panel counsel cases, and one was a private attorney case.

A total of 19 motions out of the 114 (16.7%) were resolved in three months or less – 18 by panel attorneys and one by a private attorney. Eighteen of the 19 cases resolved in three months or less resulted in the juvenile being found unfit and transferred to adult court.

At the other end of the spectrum, 15 out of the 114 motions (13.2%) took a year or longer to resolve. Seven (47%) were public defender cases, six (40%) were panel cases,

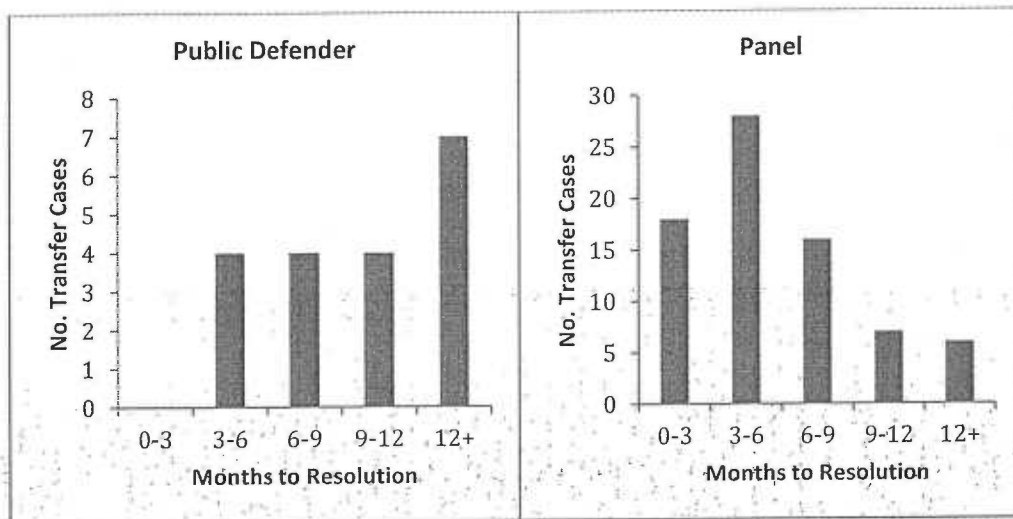
⁹⁴ A 20% rate for antipsychotic prescriptions for foster youth was recently called “disturbing” and “unacceptable” in Pennsylvania. See <http://jjie.org/pennsylvania-juvenile-offenders-given-psychiatric-drugs-at-high-rates/147154/>

Part VI: Transfer Cases

and two (13%) were private cases. Nine of the 15 stayed in juvenile court, and four (2 panel and 2 public defender) were transferred to adult court.

Overall, 37% (7) of public defender cases took over 12 months to resolve. Conversely, almost one-quarter (18) of the panel attorney cases in the sample were resolved in less than three months. Only 8% (6) of the panel attorney cases took longer than 12 months (see Figure 21).⁹⁵

Figure 21. Time to Resolution for Fitness Motions, by Attorney Type



Resource Use and Representation in Transfer Cases

Cases remaining in juvenile court

Out of the 48 cases remaining in juvenile court in the sample of 114, 96% (46) reflected a negotiated resolution to keep the client from being transferred to adult court, as documented by the withdrawal of the fitness motion by the District Attorney.

Eighty-three percent (40) of the 48 cases remaining in juvenile court reflected counsels' consultation with an expert (medical, psychological, or social worker), either through request for an expert, submission of an expert report, or expert testimony. Public defenders consulted experts in 92% of their cases that remained in juvenile court in the sample and panel in 88%.

⁹⁵ APD cases all resolved within eight to eleven months.

Part VI: Transfer Cases

Cases found unfit and transferred to adult court

Out of the 66 cases in the sample of 114 in which the juvenile was found unfit and transferred to adult court, 77% (51) reflected counsels' consultation with an expert, medical doctor, psychologist, or social worker, either through request for an expert, submission of an expert report, or expert testimony. Public defenders consulted an expert in 83% (5 out of 6), panel attorneys in 80% (40 out of 50), APD in every case, and private attorneys in only 33% (2 out of 6). Most included submission of an expert report: for public defenders it was three out of the five, and for panel counsel it was 32 out of the 40.

Regarding documentation in support of the client's case, 89% (59) of the 66 unfit cases in the sample contained one or more of the following: character letters; reports from medical, psychological, or social workers; school records; dependency court records; IEP documentation; or other written evidence. Public defenders had evidence of this type of documentation in 100% of their cases, panel attorneys in 90% (45 out of 50), APD in 100%, and private attorneys in 67% (4 out of 6).

Other data that was gathered from a review of the 66 cases in which the juvenile was found unfit is presented below in Figure 22. As a percentage of the total, panel counsel are lower than public defenders in every category.

Figure 22. Resource Use and Representation in Sample of 66 Unfit Cases

	Total Number of Unfit Cases in Sample	Expert Consultation	Documented Support	Written Motion	Testimony	Edsel P. Hearing
Public Defender	6	5 (83%)	6 (100%)	4 (67%)	2 (33%)	5 (83%)
Panel	50	40 (80%)	45 (90%)	4 (8%)	5 (10%)	35 (70%)
APD	4	4 (100%)	4 (100%)	1 (25%)	4 (100%)	4 (100%)
Private	6	2 (33%)	4 (67%)	2 (33%)	1 (17%)	5 (83%)
Total	66					

Part VI: Transfer Cases

- Written motions: Sixty-seven percent (4 out of 6) of public defenders' cases that resulted in transfer had a written motion, 8% (4 out of 50) of panel attorney cases, 25% (1 out of 4) of APD's, and 33% (2 out of 6) of private attorney cases.⁹⁶
- Expert testimony: Twenty-percent (13) of the 66 unfit cases reflected testimony from an expert or other witness. Public defenders had expert or other testimony in 33% (2 of 6) of their cases, panel in 10% (5 out of 50), APD in 100% (four out of four) and private attorneys in 17% (1 out of 6) of their cases.
- Edsel P. hearing: Eighty-three percent (5 of 6) of public defender cases in the sample that resulted in transfer had an Edsel P. hearing, 70% (35 out of 50) of panel attorney cases that were transferred had the hearing, all APD cases (4 out of 4), and 83% (5 out of 6) private attorney cases.

Waiver or Submission of Fitness

In four of the 66 cases in the sample where the juvenile was transferred to adult court, the attorney waived, conceded, or submitted fitness, essentially meaning that the attorney did not advocate for his or her client at the fitness hearing. Three were panel cases and one was a private attorney. The court brief filed in Appendix D is an example of a panel case in which the attorney submitted on fitness. Panel counsel in that case was found to have been constitutionally ineffective. It does not appear that the CEO was notified or, if the CEO was notified, it does not appear that the CEO had any structure that allowed for an action in response.

On the issue of waiver, the Public Defender and panel counsel view transfer cases differently. The Office of the Public Defender has a policy that no public defender can waive, stipulate or submit to transfer without full review up the entire chain of command, to the Head Deputy.⁹⁷ The Office could not recall an instance in which approval was given for waiver, submission, or stipulation to transfer. Some panel attorneys, in contrast, believe differently: 20% of the panel attorneys responding to the survey indicated that conceding unfitness occasionally, sometimes, or often makes sense for the client. Some of their comments include:

- "I prepare for a fitness hearing on each fitness case. However, there are times when a hearing is not in my client's best interest."

⁹⁶ Not all court clerks recorded oral motions consistently so oral motions could not be accurately counted; therefore, only written motions are included here. 17% (11 out of 66) cases included at least one written motion.

⁹⁷ The policy is slightly different if the juvenile is 17.

Part VI: Transfer Cases

- “I have conceded unfitness 4 times in 36 years each time resulting in great benefit to the client. But it should happen rarely and only when you are sure you are doing the right thing.”
- “In a rare case, the circumstances may be that the client will be better off in adult court.”

PART VII: National Standards and County Methods for Specialized Training and Continuing Legal Education; Evaluation, Supervision, Mentoring and Support; Accountability and Quality Assurance; and Compensation and Incentives

Response to motion item 1) d & e.:

“A review of the methods of specialized training, continuing legal education, supervision, mentoring and support, evaluation, compensation/incentive systems, accountability, and quality assurance employed by the Public Defender, the Alternate Public Defender, and juvenile panel attorneys.”

“A review of the methods of specialized training, continuing legal education, supervision, mentoring and support, evaluation, compensation/incentive systems, accountability, and quality assurance recommended by national standards.”

Highlights

The County’s current contract with panel counsel does not allow panel counsel to access court-paid investigators; panel counsel must pay for investigators from their flat fee or they must find an investigator to work pro bono. National and state standards state that the County should provide investigators for panel counsel.

Both panel attorneys and public defenders have annual training, but panel attorneys are required to organize and pay for their training out of pocket. Standards state that the County should ensure that training is available without cost to all counsel for indigent defendants.

Because the County has not established a qualified oversight body for panel counsel, substantive oversight, supervision, and quality control have been provided, if at all, by the panel heads. This leads to inconsistency and an inability of the County to ensure quality. It is also inconsistent with standards. In at least two instances, panel attorneys have been constitutionally ineffective and either the County was not informed, or the County was informed but had no structure that allowed for a response.

Part VII: Training, Accountability, and Compensation

Relying on the judges to provide oversight is problematic, lacks consistency, and is not recommended.

Flat-fee contracts such as those used in Los Angeles are strongly criticized in California and even barred by law in other states; since at least 2006 the State Bar has stated that they should not be used.

In an effort to ensure quality of representation for juvenile defendants nationwide, the American Bar Association (ABA), the National Legal Aid and Defenders Association (NLADA), and the National Juvenile Defenders Center (NJDC), among others, have promulgated national standards for training, supervision, compensation, evaluation and quality control of juvenile attorneys. The NJDC has additionally identified a guiding set of principles designed to provide an ethical framework for all juvenile defense standards:⁹⁸

1. Juvenile defenders play a critical role in the fair administration of justice for children;
2. Juvenile defense is a specialized practice anchored in juvenile-specific training and practice skills;
3. Juvenile defense requires zealous advocacy;
4. Juvenile defense requires competence and proficiency in court rules and the law;
5. Juvenile defense requires legal representation that is individualized;
6. Juvenile defense requires representation that is developmentally appropriate;
7. Juvenile defense is based on the clients' expressed interests;
8. Juvenile defense requires that clients be meaningful participants in their defense;
9. Juvenile defense includes counseling clients through the legal and extralegal processes;
10. Juvenile defense includes ensuring that clients and their families are treated with dignity and respect and that there is decorum in the courtroom;
11. Systemic barriers and deficiencies impair juvenile defenders' abilities to provide high-quality representation; and
12. Systemic barriers and deficiencies lead to disproportionate representation of vulnerable, underserved populations at every contact with and stage of the juvenile delinquency court process.⁹⁹

⁹⁸ National Juvenile Defense Center, "Models for Change; Systems Reform in Juvenile Justice" at 9 (2012). Available at <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

⁹⁹ National Juvenile Defense Center, "Models for Change; Systems Reform in Juvenile Justice" at 9 (2012). Available at <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

Part VII: Training, Accountability, and Compensation

These guidelines and standards are necessary because, absent competent, diligent and zealous advocacy, juveniles may face “increasingly negative consequences from an arrest or court involvement, such as decreased educational and/or employment opportunities, restrictions of access to public benefits and privileges and compromised immigration status, as well as placement in lifelong registries.”¹⁰⁰

California has adopted many of these same standards in the State Bar Guidelines on Indigent Defense Delivery Systems.¹⁰¹ In addition, Los Angeles has its own standards, documented in the Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court.¹⁰²

Specialized Training and Continuing Legal Education

Standards

The quality of juvenile representation is tied in large part to the education and training of the attorneys who appear in juvenile court.¹⁰³ To “make certain that all parties receive adequate representation, it is fundamentally important that attorneys have adequate training before they begin practice in juvenile court and on a continuing basis thereafter.”¹⁰⁴

In the juvenile system, failure to develop competent juvenile attorneys often occurs when there is a lack of recognition that juvenile defense is a specialty that requires preparation and intensive training.¹⁰⁵ Counties and others responsible for indigent defense may improperly conflate the representation of children in delinquency proceedings with the distinct, but equally important, representation of adults in criminal

¹⁰⁰ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 19 (2012). Available at <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

¹⁰¹ Administrative Office of the Courts, “Effective Representation of Children in Juvenile Delinquency Court,” (2015) <http://www.courts.ca.gov/documents/EffRepChildrenBro.pdf>

¹⁰² The Public Defender has not fully endorsed these Guidelines. The Guidelines, and the Public Defender’s position, are more fully discussed in the last section of this report.

¹⁰³ Advisory Committee Note, Standard 5.40(d)(4), California Rules of the Court (2015).

¹⁰⁴ Advisory Committee Note, Standard 5.40(d)(4), California Rules of the Court (2015).

¹⁰⁵ Nat’l Juvenile Def. Ctr. & Nat’l Legal Aid & Def. Assoc., *Ten Core Principals for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* at 2 (2008). Available at <http://www.modelsforchange.net/publications/424>; See also Judith B. Jones, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Bulletin: Access to Counsel* (2004). Available at <https://www.ncjrs.gov/pdffiles1/ojdp/204063.pdf>

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proceedings.¹⁰⁶ Moreover, juvenile defense has at times been viewed as a stepping-stone to adult criminal defense. Instead, the NJDC and NLADA advocate that the “public defense delivery system encourages experienced attorneys to provide delinquency representation and strongly discourages use of delinquency representation as a training assignment for new attorneys for future adult court.”¹⁰⁷

Recent California law recognizes the critical need for qualified juvenile defenders:

It is essential that California’s juvenile delinquency defense attorneys have the appropriate knowledge and skills needed to meet the demands of this increasingly complex area of legal practice. Advances in brain research demonstrate that children and adolescents do not possess the same cognitive, emotional, decision-making, and behavioral capacities as adults. Counsel must ensure that these differences are appropriately recognized in the attorney-client relationship and defense of the case.¹⁰⁸

Competent juvenile representation requires counsel to “not only possess knowledge of the law,” but also “to understand youth development and be able to interact effectively with youth.”¹⁰⁹ This will likely require that attorneys establish community resources and “develop relationships with local social service providers.”¹¹⁰ Furthermore, counsel must be cognizant of the various moral, economic, social, and political factors that play into a client’s particular situation.¹¹¹ “Juvenile defenders need to familiarize themselves with key elements of a ‘developmentally sound’ practice’ in juvenile court, and be able to recognize, consider, and address how disabilities, trauma, and immaturity affect

¹⁰⁶ Nat’l Juvenile Def. Ctr. & Nat’l Legal Aid & Def. Assoc., *Ten Core Principals for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* at 2 (2008). Available at <http://www.modelsforchange.net/publications/424>

¹⁰⁷ Nat’l Juvenile Def. Ctr. & Nat’l Legal Aid & Def. Assoc., *Ten Core Principals for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* at 2 (2008). Available at <http://www.modelsforchange.net/publications/424>. The need for training is echoed by the National Council of Juvenile and Family Court Judges and the Pacific Juvenile Defense Center. National Council of Juvenile and Family Court Judges, *Key Principals for Improving Court Practice in Juvenile Delinquency Cases* (July 2010), at <http://www.ncjfcj.org/resource-library/publications/key-principles-improving-court-practice-juvenile-delinquency-cases>. Pacific Juvenile Defense Center, *Statement of Beliefs* (2015); <http://www.pjdc.org/about/statement-of-beliefs/>

¹⁰⁸ AB 703, signed September 30, 2015.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160A8703

¹⁰⁹ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 22 (2012).

¹¹⁰ Nat’l Juvenile Def. Ctr. & Models for Change, *The Nat’l Juvenile Def. Standards* at 22 (2012); see also Instit. Of Jud. Admin. Am. Bar Assoc., *Juvenile Justice Standards Annotated: A Balanced Approach* at § 1.4, 70 (1996) (noting juvenile attorneys typically work with social worker and probation departments) (Hereafter cited as *Juvenile Justice Standards*). Available at <https://www.ncjrs.gov/pdffiles1/ojdp/166773.pdf>

¹¹¹ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 22 (2012).

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youths' behaviors, relationships, and perceptions of safety.”¹¹² This means, for example, that attorneys should be able to incorporate into their pretrial motions knowledge of developmental immaturity and its influence on a client's ability to intelligently, knowingly, and voluntarily waive constitutional rights.¹¹³

With regard to entry-level training and qualifications, the NJDC has defined six core competency areas for minimum proficiency in juvenile delinquency:

1. Counsel should be familiar with and utilize state juvenile delinquency statutes, criminal statutes, case law rules of procedure, rules of evidence, and rules of appellate procedure that impact juvenile practice;
2. Counsel should be knowledgeable about the key aspects of developmental science and other research that informs specific legal questions regarding capacities in legal proceedings, amenability to treatment and culpability; counsel should recognize when to consult experts;
3. Counsel must be properly trained in effective adolescent interviewing techniques;
4. Counsel must have training in the specialized skill of communicating with young clients in a developmentally appropriate and effective manner;
5. Counsel should be up-to-date on the consequences of juvenile adjudication; and
6. Counsel should be proficient with the operations of, and laws regarding, child-serving institutions, including schools, social service agencies, and mental health agencies.¹¹⁴

The California State Bar, in its Guidelines on Indigent Defense Services Delivery Systems, recommends that counsel “be experienced and not in an entry level position, [and] be trained in the development, education, substance abuse and mental health of youth[.]”¹¹⁵ Absent any local rules, the court is responsible for establishing relevant prerequisites for court-appointed attorneys and advocates in the juvenile court. The court should “ensure that attorneys who appear in juvenile court have sufficient training to perform their jobs competently, as follows: require that all court-appointed attorneys meet minimum training and continuing legal education standards as a condition of their appointment to juvenile court matters; and encourage the leaders of public law offices that have responsibilities in juvenile court to require their attorneys who appear in

¹¹² Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 22 (2012) (quoting Marty Beyer, *Developmentally-Sound Practice in Family and Juvenile Court*, Nev. L.J. 1215 (2006)).

¹¹³ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 23 (2012).

¹¹⁴ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 21-22 (2012).

¹¹⁵ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 22; www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

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juvenile court to have at least the same training and continuing legal education required of court-appointed attorneys.”¹¹⁶

With respect to ongoing training and continuing education, “the juvenile defender must be clear about his or her role and be able to keep pace with the growing body of scientific research and legal jurisprudence that applies directly to the representation of children.”¹¹⁷ California Penal Code Section 987.2(c) requires that “[i]n counties that utilize an assigned private counsel system . . . as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to . . . seek to educate those panel members through an approved training program.” The system should “provide training resources free of charge to program attorneys.”¹¹⁸

Regarding continuing legal education in particular, the American Bar Association does not mandate a particular number of continuing legal education hours for juvenile attorneys; whether to set a requirement of a particular amount of continuing legal education hours to practice juvenile law (or any law) falls under the purview of each state bar. In California, attorneys are required to complete 25 hours of MCLE (minimum continuing legal education) every three years, four hours of which must be on ethics, one hour of which must be on elimination of bias, and one hour of which must be on competence (substance abuse or mental illness).¹¹⁹ The California State Bar does not set separate requirements for criminal defense or juvenile delinquency attorneys, but recommends that jurisdictions require formal training in addition to the MCLE 25 unit requirement. The MCLE units may apply toward this requirement, but “the local jurisdiction may require more than 25 units and should also require some nexus to criminal law rather than only the MCLE’s generic unit requirements.”¹²⁰

The County should note that, on September 30, 2015, Governor Brown signed AB 703 into law. AB 703 requires that, by July 1, 2016, the Judicial Council adopt new rules of court to do the following:

(1) Establish minimum hours of training and education, or sufficient recent experience in delinquency proceedings in which the attorney has demonstrated competence, necessary in order to be appointed as counsel in delinquency proceedings. Training hours that the State Bar has approved for Minimum Continuing Legal Education (MCLE)

¹¹⁶ Standard 5.40(d)(1) and (2), California Rules of the Court.

¹¹⁷ National Juvenile Defense Center, “Models for Change; Systems Reform in Juvenile Justice” at 5 (2012). Available at <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

¹¹⁸ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006). At 19.

www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹¹⁹ <http://mcle.calbar.ca.gov/Attorneys/Requirements.aspx>

¹²⁰ The State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006), at 15.

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credit shall be counted toward the MCLE hours required of all attorneys by the State Bar.

(2) Establish required training areas that may include, but are not limited to, an overview of juvenile delinquency law and procedure, child and adolescent development, special education, competence and mental health issues, counsel's ethical duties, advocacy in the post-dispositional phase, appellate issues, direct and collateral consequences of court involvement for a minor, and securing effective rehabilitative resources.

(3) Encourage public defender offices and agencies that provide representation in proceedings under Sections 601 and 602 to provide training on juvenile delinquency issues that the State Bar has approved for MCLE credit.

(4) Provide that attorneys practicing in juvenile delinquency courts shall be solely responsible for compliance with the training and education requirements adopted pursuant to this section.¹²¹

Looking forward, the County will need to consider how implementation of AB 703 will be overseen as applied to panel counsel.

Public Defender Practice and Compliance

It is a concern that deputy public defenders are relatively inexperienced, as both the NJCD and the NLADA "encourage[] experienced attorneys to provide delinquency representation and strongly discourage[] use of delinquency representation as a training assignment for new attorneys or future adult court."¹²²

However, the Office has a training structure designed to compensate for the attorneys' relative inexperience. The deputy public defenders in the Juvenile Division cannot start in the Juvenile Division but can transfer after two to three years of practice in adult misdemeanor court. When the new attorneys arrive in the Juvenile Division they first

¹²¹ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB703

¹²² Nat'l Juvenile Def. Ctr. & Nat'l Legal Aid & Def. Assoc., *Ten Core Principals for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* at 2 (2008). Available at <http://www.modelsforchange.net/publications/424>. The need for training is echoed by the National Council of Juvenile and Family Court Judges and the Pacific Juvenile Defense Center. National Council of Juvenile and Family Court Judges, *Key Principals for Improving Court Practice in Juvenile Delinquency Cases* (July 2010), at <http://www.ncjfcj.org/resource-library/publications/key-principles-improving-court-practice-juvenile-delinquency-cases>. Pacific Juvenile Defense Center, *Statement of Beliefs* (2015); <http://www.pjdc.org/about/statement-of-beliefs/>

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observe for a few days with the DIC in that courthouse. On the third day they meet the Head Deputy and have a full day of training with the appellate attorneys and the Head Deputy in the downtown office. Training with the appellate attorneys includes the scope of juvenile representation, hearing types, dynamics of juvenile court (including working with parents), a brief introduction to adolescent development, immigration, collateral consequences, adjudications, dispositions, 777 petitions, 778 petitions, strikes, priors, and other subjects. Training with the Head Deputy includes protocols for critical incidents, child abuse reporting, fitness cases, homicide cases, and file documentation policy. It also includes training regarding file management, expected evaluations, expectations regarding client visits, and the relationship with parents. See Appendix E for a full description of the training provided by the appellate attorneys, the DICs and the Head Deputies.

New attorneys then go to their branch courthouses, where a few weeks later they have a follow-up full day of training with the same appellate attorneys and other speakers covering many of the same subjects in greater detail, including fitness, immigration, competency, confessions, adolescent development, sex cases, special education, regional centers, resource attorneys, social workers, mental health courts, and strikes. A new attorney is not permitted to handle a homicide case or a fitness case until at least two months have passed satisfactorily. At the branch, the DIC continues with additional training, including training in how to interview juvenile clients and case preparation (experts, investigations, and motions).

For ongoing training, the Public Defender hosts an annual seminar on juvenile defense that is mandatory for all attorneys in the office and open to all juvenile defense attorneys outside of the Office. See Appendix E for the agendas from the last ten annual seminars.

The Office offers monthly webinars on juvenile delinquency subjects such as psychotropic medications, forensic examinations, forensic cellphone and GPS devices, and internet and social media. The Office also provides additional follow-up trainings for new attorneys, monthly in-person trainings that are offered within the particular courthouse branches, and tours of juvenile facilities. In addition, the DICs, the social workers, and the resource attorneys all meet monthly to review subjects of particular interest; social workers and resource attorneys also attend the law trainings and each others' trainings. Past training topics have included effective report writing, hard to place youth, common street drugs, IEPs, and educationally related mental health services. Attorneys receive MCLE credits for most of these trainings as well as for the annual seminar. See Appendix E for a list of the webinars offered in the last year, dates and subjects of most recent trainings, meetings, and tours. These additional trainings and webinars are not open to attorneys outside the Office. The annual seminar is open to the defense bar and other public defender offices.

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The Juvenile Division recently hired a full-time trainer. She has been with the Office of the Public Defender for over 13 years, recently as an appellate attorney specializing in juvenile delinquency issues. It is expected that the Juvenile Division training program will change and expand under this new leadership.

All attorneys in the office are required to comply with the requirements of the California State Bar for minimum continuing legal education (MCLE). Both the annual public defender training, and most of the internal monthly trainings, meet MCLE requirements for public defender attorneys. The Public Defender does not make training mandatory beyond its annual seminar and the MCLE requirements, but according to the Public Defender most attorneys attend far more than the minimum MCLE amount each year.

Even with the training, however, the practice of rotating young attorneys through the Juvenile Division was criticized by a few of the judges in the survey, including one who stated:

Some public defenders spent more time on other needs of minors such as education, special immigration status, and mental health. Institutional representation can provide extra resources, including non-attorney personnel to do this. The Public Defender's Office and the District Attorney's Office both need to be reformed as well. Juvenile is a rotating assignment resulting in attorneys with little interest in the other aspects of the Juvenile system beyond crime and punishment. Representation should be institutional, long term, and by attorneys with a real interest in juvenile law practice.

Panel Counsel Practice and Compliance

The contracts between the County and the panel attorneys do not specify any training or entry requirements for new attorneys, and do not require any specific training or continuing legal education. However, because panel counsel have all been practicing for so long, they would almost certainly meet any minimum competency requirements set by the County. The original RFP required five years of experience, and panel heads state that they continue to adhere to those requirements despite the fact that those requirements are not written into the contract.¹²³

Although the County does not explicitly require any ongoing training, 90% of the panel attorneys who responded to the survey indicated that they attend the Public Defender's annual seminar almost every year. In addition, the panel attorneys themselves host an annual seminar (organized by the Sylmar panel head) that is open to all juvenile defense

¹²³ The content of the original RFP could not be confirmed for all eight branches.

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attorneys. Agendas from the past few years' panel seminars are attached in Appendix F. Nearly all surveyed panel attorneys (87%) said they attend the annual panel seminar almost every year. One panel head stated that they require attorneys in that branch to attend the annual panel seminar, the annual Public Defender seminar, or both. Other panel heads indicated their belief that the attorneys in their branch were experienced enough to monitor their own training.

When asked how they kept abreast of new laws and duties, the most common methods were the Public Defender training, newsletters and journals, and the annual panel seminar. One panel head emphasized a listserv available to panel attorneys, but only 11 of the 31 attorneys in the survey identified the listserv as a primary means used to stay current on changing laws and duties.

It is a concern that panel attorneys have to pay to attend the annual Public Defender training. The fact that the County does not cover the cost for panel attorneys to attend training – or make training available free of charge for panel attorneys – conflicts with standards because the County does not “provide training resources free of charge to program attorneys.”¹²⁴ Instead, panel attorneys are required to create and pay for their own training out of their flat-fee payments, putting panel attorneys in the position of having to choose between attending the annual training, and being compensated for their work with clients.

As with public defenders (and all attorneys), panel attorneys must comply with the MCLE requirements of the State Bar, which is 25 hours over three years. The County does not impose any additional continuing legal education requirements on panel counsel, nor does the County require or provide any specialized continuing legal education. The panel's annual training seminar provides six hours of MCLE each year.

More critically, the issue of specialized training both for entry into the panel system and for ongoing training is going to become more important as the panel attorneys retire or leave juvenile practice. More than half (58%) of the panel attorneys indicated that they expected to retire or leave the panel in less than ten years, and 17% indicated that they expected to leave in less than five years. The County currently has no system to review or evaluate new attorneys who wish to join the panel, nor does the County have any person who would be able to substantively evaluate the performance and capacities of entering or existing panel counsel. As this group of panel attorneys heads toward retirement it will become critical that the County consider how it will ensure that new attorneys are qualified to represent juveniles in delinquency court.

¹²⁴ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006). At 19. www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

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Finally, in light of the passage of AB 703, the County will need to develop a structure to ensure that panel attorneys comply with new standards once they are developed. The County does not currently have any such structure.

Supervision, Evaluation, Mentoring, and Support¹²⁵

Standards

Indigent defense structures and delivery systems include institutional public defender offices, assigned counsel, conflict counsel, law school clinicians, and non-profit law centers. The nature of these systems will impact the content and the type of attorney supervision that is appropriate.¹²⁶ The fact that panel counsel are independent does not mean that supervision is irrelevant; the American Bar Association recommends that *all* indigent defense attorneys be “supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.”¹²⁷

The State Bar states that the County “shall establish written procedures, using uniform standards, to periodically monitor and accurately assess the performance of its attorneys.”¹²⁸ When looking to contract or independent providers of indigent defense, “[s]uch evaluations cannot be identical to those of supervisors of employees because of assigned counsels’ status as independent contractors”¹²⁹ but supervision is still a requirement.

Although judicial evaluation can be a component of County supervision, the American Bar Association strongly recommends that supervision of counsel not lie solely within the judiciary to maintain the independence of counsel and to allow counsel to advocate for their clients. “The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.”¹³⁰

Whatever the structure of the indigent defense system, a supervisor “provide[s] leadership and ensure[s] that counsel is able to effectively offer the most competent,

¹²⁵ Evaluation is a component of both supervision and quality assurance and, therefore, it appears in both sections.

¹²⁶ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 144 (2012).

¹²⁷ American Bar Association, *ABA Ten Principles of a Public Defense Delivery System with Commentary* (2002) (Principle 10).

¹²⁸ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 16

¹²⁹ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 16

¹³⁰ American Bar Association, *ABA Ten Principles of a Public Defense Delivery System with Commentary* (2002). (Principle 1.)

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diligent, and zealous representation possible to protect the client's procedural and substantive rights."¹³¹ This means ensuring that:

- a. Counsel has regular and ongoing opportunities to receive relevant and specialized training and leadership development;
- b. Counsel's skills and abilities are a proper match with the number and complexity of cases assigned;
- c. Counsel receives interactive and timely feedback in the form of leadership, coaching, training, role-playing, mentoring, and other support;
- d. Counsel has access to investigative and other critical resources; and
- e. Counsel has back-up and support when systemic barriers interfere or conflict with counsel's duties to clients and undermine his or her role.¹³²

To comply with the above-mentioned list, supervisors should construct an environment that nurtures respect for juvenile defense and "supports zealous defense for youth."¹³³ This allows the attorney under supervision to "withstand court challenges and provide competent, diligent, and zealous legal advocacy for the client."¹³⁴ Moreover, in the event that "the role of the juvenile defender is questioned or maligned, or when system stakeholders attempt to penalize defense counsel, or their clients, for appropriate zealous advocacy," a supervisor is charged with intervening.¹³⁵

To promote effective representation, supervisors are expected to provide both formal and informal learning opportunities.¹³⁶ Of critical importance are training opportunities that (1) inform counsel regarding changes in the law, (2) allow practice in lawyering skills, (3) inform counsel regarding advancement in developmental science and other areas of adolescent development, (4) highlight changes in client demographics, including historically marginalized populations, and (5) discuss rehabilitative and community-based services and the means to access them.¹³⁷ National standards also recommend that a supervisor in juvenile indigent defense ensures that, among other things, counsel has access to investigative and other critical resources.¹³⁸

Supervisors "should develop written standards and consistent formal methods of review."¹³⁹ They should create stop-gap measures that provide counsel with assistance

¹³¹ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³² Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³³ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³⁴ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³⁵ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³⁶ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 145 (2012).

¹³⁷ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 145 (2012).

¹³⁸ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³⁹ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 146 (2012).

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when needed,¹⁴⁰ and there should be systems in place where the supervisor provides regular and timely feedback.¹⁴¹ “[S]upervisors should seek to promote an office culture in which counsel feels comfortable seeking guidance from colleagues as well as supervisors.”¹⁴² “The evaluation system must clearly articulate performance expectations and afford counsel feedback regarding performance.”¹⁴³

The County’s Guidelines also address supervision. They adopt the NJDC Standards and emphasize that supervisors must: (1) “provide leadership and ensure that counsel is able to effectively offer the most competent, diligent, and zealous representation,” (2) “ensure that counsel has regular and ongoing opportunities to receive relevant and specialized training and leadership development,” (3) “ensure that counsel’s skills and abilities are a proper match with the number and complexity of the cases assigned,” and (4) “ensure that counsel has access to investigative and other critical resources.”¹⁴⁴

Finally, concerning mentoring, neither national nor state standards require it. However, “for lawyers facing [] difficult situations, having an experienced mentor to consult can make all the difference in whether they succeed or fail in the profession, and . . . whether they have a satisfying or a disappointing career.”¹⁴⁵

Public Defender Practice and Compliance

The Public Defender, as a structured County department, builds supervision, mentoring and support into the Office. In an attorney’s first two months, they are observed regularly by the supervising DIC while they interview their clients, meet with family, appear in court, litigate motions and argue at hearings. The DIC then writes a memo recording his or her evaluation for the Head Deputy; the attorney’s performance must be satisfactory.

All public defenders are formally evaluated annually, consistent with County requirements. In addition, anyone who is promoted (from a Deputy Public Defender II to a Deputy Public Defender III, for example) has a mandatory six month probation period, and he or she is evaluated during that six month period in addition to the annual evaluations. Performance evaluations are performed consistent with the Attorney Performance Standards dated February 8, 2010. The standards differentiate the

140 Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 146 (2012).

141 Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 146 (2012).

142 Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 146 (2012).

143 Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 146 (2012).

144 *Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court*, p. 85.

145 Fujie, Holly, State Bar of California. “Mentoring: Now more than ever.” *California Bar Journal* (May 2009). Available at

<http://archive.calbar.ca.gov/%5CArchive.aspx?articleId=95444&categoryId=95319&month=5&year=2009>

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evaluation criteria for supervisors, but all attorneys including supervisors are evaluated for technical skills. For supervisors, the categories are preparation and knowledge, advocacy, attitude, adaptability and productivity, effectiveness of personal interactions, and supervisory skills. For other attorneys, the categories are advocacy and communication skills (client relations, courtroom effectiveness, case negotiations and sentencing skills), case analysis and preparation skills (legal analysis, research and writing, effective use of investigators, paralegals, experts and witnesses, work habits and organization), and role attitude and experiences (experience, professional relations and role attitude as defense attorney, compliance with policies and procedures, role attitude as public defender, assignment flexibility and leadership). See Appendix G for a copy of the February 8, 2010 Standards.

Panel Counsel Practice and Compliance

The current panel counsel structure lacks an overriding supervision and evaluation mechanism. The only substantive supervision comes from the panel heads themselves. One panel head in particular stated that he/she actively supervises the attorneys in his/her branch, and provides training and coordination. Other panel heads, however, stated that the attorneys in their branches were highly experienced attorneys who do not need supervision. All panel heads stated that the attorneys support each other and contact each other with questions. Some panel heads contend that the County does not need to evaluate them because they have sufficient experience to render evaluation unnecessary. Indeed, in three of the contracts the panel heads negotiated a provision that may prevent the County from taking action in response to a negative evaluation.

The County is ultimately responsible for ensuring that all indigent defense counsel are serving their clients competently and zealously. The County is effectively the supervisor until it designates another agency or group to provide qualified and substantive supervision and evaluation, and provides adequate funding to do so.

Relying on the panel heads to self-supervise is not recommended. The panel heads are also representing indigent juveniles on behalf of the County, and there is no mechanism to supervise or evaluate the panel heads themselves. Moreover, there is no feedback mechanism that would allow the County to ascertain whether or not the panel heads are adequately supervising the attorneys in the branch, or whether they are performing any supervisory function at all.¹⁴⁶

¹⁴⁶ One panel head stated that they supervise their attorneys. Other panel heads contend that supervision, to the extent it is necessary, is provided by the judges. Supervision by judges is addressed in the next section.

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The contracts do place some degree of supervisory or evaluative authority in the CEO's office, and it appears that up until 2006 the CEO's office surveyed the delinquency court judges about the panel counsel on a semi-regular basis. However, the survey was not anonymous and the judges' names were used when their comments were reported back to the panel heads. Since the panel heads and the judges have close relationships, and since they continue to see each other on a regular basis, it is possible that the non-anonymous survey did not elicit the judges' full and honest responses and was therefore an ineffective quality control mechanism. It does not appear that any further substantive evaluation or supervision was done until Fall 2014, when the CEO audited each panel heads' compliance with the contract. This audit, however, was limited to administrative compliance with the contract terms.

In addition, the County does not provide a structured and knowledgeable intermediary or supervisor to oversee the panel attorneys and as a result there is no one available to support the panel attorneys in the event of court challenges, or if "the role of the juvenile defender is questioned or maligned, or when system stakeholders attempt to penalize defense counsel, or their clients, for appropriate zealous advocacy."¹⁴⁷ There is also no outside intermediary tasked with advocating for resources, leaving it to the panel heads to advocate for themselves. Their ability to advocate, however, is limited by the fact that they are relying on the County for their continued income.

One of the judges commented that, to the best of their recollection, it was only public defenders or retained counsel who had challenged a particular judge through Civil Code Section 170.6. Panel counsel, to this judge's recollection, have not made such challenges. This judge commented that, in an adversarial system that depends on counsel to fully advocate for his or her client even at the expense of the relationship with the judge, failure to challenge a judge in appropriate circumstances is exceedingly troublesome.

Evaluation, Accountability, and Quality Assurance

Standards

A strong evaluation system will achieve accountability and quality assurance. Evaluation, accountability, and quality assurance are all related, as the system needs evaluation to ensure both accountability and quality. Thus the California State Bar recommends that within any indigent defense system, whether institutional, contract, private, or otherwise, "there should exist a mechanism whereby the quality of representation

¹⁴⁷ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

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provided by indigent defense providers is monitored and accurately assessed, employing uniform standards.”¹⁴⁸

For a county-based office such as the Public Defender, to effectively evaluate their staff attorneys and ensure accountability and quality, supervisors should “promulgate, adopt, and implement performance standards or guidelines based on best practices.”¹⁴⁹ “An institutional defender should provide a continuous, interactive system whereby mentors, supervisors and managers provide assessment, feedback, documentation, remediation and other functions to ensure that the quality of service being provided is assured.”¹⁵⁰

With respect to contract and assigned attorneys, the State Bar states that “each jurisdiction shall establish operating rules which promote the overall quality of indigent representation”¹⁵¹ for those contract and assigned attorneys.

Accountability and quality should be monitored in part by the manner in which the contract is awarded and by inserting provisions in the contract that demand high quality representation. The appointment process for contract attorneys “should never be *ad hoc*, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.”¹⁵² “An Administrator and/or Board of Governors should oversee the assigned counsel system. Because of the possibility of conflict, or the appearance of conflict, the administrator should not be allowed to maintain a private criminal law practice.”¹⁵³ The salaried administrator should also have a budget to manage the private attorneys, support high performance, and provide quality oversight including an appeals process if necessary.¹⁵⁴

The American Bar Association and the National Legal Aid and Defenders Association have promulgated general standards for contract systems that are relevant to evaluation and quality assurance. Though not specific to the juvenile law system, the ABA standards and the NLADA Guidelines provide an overview of an effective contract

¹⁴⁸ The State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006), at 14.

¹⁴⁹ Nat’l Juvenile Def. Ctr., The Nat’l Juvenile Def. Standards at 146 (2012).

¹⁵⁰ The State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006), at 17.

¹⁵¹ The State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006), at 14.

¹⁵² American Bar Association, ABA Ten Principles of a Public Defense Delivery System with Commentary (2002).

¹⁵³ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 36.

www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹⁵⁴ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 39.

www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

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system. The two organizations contain the following common standards for contracting:¹⁵⁵

1. Contracts should ensure quality of representation (ABA Standard 5-3.1; NLADA Guidelines III-8). One recommended way of ensuring quality of representation is to refuse to award a contract on the basis of cost (ABA Standard 5-3.1; NLADA Guideline IV-3).
2. The professional independence of all indigent defense delivery systems, including contractor systems, should be maintained by creating an independent organization such as a board of trustees or policy board to administer and award contracts (ABA Standard 5-3.2(b); NLADA Guideline III-1).
3. Contracts should not contain provisions that create conflicts of interest between the contractor and clients (ABA Standard 5-3.2(c); NLADA Guideline III-13). Among the potential conflicts addressed are forcing contractors to choose either paying for investigation, expert, transcription, and other services or forgoing these services by not including them in the contract; failing to ensure that the contract's mechanism for addressing conflict cases does not act as a financial disincentive for withdrawing; and inducing an attorney to waive a client's rights for reasons not related to a client's best interests (ABA Standard 5-3.3(b)(vii)(x); NLADA Guideline III-13).
4. To avoid situations in which lawyers or law firms are awarded contracts and delegate responsibility to inexperienced associates, contracts should include identification of attorneys who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval (ABA Standard 5-5.3(iv)).
5. Contracts should include allowable workloads for individual attorneys and measures to address excessive workload (ABA Standard 5-3.3(b)(v); NLADA Guidelines III-6 and III-12).¹⁵⁶
6. Contracts should include provisions for supervision, evaluation, training and professional development (ABA Standard 5-3.3(b)(xi); NLADA Guidelines III-6 and III-7).
7. Contracts should include the grounds for termination of a contract (ABA Standard 5-3.3(b)(xv); NLADA Guidelines III-4 and III-5).

¹⁵⁵ For a list of standards promulgated by the ABA, see The Am. Bar Assoc., *Providing Defense Services* (2015), www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_blk.html

¹⁵⁶ Caseloads are not addressed in this report, but acceptable caseloads are addressed in great detail in the ABA's *Ten Principles*, in the ABA's *Juvenile Justice Standards*, by the American Council of Chief Defenders, and others.

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Also for contract or assigned systems, “each jurisdiction should maintain a written complaint procedure for complaints made against an attorney who is providing indigent legal representation,” and maintain documented procedures for resolving those complaints, as well as a sanction system.¹⁵⁷

Finally, each jurisdiction should include a written evaluation system which may include input from judges, prosecutors, and other members of the defense bar. The system should include having a qualified and experienced person or committee review significant law and motion work, and having a qualified and experienced person or committee make a productivity evaluation based on the number of cases handled or handling of difficult cases.¹⁵⁸

Public Defender Practice and Compliance

As an institutional provider of indigent defense, the Public Defender is responsible for the evaluation and quality control of its employees. The Public Defender’s evaluation systems, discussed earlier, appear to comply with standards. The Office has promulgated performance standards and guidelines based on best practices and provides a continuous, interactive system whereby supervisors and managers provide assessment, feedback, documentation, remediation and other functions to ensure that the quality of service being provided is assured.

Panel Counsel Practice and Compliance

The County’s current panel counsel structure lacks a number of the features recommended by national and state standards. Specifically, the County has:

- No mechanism to assess the quality of representation using uniform standards.
- No articulated performance standards or guidelines based on best practices. No specificity about what will be monitored. No cohesive set of quality standards.
- No full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.
- No substantive oversight by a qualified independent administrator or Board.
- No system for evaluation that allows for qualified and experienced review of panel attorneys’ work.

¹⁵⁷ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 16.

¹⁵⁸ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 17.

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- Any substantive oversight that does exist is performed by the panel heads, who themselves are panel members and who therefore raise the possibility or appearance of conflict. The panel heads are either uncompensated for this work or they are compensated only by taking a portion of the other attorneys' flat fees, which is in itself problematic.
- No budget to manage the panel counsel, support high performance, and provide quality oversight including an appeals process if necessary.
- Contracts that create conflicts of interest by requiring attorneys to pay for investigators and their own training out of their flat fee (this issue is more fully discussed in the incentives section below).
- Contracts that do not identify the attorneys, and no provision requiring notification or approval for substitution of panel counsel in the branch.
- No contract provisions defining supervision, evaluation, training, and professional development.
- No written complaint procedure for complaints made against a panel attorney. No means by which judges or clients can express dissatisfaction. No process for complaints; review, sanctions, or appeals. No consequences in the event that an evaluation reveals deficient performance.
- No means by which panel heads themselves are subject to quality assurance.
- No requirement that the County be notified in the event that a court finds that a panel attorney has provided ineffective assistance of counsel.
- Oversight that has been limited to compliance with billing requirements and invoicing procedures.
- Group contracts that, in the words of one of the judges responding to the survey, "mean that we have to take the good with the bad."

Panel heads respond that they monitor their own quality, and that the judges notify them if one of the panel lawyers is below standards. This structure is not recommended and does not comply with the recommendation of the American Bar Association that supervision of defense counsel not lie within the judiciary in order to maintain the

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independence of counsel, and so that counsel can fully advocate for their clients without worrying about their job security.¹⁵⁹

In addition, while it is true that, over the past twenty years, on a few occasions the judges have reached out to the panel heads with concerns about a particular panel attorney, and the panel heads have acted to rectify the situation, this informal system lacks consistency and is inherently problematic. The system is entirely dependent on the longevity of the panel heads and judges, and the trust relationships they develop with each other. If a particular judge does not feel comfortable expressing a concern to the panel head, the system fails. It also provides no way for the judges to express concern about the panel heads themselves; if the judge has a concern about the panel head, there is no qualified individual with authority to whom the judge can express the concern.

This informal process is also generally most effective only at the margins, in those very rare situations where the unacceptable behavior is so glaring that no judge could be faulted for raising the issue. If the behavior is detrimental to the client but not so extreme, the judge may not be comfortable raising the concern, and the system fails.

Finally, the fact that the behavior had to be pointed out by the judges, and had not been caught by the panel heads prior to the judges' interference, itself represents a failure of the informal quality control system. Panel heads contend that they supervise the attorneys in their branches, but in the examples given the panel heads were unaware of the attorneys' unacceptable behavior until notified by the judge.

¹⁵⁹ American Bar Association, ABA Ten Principles of a Public Defense Delivery System with Commentary (2002). (Principle 1.)

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Alternate Public Defender

The APD is similar to the Public Defender for training, supervision, evaluation, and quality assurance because it has an institutional structure. The APD's system for staff performance monitoring and evaluation is similar to the Public Defender's, as all APD attorneys are also County employees.

Like the Public Defender, the APD has a full training and supervision program for new defense attorneys. When a new attorney has started working with the existing juvenile attorneys, even if that new attorney has many years of adult experience, the new attorney has been required to train with one of the existing attorneys to ensure up to date knowledge and compliance with all current juvenile expectations. The APD does not place new or inexperienced attorneys in the Juvenile Division.

Attorneys assigned to the APD Juvenile Division attend a two day training session on juvenile issues presented by an experienced APD juvenile practitioner. Training for all APD juvenile attorneys on a variety of juvenile issues is provided on a periodic basis.

The three attorneys, a paralegal, and the supervisor in the Juvenile Division attend the annual Public Defender training every year (one of them used to be a presenter at that training), and most years they also present at other statewide and national training.

Although its Juvenile Division is small, the attorneys mentor and support each other. They have a system for brainstorming and working together, often based around an APD binder containing one tab for each of the 33 areas about which juvenile attorneys should have knowledge, identified in the County's Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court.¹⁶⁰

¹⁶⁰ The areas are: child welfare services and entitlements, child and adolescent development, competency and capacity, mental health issues, communicating and building attorney-youth relationships with adolescents, administrative appeals, community-based treatment, resources and programs, counsel's role in treatment and problem solving courts, confidentiality rules in juvenile court,, dependency court/abuse and neglect process, Section 241.1 process, diversionary programs, addiction and substance abuse, ethical issues and considerations, gender-specific programming, immigration, racial, ethnic and cultural understanding, role of parent or guardians and other caregivers, sexual orientation and gender identity awareness, transfer to adult court and waiver hearings, education issues, Indian Child Welfare Act, local resources including out of home placements and funding streams, Probation Department policy, duties and mandates, child support and its implications, record sealing, writs, appeals, modification or court orders, violation/revocation hearings, transitional services for youth, collateral consequences and proceedings that may impact the youth, Rule of Court 5.663, local and state juvenile institutions, using experts and consultants, and use of psychotropic medication and protocols related thereto.

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Compensation/Incentive Systems

Standards

Adequate compensation for indigent defense attorneys is critical: “Lawyers participating in juvenile court matters, whether retained or appointed, are entitled to reasonable compensation for time and services performed according to prevailing professional standards.”¹⁶¹ The California Rules of Court look to local presiding juvenile judges to guide parity in pay. Presiding judges, in “conjunction with other leaders in the legal community, ensure that attorneys appointed in the juvenile court are compensated in a manner equivalent to attorneys appointed by the court in other types of cases.”¹⁶² “Compensation for the legal work in the juvenile court should reflect the importance of this work.”¹⁶³

With respect to assigned counsel and contract systems for indigent defense, “[r]easonable compensation should be provided to appointed attorneys in assigned counsel and contract indigent defense systems.”¹⁶⁴ Of particular importance is that “[r]ates of compensation should be sufficient to assure effective assistance of counsel.”¹⁶⁵ “[I]n no event should the net hourly compensation for assigned counsel be less than the aggregate hourly compensation of an institutional defender of the same level of skill and experience.”¹⁶⁶

The lack of parity of compensation among indigent juvenile defense attorneys, prosecutors, and adult defense attorneys is well recognized.¹⁶⁷ Moreover, “fees paid to attorneys appearing in juvenile court are sometimes less than the fees paid to attorneys doing other legal work. Such a payment scheme demeans the work of the juvenile court, leading many to believe that such work is less important.”¹⁶⁸

¹⁶¹ Instit. Of Jud. Admin. Am. Bar Assoc., *Juvenile Justice Standards Annotated: A Balanced Approach* at § 2.1(b)(i), pg 71 (1996).

¹⁶² Standard 5.40(c)(4), California Rules of the Court (2015).

¹⁶³ Advisory Committee Note, Standard 5.40(c)(4), California Rules of the Court (2015).

¹⁶⁴ Standard 5.40(c)(4), California Rules of the Court (2015).

¹⁶⁵ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 32. In addition, California Penal Code Sections 987.2 and 987.3 guide the Court in appointing panel counsel, and require that court-appointed attorneys receive reasonable compensation and necessary expenses. The following factors should be considered in awarding compensation to appointed counsel in criminal cases under these sections of the Penal Code: (1) Customary fees in the community for similar services by privately retained counsel; (2) time and labor required; (3) difficulty of the defense; (4) novelty or uncertainty of the law; (5) degree of professional ability, skill and experience required; and (6) professional character, qualification and standing of the attorney.

¹⁶⁶ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 32.

¹⁶⁷ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 32.

¹⁶⁸ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 163 (2012).

¹⁶⁹ Advisory Committee Note, Rule 5.40(c)(4), California Rules of the Court (2015).

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Flat Fee Contracts

National standards and recommendations are uniform in their disapproval of flat fee contracts such as that used by the County. A flat fee “does not link attorney time and effort to the level of remuneration,” and in so doing, “encourages attorneys to do what is most profitable for them and what is efficient for the system but not what is in the best interests of clients.”¹⁶⁹ For this reason and others, both the American Bar Association and the California State Bar strongly disapprove of flat-fee contracts.

According to the California State Bar, “fixed-period, bulk or flat rates should not be utilized unless based on reliable statistical caseload data, and only in conjunction with a method, specified in the contract, for increasing compensation to account for increases in caseload size or the cost of defending extraordinary cases.”¹⁷⁰ Similarly, the American Bar Association states that “contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative and other litigation support services.”¹⁷¹

Some states, such as South Dakota, Iowa, and Idaho, have banned the use of flat fee contracts for indigent defense.¹⁷² Others, such as Nevada and Michigan, have proposed banning flat fees, or banning incentive systems such as that created by a flat-fee. Iowa’s reasoning is illustrative: There, the Supreme Court found that a flat fee capped at \$1,500 per appellate case would “substantially undermine the right of indigents to effective assistance of counsel.” The Court explained that “the low level of compensation threatens the quality of indigent representation because of the perverse economic incentives introduced into the criminal justice system. ... Low compensation pits a lawyer’s economic interest ... against the interest of the client.”¹⁷³

¹⁶⁹ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 34; see also ABA Standards for Criminal Justice: Defense Function 136, Standard 5-2.4 (3d ed. 1992), available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_dfunc_blk.html#1.2

¹⁷⁰ State Bar of California *Guidelines on Indigent Defense Delivery Systems* (2006) at 33. www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹⁷¹ American Bar Association, *ABA Ten Principles of a Public Defense Delivery System with Commentary* (2002) (Principal 8).

¹⁷² South Dakota: https://ujs.sd.gov/media/firstcircuit/COURT_APPOINTED_ATTORNEY_FEES.pdf; Iowa: <http://www.nlada.net/jscri/blog/gideon-alert-iowa-sct-finds-rigid-flat-fee-contracts-%E2%80%9Csubstantially-undermine%E2%80%9D-right-coun>; and Idaho: <https://legislature.idaho.gov/idstat/Title19/T19CH8SECT19-859.htm>

¹⁷³ *Simmons v. State Defender*, 791 N.W. 2d 69 (Iowa 2010).

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A report by the Department of Justice in 2000 found that “good contract systems cost more per case than do public defender or assigned counsel programs.”¹⁷⁴ Although the number of research studies on flat-fee contracts is limited, the few that do exist show a connection between low fees and actions taken (or not taken) by defense counsel. “One study in Clark County, Washington, found the contracting system decreased the quality of representation, reduced the number of cases taken to jury trials, increased guilty pleas at first appearances, caused decline in motions to suppress and requests for expert assistance, and caused an increase in complaints from defendants. Another study found similar deficiencies in representation provided under a contracting system and concluded that, over the long term, contracting would cost the state more than an appointed counsel system.”¹⁷⁵

Investigators

Both the American Bar Association and the NLADA recommend that contracts not contain potential conflicts of interest between the contracting attorney and his or her client; forcing the attorney to pay for an investigator out of his or her compensation is a potential conflict that should be avoided.¹⁷⁶ Similarly, the State Bar recommends that investigators “should not operate as a charge against the indigent defense provider to such an extent that the net personal compensation to the defender is diminished.”¹⁷⁷ “To provide effective representation, juvenile practitioners should be provided with the necessary resources, including but not limited to ancillary services such as investigators, social workers and other experts. These services are essential in light of the new requirements imposed upon juvenile defenders to ensure that the ordered services are being provided.”¹⁷⁸ These guidelines were enacted in 2006¹⁷⁹ when the requirements were new, but the County continues to renew contracts that prohibit panel counsel

¹⁷⁴ Bureau of Justice Assistance, Dep’t of Justice, Contracting for Indigent Defense Services at 17 (April 2000) (noting several additional characteristics shared by effective contract systems, including independent oversight and monitoring, limitations on the practice of law outside the contract, guidelines on client contact and notification of appointment, and a mechanism for oversight and evaluation). <https://www.ncjrs.gov/pdffiles1/bja/181160.pdf>

¹⁷⁵ “Gideon at 50: A Three Part Examination of Indigent Defense in America, Part I: Rationing Justice: The Underfunding of Assigned Counsel Systems”, National Association of Criminal Defense Lawyers March 2013, citing Bureau of Justice Assistance, Contracting for Indigent Defense Services. at 10. (citing Lefstein, Norman, *Criminal Defense Services for the Poor: Methods and Programs for Providing Legal Representation and the Need for Adequate Financing* (1982), and Houlden, Pauline, and Steven Balkin, *Quality and Cost Comparisons of Private Bar Indigent Defense Systems: Contract v. Ordered Assigned Counsel*, *Journal of Criminal Law and Criminology* 76:176 (1985)).

¹⁷⁶ ABA Standard 5-3.3(b)(vii)(x); NLADA Guideline III-13.

¹⁷⁷ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006).

www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹⁷⁸ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 23;

www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹⁷⁹ Confirmed in correspondence with the State Bar, July 2015.

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from accessing the court-paid investigators that are available to other attorneys for indigent defendants.

The failure to provide investigators for panel counsel is particularly critical. A contract that does not compensate attorneys for investigators creates “an inherent and irreconcilable financial disincentive for a contract defender to investigate the case, [and] creates an unacceptable conflict of interest.”¹⁸⁰ Moreover, failure to provide investigators can lead to findings of ineffective assistance of counsel, as “the failure to investigate and interview a witness identified by the client or in documents obtained during the course of discovery is one of the most frequent post-conviction claims of ineffective assistance of counsel.”¹⁸¹

As discussed above, flat fee contracts are strongly discouraged, even barred in some states and counties. In the event they are used, however, “flat-fee contracts in California should separately reimburse the contracting attorneys for the expenses of adequate investigation and needed experts.”¹⁸²

Public Defender Practice and Compliance

The Juvenile Division of the Office of the Public Defender is a County office; all attorneys employed by the Public Defender are County employees. Salaries for public defender attorneys and staff comply with County policies. The Public Defender’s policies regarding compensation and incentives appear to conform to standards.

All payment structures have incentives and disincentives. A salary system (as opposed to flat-fee or hourly) can theoretically result in a disincentive to resolve cases quickly. It has also been alleged that the Public Defender’s evaluation system creates an incentive to file motions or litigate cases even when a quick resolution would be possible; this has been termed “promotion by motion.” The Public Defender responds that its supervision and oversight system corrects against any abuses in the system, and that they resolve cases as fast as they can, consistent with their obligation to protect their clients’ rights. The Public Defender strongly denies that any attorney in the office would be permitted to file a motion that was inappropriate or that did not have a basis in law.

A bigger concern, heard anecdotally and echoed by the judges in the survey, is the inability of juvenile public defenders to advance within the Juvenile Division, thus

¹⁸⁰ California Commission on the Fair Administration of Justice, Final Report, p. 94 (2006)

<http://www.ccfaj.org/>

¹⁸¹ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 71 (2012).

¹⁸² California Commission on the Fair Administration of Justice, Final Report, p. 94 (2006)

<http://www.ccfaj.org/>

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creating an incentive for qualified juvenile defense attorneys to leave the division. Attorneys who wish to be promoted often move back to the adult division or transfer to APD, rather than stay in juvenile. This results in a loss of institutional knowledge and experience.

Panel Counsel Practice and Compliance

National standards discourage the use of the flat-fee system and in the event that they are utilized, it is recommended that contracting attorneys receive separate compensation for investigators and needed experts. The County's current juvenile panel system is not in compliance with the aforementioned national standards.

Whatever the pay structure, the County also needs to ensure parity between juvenile panel attorneys and other indigent defense providers. For example, indigent defense providers in the County's adult criminal court are compensated on an hourly basis, with the hourly rate graduated by the type of case.¹⁸³ Juvenile cases could be structured in a similar manner.

When asked an open-ended question about how the current panel and public defender system could be improved, a number of the judges commented on the low pay rate for panel lawyers. Judicial comments included:

- "Increase fees for attorneys handling the most difficult cases."
- "Pay them more."
- "The system should be changed so more serious cases could be billed at a higher rate and if the case becomes more serious because of unanticipated problems like mental health issues then the attorney could bill the case according to the work that went into resolving it."
- "Pay them a living wage."
- "The panel should be held to higher expectations and they should be paid to meet those expectations."
- "The flat fee system for payment of the panel needs to be changed to a system that reflects the actual time spent by the attorneys. Investigation and other ancillary costs need to be paid by the court separately and not negotiated into the panel attorney compensation."
- "Compensation. Money and time is always a factor when panel attorneys decide to go to trial on a matter. It takes money to properly investigate a case and prepare for trial."

¹⁸³ Los Angeles County Bar Association website, accessed September 25, 2015.
<http://www.lacba.org/showpage.cfm?pageid=24>

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Finally, because panel attorneys receive a payment for every petition, the system arguably creates an incentive to register as many petitions as possible. Anecdotally, investigation for this report uncovered allegations that a few panel attorneys have requested that the Court and Probation proceed with a formal 777 violation petition against a youth, rather than resolve a matter informally, so that the panel attorney could invoice for the matter as a new petition. This would be a clear ethical violation, but it cannot be confirmed and thus is no more than an unsubstantiated rumor.

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PART VIII: Compensation Models and Systems in Other California Counties

Response to motion item 1) f.:

“A review of the compensation models and systems for juvenile indigent defense contracts in other California counties.”

Highlights

Among the counties surveyed:

Los Angeles is the only county that does not make county-paid investigators available to panel counsel.

Los Angeles is the only county that has no centralized mechanism for quality control. It is the only county that contracts directly with private attorneys and does not fund a qualified office or agency to monitor quality.

Los Angeles is the only county in which no experienced attorney or committee provides supervision and oversight.

Los Angeles is the only county that compensates panel counsel with a uniform per-case flat fee. In other counties, panel counsel are compensated by salary, on an hourly basis, or via an event-based flat fee structure that provides for different flat fees for different activities and different types of cases.

The juvenile indigent defense systems in the following ten counties were examined for this section of the report:¹⁸⁴

- Alameda
- Sacramento

¹⁸⁴ Two additional counties, Riverside and Ventura, failed to return numerous calls, emails, and messages and therefore are not included in the review.

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- Contra Costa
- Fresno
- Kern
- Orange
- San Bernardino
- San Diego
- San Joaquin
- Santa Clara

Information about these selected counties was pulled from public websites, previous reports and media coverage, and telephone interviews and emails with representatives from each county. Where available, information was collected about the structure of indigent defense systems; the nature and level of county oversight; compensation structures and levels; and training. Below is a synthesis of the juvenile indigent defense systems in this group of ten counties.

Indigent Defense Structures

In all ten counties, as in Los Angeles, the Office of the Public Defender represents indigent youth if possible. The way in which the counties administer conflicts, however, varies significantly (see Figure 23).

- Three of the ten counties (Alameda,¹⁸⁵ Kern, and San Joaquin) assign all conflict cases to individual panel attorneys through a panel system overseen by the local Bar Association.
 - Alameda has 32 delinquency panel attorneys who handle approximately 450 cases a year, or about 14 cases per attorney.
 - Kern has 10 to 12 delinquency panel attorneys who each handle 75 to 80 cases a year.
 - San Joaquin has seven panel attorneys on the regular juvenile delinquency rotation; each attorney gets between 35 and 60 cases a year.
- One county (Sacramento) has a county office called Conflict Criminal Defenders (CCD) that provides attorneys when the Public Defender has a conflict. The attorneys are members of the Bar Association's Indigent Defense Panel; the County (through the CCD) and the Bar Association operate through an MOU.
 - Information about the number of juvenile delinquency panel attorneys and their caseloads was unavailable.
- Three counties (Santa Clara, San Diego, and Contra Costa) have a county-run Alternate Public Defender Office that handles the first level of conflict, and utilize panel attorneys for any further conflicts.

¹⁸⁵ Alameda County juvenile panel attorneys handle mostly felony cases. The Bar Association contracts out the juvenile misdemeanor cases to the East Bay Children's Law Office.

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- Santa Clara and San Diego manage those panel attorneys through a County office.
 - Santa Clara has three delinquency panel attorneys who each handle between 110 and 145 cases a year.
 - San Diego has six delinquency attorneys on the panel and the office has about 300 to 400 open cases at a time; the number of new cases per attorney per year was not available.
- Contra Costa uses a conflicts panel run by the Bar Association; each of the Contra Costa panel attorneys receives between two and six cases a year.
- Orange County has three privately run firms called Delinquency Contract Attorneys (DCAs) for the first three conflicts if the Public Defender cannot take the case. The primary DCA, called Juvenile Defenders, takes the largest share of the conflicts. The DCAs act as Alternate Public Defender Offices except they operate by contract with the County, not as internal County departments, so the attorneys are not county employees. Any subsequent conflicts after the three DCAs go to a court-administered delinquency conflicts panel staffed with 15 individual private attorneys. The private panel attorneys operate on four-year contracts; approximately 150 to 200 cases a year are referred to the panel as a whole so each private attorney gets 10 or 11 cases a year.
- The remaining two comparison counties (Fresno and San Bernardino) have contracts with private law firms to handle all levels of conflict. The private firms are paid an annual fee by the counties and the panel attorneys working in those law firms are salaried employees of the firm. It should be noted that these types of contracts for indigent defense are not recommended and have been subject to strong criticism by prosecutors, defense attorneys, judges, academics and stakeholders.¹⁸⁶
 - In Fresno, one private firm holds the contract with the County. That firm manages three separate groups of attorneys. The first level of conflict is staffed by a group of three full-time attorneys; the second level is staffed by a group of two full-time attorneys, and if there are further conflicts they go to a rotating group of independent private panel attorneys. All levels of conflict are accountable to the private law firm that holds the contract with the County. Caseloads are unknown for all attorneys.
 - San Bernardino similarly has one contract with a private firm. That firm manages three small offices as well as a small panel of independent

¹⁸⁶ See e.g., California Commission on the Fair Administration of Justice; <http://www.ccfaj.org/documents/CCFAJFinalReport.pdf> at 91 - 100 (2006).

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attorneys for further conflicts. The office that takes most of the conflicts has three full-time attorneys. The number of attorneys in the second and third conflict offices, and the number of panel attorneys, is unknown. The Public Defender conflicts off 600 to 700 juvenile cases a year.

Figure 23. Administration of First Level of Conflict for Juveniles in Selected California Counties

Bar Association Panel Attorneys	APD	Private Law Office
Alameda Kern San Joaquin Sacramento	Contra Costa San Diego Santa Clara	Fresno San Bernardino Orange

Santa Clara County Indigent Juvenile Defense: A Recent and Relevant Restructuring

In 2006 Santa Clara County commissioned an audit of its indigent defense system. At the time, juvenile delinquency cases were handled first by the Public Defender and any conflicts went to a panel run by the Legal Aid Society.¹⁸⁷ The auditors recommended that the least costly way to provide indigent defense services was to assign all adult and juvenile cases to the Public Defender; designate the Alternate Public Defender for conflicts; and then designate the Legal Aid Society when a further conflict was present.¹⁸⁸ It was anticipated that this system would also increase case flow and quality of service.

As a result of this audit, in 2008 Santa Clara County restructured its juvenile indigent defense system.¹⁸⁹ The Public Defender continues to have first assignment of all juvenile delinquency cases. The APD is assigned juvenile cases when the Public Defender has a conflict. For any further conflicts, the County established a new unit in the Office of County Counsel called the Independent Defense Counsel Office, allowing their contract with the Legal Aid Society to expire. One year after the changes were implemented, the County began to see improvements in the delivery of indigent defense services.¹⁹⁰

¹⁸⁷ The County's APD did not handle juvenile cases.

¹⁸⁸ "Management Audit of the Office of the Public Defender and Indigent Defense System of the County of Santa Clara," January 2007.

<https://www.sccgov.org/sites/bos/Management%20Audit/Documents/PublicDefenderAudit.pdf>

¹⁸⁹ February 26, 2008 Santa Clara County Office of the County Executive Press Release: "County to Bring Indigent Defense System In-house." https://www.sccgov.org/sites/opa/nr/Documents/Indigent-Defense-Sys-in_house-2008.pdf

¹⁹⁰ First Year Report on Restructured Indigent Defense System.

<http://www.sccgov.igm2.com/Citizens/FileOpen.aspx?Type=4&ID=30244>

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Oversight and Management

The comparison counties all have centralized mechanisms in place to ensure accountability and quality. Los Angeles County does not have such mechanisms in place. All ten have an attorney in a director or supervisory role who oversees the program or office in charge of private or panel counsel, and four of those attorney supervisors are former public defenders. This is consistent with a recent national review, which strongly recommended that “at the trial level, the appointment, review, and re-appointment of [. . .] panel lawyers should be overseen by a committee of lawyers knowledgeable about and committed to indigent defense[.]”¹⁹¹

Alameda

Alameda’s Criminal Court Appointed Attorneys Program is run through the Bar Association. The Program is managed by a Director, an Administrator, and a billing specialist. The Director is a former public defender. She is responsible for all daily operations including appointments, record keeping, caseload monitoring, budget, and the contract with the County. She answers to an Advisory Committee of five to 11 members, most of whom are experienced criminal defense attorneys. Advisory Committee members serve two year terms. Together, the Director and the Advisory Committee monitor quality assurance and evaluate panel members.

The Advisory Committee and the Director conduct confidential peer and judicial reviews of panel members. They are not required to give notice and the reviews may occur at any time. When there is an investigation into allegations of incompetence, the attorney may be required to submit a written explanation or discuss it with the Committee or Director. Remedies include remedial training, mandated mentoring and oversight, demoting class, suspension, and removal from the panel.

In 2014 Alameda started a panel counsel evaluation process; the new process was partially in response to concerns that had arisen because panel attorneys were remaining on the panel indefinitely. Within a year they went from 170 to 130 panel attorneys (adult and juvenile); some of the loss was due to quality control and some was due to natural attrition because attorneys chose not to continue on the panel in light of the new requirement. The County is implementing a requirement that all panel attorneys must be invited back on a yearly basis. The County has not yet determined the frequency of future evaluations but is committed to more evaluations in the future.

¹⁹¹ Federal Indigent Defense 2015: The Independent Imperative” at 9;
<https://www.nacdl.org/federalindigentdefense2015/>

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Alameda also enforces maximum caseload requirements for the panel attorneys' total caseloads. These caseload maximums include retained or other cases taken by the attorney in addition to the conflict cases.

Kern

Kern County's Indigent Defense Panel (IDP), managed through the Bar Association, is overseen by an Administrator. The Administrator is a former IDP attorney with 20 years of experience handling adult cases. For juvenile delinquency cases it is the court's three delinquency judges, not the IDP, who choose and appoint the individual panel attorneys in cases that need counsel. All matters other than case assignment, including oversight, complaints, and payment, are handled by the Administrator.

San Joaquin

The Bar Association panel in San Joaquin County is overseen by a Director and a Coordinator. The Director is an attorney. The Coordinator started as a legal secretary in a criminal law office and has been the Coordinator for 32 years. She and another person handle all the assignments and billing for the program. Panel attorneys are all in private practice and they maintain their own system of conflicts. The Director and the Coordinator handle complaints and solicit input from the judges. The program also has a review committee and a peer review process for attorneys about whom they receive complaints.

Sacramento

The Conflict Criminal Defender Office (CCD) in Sacramento County provides oversight for all panel attorneys. CCD is a County Department. The CCD and the Bar Association's Indigent Panel Committee work together through an MOU.

CCD has eight employees. The Executive Director and the Deputy Director are both former lawyers. CCD is responsible for case assignments, trainings, and billings; CCD is the point of contact for the courts. CCD and the Bar Association's Indigent Defense Panel Committee are jointly responsible for developing standards. Ensuring that the panel attorneys meet those standards is largely up to the Bar Association's Indigent Panel Committee; the Bar Association also has an Education Committee and a Peer Review Committee. Complaints about panel attorneys can be made to either the CCD or the Bar Association.

Santa Clara

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Santa Clara County has an Independent Defense Counsel Office housed within the Office of County Counsel. The IDO Director is a former juvenile public defender. She was the Juvenile Division Supervisor at the Public Defender's Office. She provides on-site administrative oversight, provides assistance to panel attorneys, and oversees the panel to make sure they are informed of and are adhering to current and new policies. She is directly involved in overseeing the panel counsel in day-to-day operations. Panel attorneys are evaluated on their availability, responsiveness, case outcomes, client relationships, and reputations with judges and prosecutors. The Director also oversees and reviews the billing, and represents the panel attorneys in interactions with County administration.

San Diego

Prior to 2009, San Diego had four offices charged with appointing counsel for indigent defendants: the Public Defender, the Alternate Public Defender, the Office of Assigned Counsel (OAC), and the Multiple Conflicts Office. In 2009 all four offices were consolidated into the Office of the Public Defender, with glass walls/firewalls between them. All four offices are under the general supervision of the Public Defender.

The Bar Association managed the panel from 1996 to 2009 but the OAC has managed the six delinquency panel attorneys since the consolidation in 2009. The OAC is run by a Director who is also an attorney. The Director is authorized by the Board of Supervisors to enter into contracts with the panel attorneys. Although the PD is the overall supervisor, there is an ethical glass wall between OAC and the PD, and they operate out of different offices.

The Director is responsible for referrals and case assignment procedures, keeps program records, continues development of policies, procedures, rules and regulations, and develops statistical information and reports related to the program. Complaints are investigated by the OAC Director who has the sole discretion to determine if the complaint has merit or not and what action should be taken. The Director may appoint a review committee to assist with the evaluation of the complaint at the request or approval of the panel attorney under investigation.

Contra Costa

The Bar Association's Criminal Conflicts Program oversees panel attorneys, both adult and juvenile, in Contra Costa County. Adult and juvenile panel attorneys are combined, possibly because the total number of cases going to panel attorneys is small. The Director and Program Administrator of the Criminal Conflicts Program is an attorney. The Director oversees case assignment, although a staff member handles the actual assignment except in extremely complicated cases. A committee of eight attorneys

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determines eligibility and entry onto the panel. The committee also investigates complaints by judicial officers and attorneys. The Director has discretion on how to handle complaints from clients or unwritten complaints from attorneys.

Contra Costa County also has a monitoring attorney program where an attorney may be assigned to monitor the legal representation of an appointed panel attorney in any case where the best interests of the client and/or the Criminal Conflict Committee will be served. In addition, panel members are subject to suspension, termination, or reclassification anytime for any substantial violation of the panel rules, rules of professional conduct, or disciplinary action by the Bar.

Orange County

Juvenile Defenders handle most of the conflicts in Orange County; it is a privately-run office that holds a contract with the County. The head attorney at Juvenile Defenders manages and oversees the office, including the billing. He is a former juvenile public defender and has been doing juvenile defense work for 35 years. All attorneys on staff in the Juvenile Defenders offices are experienced; they have been working full-time in juvenile delinquency for approximately 17 years. Oversight information was not available for the other two contracted offices or for the independent panel attorneys. Juvenile Defenders estimated that the Public Defender and Juvenile Defenders, combined, handle more than 95% of the juvenile delinquency cases in the County.

Fresno

The law firm of Ciummo & Associates holds a flat fee contract with the County to oversee all conflicts. Oversight of all conflict attorneys thus lies with the law firm, which is staffed with attorneys. The rotation for juvenile delinquency cases is approximately every two years. The office makes sure that at least one of the attorneys assigned to cover juvenile delinquency cases has been in the assignment at least one year and has at least five years of criminal defense experience.

San Bernardino

San Bernardino County, like Fresno, contracts with a private law firm for all conflicts. One of the partners at the private firm is an experienced juvenile delinquency attorney who has been handling delinquency cases for 30 years. No further information was provided about oversight of the attorneys.

Investigators

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Panel attorneys are given access to investigators in nine of the ten counties (information could not be obtained from Orange County as it related to the panel attorneys although Juvenile Defenders, the contracted office that takes the first level of conflict, has on staff investigators). For the nine counties with information known about the provision of investigators for panel lawyers, none of the juvenile panel attorneys are required to pay for an investigator out of their own pocket, as is the case in Los Angeles.

Compensation

Compensation models vary in each county. However, most of the counties utilize a tiered system based on seriousness of the case, or they compensate attorneys based on an hourly rate.

The panels run by the Bar Associations generally pay their attorneys an hourly rate. San Joaquin's is fixed at \$85 an hour and Sacramento has a tiered hourly system based on the seriousness of the case ranging from \$70 to \$100 an hour.¹⁹² Panel attorneys in Contra Costa County (both adult and juvenile) are paid on a graduated hourly rate of \$70 - \$80 an hour for misdemeanors with a tiered rate of \$115 to \$165 an hour for felonies depending on the type and stage of the case.

Kern County's structure is a hybrid where payments are generally based on the events in the case but some work is paid by the hour; the hourly rate is \$51 an hour.

San Diego also has a hybrid model that combines an hourly rate and an event-based fee for certain events. The County maintains a four page list of events in juvenile delinquency cases, but generally compensates attorneys \$800 for felony juvenile cases up through disposition, plus \$400 for a full day of trial or \$275 for a half day of trial.¹⁹³ For serious cases filed under 707(b), hearings are compensated at three different hourly rates (\$50, \$60 and \$65) up to a maximum between \$2100 and \$3200 depending on the charges.

Santa Clara relies mostly on a graduated event-based system, with a flat fee of \$375, \$800, or \$1100 depending on the seriousness of the case, plus a flat fee of between \$100 and \$400 for motions depending on the complexity and the need for a hearing, plus a half day trial fee of \$250 to \$350 depending the type of case. Homicide cases are compensated at \$115 an hour.

¹⁹² The quoted rates are for adult cases.

¹⁹³ http://www.sandiegocounty.gov/content/dam/sdc/oac/docs/OAC_Fee_Schedule_Feb_2014.pdf

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Alameda County changed its compensation model in 2013 from an event-based structure to a tiered hourly structure based on the seriousness of the case.¹⁹⁴ The County hoped the compensation model would eliminate the incentive for attorneys to take on too many cases. Amounts range from approximately \$68 to \$80 an hour, with a \$100 one-time fee for cases that are resolved on the same day as the initial appearance. The hourly rate for 777 violation petitions is \$80.

Orange County Juvenile Defenders, the office that acts as a private APD office, has a contract with the County for a flat fee per petition. The rate is \$302 per petition, including 777s, which covers arraignment through a two-day trial. The office receives an additional \$69 for every post-disposition progress review. Although the office's contract with the County is based on the flat fee, attorneys working in the office and representing clients are paid by salary. The contracts for the other two privately-run offices could not be confirmed but are presumed to be the same. The independent panel attorneys are paid by the court on an hourly basis through invoices submitted to the court; the hourly rate could not be confirmed.

In Fresno, the County has a flat-fee contract with a single private firm to handle all conflicts. That firm delegates representation to two smaller firms (one with three attorneys, the other with two) and the attorneys in both of those smaller firms work on salary. If there is a further conflict beyond the two firms the client is represented by a private panel attorney; the County and the firm were not willing to provide compensation information for those panel attorneys.

San Bernardino similarly has a flat-fee contract with a private firm that employs salaried attorneys. If the salaried attorneys are conflicted off the case, the firm that holds the contract maintains a panel of private attorneys who are paid on a per-case basis. The amount is unknown.

Training

All ten comparison counties offer trainings to their panel attorneys through the public defenders' offices, the bar association, or other organizations. Four of the ten counties have some sort of continuing education or training requirement for their attorneys.¹⁹⁵ Two counties, Kern and Sacramento, require trainings for new attorneys. The Orange County Public Defender provides monthly training seminars for free to any member of the Bar.

¹⁹⁴ <https://www.acbanet.org/UserFiles/files/PDFs/CAAP/Fee%20Schedule%20050113.pdf>

¹⁹⁵ Three (San Joaquin, Alameda, San Diego) require yearly continuing education. Sacramento requires that attorneys attend introductory trainings for attorneys that are new to the panel.

Part IX: Recommendations from County Guidelines

PART IX: Recommendations from County Guidelines and Public Defender Cost to Implement

Response to Supervisor Molina's friendly amendment:

"...include as part of the study all the recommendations listed in Presiding Judge Michael Nash's draft report entitled, "Juvenile Court Delinquency Standards of Representation," changing the recommendations from "should do" to "must do," and request the Public Defender to determine the cost to implement these recommendations."

Highlights

The Public Defender objected to the draft Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court, and the final Guidelines (issued in 2014) were not endorsed by the Public Defender. Many of the objections arose from differences of opinion regarding the scope of the Public Defender's role, not from a lack of funding. Thus, not all objections will be resolved even if the County fully funds the Public Defender to implement the Guidelines.

There are some areas where the Public Defender could come closer to full compliance with increased funding, in particular by expanding the CARE program which provides social workers and resource attorneys for Public Defender clients. The Public Defender believes that expansion of the CARE program would require a very substantial increase in funding. No further specification was provided, on the grounds that to do so would be speculative.

In 2014, the Juvenile Division of the Los Angeles County Superior Court published Guidelines for attorneys representing youth in the Los Angeles juvenile delinquency court. The Guidelines act as a practice guide for lawyers representing youth in delinquency courts in California, with an emphasis on Los Angeles.¹⁹⁶ They set forth exhaustive standards capable of informing "judges, prosecutors, probation officers, and other juvenile justice stakeholders [about] the specifics of the role of defense counsel in

¹⁹⁶ *Guidelines for Attorney's Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 2.

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the delivery of zealous, comprehensive [holistic] and quality legal representation to which children charged with crimes are constitutionally entitled.”¹⁹⁷

A comprehensive review of every recommendation in the Guidelines, and an analysis of the degree to which panel attorneys and public defenders adhere to each of those recommendations, was well beyond the scope and budget for this report. However, research, outreach, and interviews for this report were informed by the Guidelines, and earlier sections of the report highlight numerous areas and practices that are addressed in the Guidelines.

The sections below respond to the Board motion by first addressing the issue of “should” versus “must,” then by highlighting some of the key Guideline recommendations chapter-by-chapter and addressing how they are or are not followed by panel counsel and public defenders. This section concludes with the Public Defender’s response to the Board request that the Public Defender assess the cost of full compliance with the Guidelines.

Guidelines Use of “Should” and “Must”

The Guidelines use both “should” and “must” to identify attorney obligations and recommended procedures. The Board motion requested a review to determine which of the “should” phrases should be “must” phrases. A full review of every use of the term “should” was beyond the scope of this report. Moreover, the fact that the Guidelines use both “should” and “must” means that use of the terms can be assumed to be intentional. That is, it can be assumed that the authors of the Guidelines intentionally chose “should” and intentionally chose “must” where those terms are used. Given the intense detail and consideration that went into the Guidelines, and given the short time frame for this report, a full review of every “should” and “must” in this report was impracticable.

Moreover, the term “should” appears in the Guidelines well over 100 times, and many of those are grammatically and contextually appropriate. This occurs, for example, when the Guidelines instruct attorneys to consider certain issues, as in “counsel *should* consider making a motion to sever counts when grounds exist to do so” (p.35), “if the youth is not placed within a reasonable period of time, counsel *should* consider a motion for modification of the disposition order, or seek relief by extraordinary writ” (p. 75), and “if formal [discovery] requests are not complied with in a timely manner, counsel *should* consider seeking sanctions, which may include the preclusion of

¹⁹⁷ *Guidelines for Attorney’s Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 3., quoting National Juvenile Defender Center: Role of Juvenile Defense Counsel in Delinquency Court, p. 7.

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prosecution evidence being introduced” (p.17). These “shoulds” are not necessarily calling for required *action* so much as required *thought*, and changing the “should” to “must” does not seem appropriate.

In addition, in many places the use of “should” is appropriate because the recommended action is dependent upon the totality of the circumstances, and it may, or may not, be the appropriate legal action in any particular case given the circumstances of that particular client. For example, “if the 241.1 process is initiated, and the youth is to remain detained, counsel *should* request placement/housing in the Elite Family Unit, (alpha and omega), at Central Juvenile Hall” (p. 48), or “if and when a placement changes, counsel should determine whether there is any unreasonable delay in the youth’s enrollment in school. Counsel *should* bring any issues to the court’s attention” (p. 76), or “counsel *should* advocate for modification to dependency if the youth has completed probation but has nowhere to go. Youth should not linger on probation for placement purposes” (p. 50). Most of the time, these recommended actions will be the best actions for the client – but not necessarily always, and to use the term “must” in the Guidelines would inappropriately remove the individual assessment that counsel must give to each client.

Finally, many times when the Guidelines use “should,” the question is not whether “should” is more appropriately a “must,” but whether the County is prepared to impose consequences in the event a “must” is not followed. So for example, the Guidelines recommend that “counsel *should* wear appropriate professional attire and advise the youth as to appropriate attire and demeanor for the courtroom.” (p.9). This could theoretically become a “must” – but the difference between “should” and “must” would have no meaning unless the County imposes consequences on attorneys who do not comply. In this particular example, such a policy might not be an efficient use of County resources. In another example – for instance, “in addition to understanding the juvenile court process and systems, juvenile team members *should* be competent in juvenile law, criminal law, the collateral consequences of adjudication” (p. 6) – the County might wish to devote the resources required to both monitor and enforce compliance if the “should” became a “must.”

To assist the County in making this determination, the next section addresses each chapter of the Guidelines and highlights key areas where either the Public Defender or panel counsel do not follow the recommendations.

Guidelines Implementation

The comprehensive nature of the obligations and goals embodied by the Guidelines caused the authors to acknowledge that complete adherence would be “difficult to

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achieve without sufficient funding and resources.”¹⁹⁸ This sentiment was mirrored in the Public Defender’s official response to the Guidelines. The Public Defender, “while agreeing with many of the principles articulated in the guidelines,” would not endorse them on the basis that “the guidelines would inevitably create local expectations that cannot realistically be met with existing resources.”¹⁹⁹

The section below addresses each chapter in the Guidelines and, where information was available, includes the position of the Public Defender and panel counsel regarding the recommendations in that chapter. Complete details regarding the Public Defender’s position are included in the Public Defender’s March 28, 2014 response to the draft Guidelines; those details are not repeated in full here.

Chapter One: Ethical Duties

Chapter One addresses the general ethical duties of attorneys in delinquency court, including those set by California law and rules of court, as well as standards and rules set by the American Bar Association.

The Public Defender states that its comprehensive training and support structure allows it to fully comply with the comprehensive requirements in Chapter One. However, the Public Defender disputes the Guidelines’ use of “best interests” rather than “expressed interests” of the child, a dispute that may (or may not) have been resolved by AB 703, signed into law in October 2015. In a later section (chapter two, recommendation 5), the Guidelines state that counsel must serve the interest of the youth “and may not substitute . . . the youth’s best interests for those expressed by the youth,” but this did not appear to resolve the Public Defender’s objection.

The Public Defender also objected to the scope of the 33 areas of specific substantive knowledge listed in section 5, stating that while the Public Defender trains all of its juvenile staff in each of the identified areas, “some [of the 33 areas] are so detailed that they go beyond the skill set of [their] attorneys.”²⁰⁰ The Public Defenders’ approach is to train all attorneys to recognize all 33 issues so that they are able to seek guidance from additional professionals if required, but not to require that each of the deputy public defenders have substantive knowledge in all 33 areas.²⁰¹ In practice, and as discussed in

¹⁹⁸ *Guidelines for Attorney’s Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 3.

¹⁹⁹ *Guidelines for Attorney’s Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 1.

²⁰⁰ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 7.

²⁰¹ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 7.

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the Resource section above, the Public Defender's on-staff social workers and the resource attorneys have specific training in most if not all of the 33 areas, and the deputy public defenders use those resources extensively.

Panel heads state that they and the panel attorneys in their branches comply with the requirements in Chapter One. Panel heads further state that their long experience provides them with the knowledge necessary to provide representation or recognize legal issues in all 33 areas of specific substantive knowledge, without the necessity of social workers or resource attorneys.

Chapter Two: General Duties

Chapter Two covers a delinquency attorney's general duties of representation, including preparation, knowledge of the law, and court behavior.

The Public Defender states that it complies with Chapter Two, with a few exceptions. One of these, in response to recommendation 12, is a dispute regarding the extent of the attorney's obligation in the post-dispositional phase. This is discussed in the section on Guidelines Chapter 12, below.

The Public Defender also objected to the recommendation that "counsel must...bring to the court's attention other interests of the youth that may require advocacy in another legal or administrative arena, as appropriate."²⁰² The Public Defender expressly states that this Guideline cannot be complied with as a matter of policy on the basis that it conflicts with attorney client privilege.²⁰³ The use of the term "as appropriate" does not appear to have alleviated the Public Defender's concern.

Panel heads' position on each of the 18 requirements in Chapter 18 is unknown. In general, panel heads contend that they comply with everything expected of them by the court.

Chapter Three: Duties of Representation Prior to Arraignment

Chapter Three includes 19 specific recommendations regarding counsel's initial contact with his or her client. The Public Defender and panel heads both attempt to meet with and represent new clients prior to arraignment. Both stated that, while they comply

²⁰² *Guidelines for Attorney's Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, pp. 8-9.

²⁰³ Ronald L. Brown, *Response to 'the guidelines'*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 7.

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with the recommendations in Chapter Three, it is not always possible to address all of the recommendations in Chapter Three prior to arraignment.

Chapter Four: Duties at Arraignment

Chapter Four contains ten specific recommendations about actions to be taken at arraignment. The Public Defender states that it complies with the recommendations in Chapter Four, with the exception of two legal disputes including whether the clients or the attorney determines which plea to enter. This disagreement centers on the question of the client's "expressed interests" versus "best interests" mentioned above.

Information was not available on a recommendation-by-recommendation basis from panel heads, but in general panel heads stated that they fully represent their clients at arraignment.

Chapter Five: Duties Post-Arraignment to Adjudication

Chapter Five covers detention hearings, discovery and investigation, the pre-plea hearing, alternatives such as diversion or deferred entry of judgment, and plea negotiation. Both panel heads and the Public Defender state that they fully represent their clients post-arraignment to adjudication, that they fully advocate for their clients' needs, and that they negotiate on their clients' behalf for the best possible outcome.

On the issue of discovery and investigation, the Public Defender states that its attorneys are trained to seek additional evidence beyond that provided by the DA and Probation in all cases. It is not known how often additional discovery or evidence is obtained by Public Defender attorneys, investigators, resource attorneys or social workers. For panel counsel, about a third (29%) of panel counsel stated that they rarely or less than half the time need to obtain potential evidence beyond what is provided by the DA and Probation. A little more than half (55%) stated that they obtain additional discovery or evidence in more than half or almost all of their new cases. The remaining 16% said that they need to obtain additional evidence beyond what is provided by the DA and Probation in about half their cases.

As discussed in the Resource section above, the Public Defender and panel counsel have different practices regarding additional evidence that might be needed to represent the client. If school records are needed, for example, the Public Defender generally has a resource attorney, social worker, or investigator obtain the records. In the survey, almost all panel counsel stated that they ask Probation or their client's parents to provide the records; a few respondents stated that they have occasionally obtained school records by subpoena.

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On the issue of investigators in particular, it appears that public defenders and panel counsel have strikingly different rates of use. This issue is addressed earlier in this report, in the section on resource use.

Neither public defenders nor panel counsel have a practice of attending the pre-plea interview with their clients.

Chapter Six: Competency

Both panel heads and the Public Defender state that they comply with the Guidelines, that they are fully aware of issues surrounding their clients' competency, and that they respond accordingly.

The Public Defender does not track how often its attorneys have competency concerns about a client. In the survey, 47% of panel attorneys said that they have competency concerns about a client once or twice a year.

Chapter Seven: Motions and Hearings

Chapter Seven contains an extensive discussion of almost all possible motions that might be made in a juvenile's case. Both the Public Defender and panel heads claim that their attorneys are aware of all possible motions, that they comply with Chapter Seven, and that they will bring motions when necessary.

Both public defenders and panel attorney utilize oral rather than written motions at times. It is the Public Defender's practice to discourage oral motions; the Public Defender does not track how often motions are made orally as opposed to in writing.

A little more than a third (38%) of panel counsel said that their motions are almost always or usually made orally, rather than in writing. The largest share of panel counsel (47%) stated in the survey that they bring about half written and half oral motions.

Chapter Eight: Crossover Youth

Chapter Eight addresses crossover youth (youth in both dependency and delinquency court) and, in particular, 241.4 hearings and AB12/212 proceedings. The Public Defender objected to the introductory language equating dual status with a benefit to the juvenile delinquency client, on the grounds that such status will sometimes harm the client and therefore should not always be pursued by the delinquency attorney.

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The Public Defender also objected to chapter section B (regarding AB 12/212), stating that it will not represent youth over 18 in re-entry hearings because it is “not tasked with representing individuals who are not under the delinquency jurisdiction of the court.”²⁰⁴

Unlike the Public Defender, panel counsel represent AB12/212 youth in any proceeding for which they are appointed by the delinquency court. They have been including these AB 12/212 appointments on their invoices to the CEO. Over the past three years, panel counsel have invoiced for approximately 125 such appointments.²⁰⁵

Panel counsel appointments generally occur when the youth is over 18 but eligible for social services such as tuition and rent allowance under AB 12/212 and Welfare and Institutions Code Section 450. The delinquency court appoints panel counsel as counsel of record, then counsel help the youth apply for services and monitors to verify that services are being provided by Probation. Counsel also make follow-up court appearances as requested by the court.

Chapter Nine: Fitness Hearings

Both panel counsel and the Public Defender state that they are aware of their obligations in fitness hearings, and that they comply with all requirements and recommendations.

To the extent there are differences in practice or outcomes in fitness hearings, those differences are addressed in the section on fitness hearings earlier in this report.

The Public Defender, but not panel counsel, will represent former clients who are eligible for parole hearings or re-sentencing proceedings available under SB 9, SB 260, SB 261, or *Miller*.

Chapter Nine also includes a discussion in Section D regarding housing for youth who have been transferred to adult court, both before and after the youth turns 18. Neither panel counsel nor the Juvenile Division of the Public Defender represent the youth once they are transferred to adult court, so compliance with this section of the Guidelines is unknown.

²⁰⁴ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, pp. 11-12.

²⁰⁵ Based on a review of three years’ of panel invoices.

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Chapter Ten: Duties at the Adjudication Phase

Both panel heads and the Public Defender state that their attorneys comply fully with the adjudication requirements in Chapter Ten.

Chapter Eleven: Disposition

Both panel heads and the Public Defender state that their attorneys comply fully with the disposition requirements in Chapter Eleven.

Chapter Twelve: Post-Disposition

Chapter Twelve includes a lengthy discussion and list of recommendations regarding counsel's role in proceedings after disposition, including actions that are recommended after the client has been placed on probation and returned home, or after the client has been sent to suitable placement, Camp, or DJJ. The chapter also includes recommendations regarding the client's return from DJJ, probation violations (777 petitions), and record sealing.

The Public Defender objected to the scope of Chapter Twelve, stating that the chapter "envisions delinquency counsel operating to monitor Probation and to ensure Probation's execution of their professional obligations. Such case management duties are beyond the role of defense counsel."²⁰⁶ The Public Defender also stated that it "does not currently continuously monitor all clients in camp and placement."²⁰⁷ In this, the Public Defender and panel heads appear to be in agreement, as panel heads similarly stated that it was Probation's job to monitor the youth after disposition. Both panel heads and the Public Defender were emphatic that they would act appropriately to advocate for their clients if notified of an issue by the client or by Probation.

Some judges noted the failure to do much post-disposition representation. Comments included:

- "Attorneys as a whole do not follow up on post-dispositional issues,"
- "I don't see much difference in what panel attorneys or public defenders are advocating post-disposition," and

²⁰⁶ Ronald L. Brown, *Response to 'the guidelines'*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p.13.

²⁰⁷ Ronald L. Brown, *Response to 'the guidelines'*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p.13.

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- “The lawyers, both public defender and appointed counsel, do not do a sufficient job” in psychotropic medication hearings, camp updates and release planning, suitable placements determinations, and group home updates.

Although they are similar in their approach generally to post-disposition representation, there is a difference between the Public Defender and panel counsel regarding clients in DJJ. The Public Defender has a DJJ unit, tasked with proactively monitoring its clients in DJJ, visiting clients in DJJ, advocating for services while the clients are in DJJ, and representing those clients in re-entry proceedings. Panel counsel do not provide any such proactive representative, but will represent and advocate for their DJJ clients if notified of an issue by Probation. This issue is addressed earlier in this report, in the section on resource use and rate of use.

Chapter Thirteen: Psychotropic Medication

Chapter 13 of the Guidelines includes six recommendations related to the authorization of psychotropic medications for youth. Among other things, the chapter recommends that counsel verify the accuracy of information in the psychotropic medication report, file an opposition if there are concerns, and attempt to communicate with the client prior to scheduled progress report hearings.

The Public Defender states that they are unable to comply with this chapter of the Guidelines as “to do so would subject us to incalculable professional liability.”²⁰⁸ According to the Public Defender “counsel is unable to comply with these requirements due to attorney client privilege. Counsel is ethically obligated to protect a client’s private health information from unlawful dissemination. It is Probation’s overarching responsibility to ensure the safety and treatment of youth under their care. This role cannot and should not be shifted to delinquency counsel.”²⁰⁹ The degree to which the Public Defender’s psychiatric social workers could provide guidance when psychotropic medications are requested for Public Defender clients is unknown.

Panel counsel’s position regarding Chapter 13 is unknown. In survey responses, panel attorneys stated that their practices regarding psychotropic medication hearings include:

²⁰⁸ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 14.

²⁰⁹ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 14.

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- “I research the medication sought in order to assess the side effects. I’ll ask the parents if they know what medication the child has been prescribed and see if the minor has received these meds in the past,”
- “I have no medical training so I leave the decisions on meds to the doctor and parent,”
- “If I receive such a request, I will discuss the request with my client and my client’s parents,”
- “I contact the minor and his family to discuss the options with them,”
- “I review to be sure that an independent M.D. has confirmed the request,”
- “I review the Order and check the file and status for apparent appropriateness,”
- “See if my client has any objection or family has any objection and proceed accordingly,” and
- “I determine what the medication is that is being prescribed and what the purpose of it is. I then determine whether or not that is appropriate.”

Neither public defenders nor panel counsel appear at psychotropic medication hearings unless the court requests an appearance by counsel. Both the Public Defender and panel counsel were emphatic that they always appear in court if the matter is placed on calendar and an appearance is requested.

In their survey responses, panel attorneys commented on the fact that many delinquency judges do not place psychotropic medication hearings on calendar, that notice is generally not given to counsel, and that some judges do not put medication requests on the record so counsel are unable to attend.

Chapter Fourteen: Transfers

Chapter Fourteen addresses inter-county transfers, both in and out of Los Angeles. The Public Defender states that it fully complies with this section. The degree to which panel counsel encounter transfer issues is unknown.

Chapter Fifteen: Consequences Beyond Disposition

Chapter Fifteen covers a number of potential collateral consequences that might be faced by a juvenile, including immigration, barriers to military enlistment, firearm restrictions, DNA collections, and limitations on the sealing of records. The Public Defender states that its attorneys are aware of collateral consequences and that the Office complies with Chapter 15. The extent of panel counsel compliance is unknown.

Part IX: Recommendations from County Guidelines

Chapter Sixteen: Supervision

Supervision is addressed earlier in this report in the section on Standards and County Compliance.

Public Defender Cost of Full Implementation

In its 2014 objections to the draft Guidelines, the majority of the Public Defender's objections were phrased as disputes regarding the legal scope of representation, not as lack of resources. These legal disputes include:

- Areas where the Public Defender interprets the Guidelines to require inappropriately advocating for the client's "best interests" rather than legally-required "expressed interests." (Chapters One, Two, and Four);
- Whether dual status, or status as a crossover youth, is always a benefit for the client and so should be pursued by delinquency counsel (Chapter Eight);
- Representing crossover youth over 18 on petitions for reentry, which the Public Defender says it is "not tasked with" (Chapter Eight);
- Post-disposition representation, which the Public Defender believes is "beyond the role of defense counsel" other than the existing DJJ unit (Chapter Twelve); and
- Advocacy relating to psychotropic medication requests, which the Public Defender believes "cannot and should not be shifted to delinquency counsel." (Chapter Thirteen).

Other Public Defender objections arise from the Public Defender's assertion that the Guidelines interfere with the Office's internal decisions regarding staffing and management of its attorneys (for example, whether all attorneys should master all 33 substantive areas, how the Office manages caseloads, and how the Office utilizes substitute or stand-in counsel if the assigned public defender is not available).

The objections identified above are not based in a lack of resources. Indeed, in the 2014 objection letter, the Public Defender did not explicitly identify any specific area where the Office desires to work but has been unable to do so due to lack of financial resources. However, the Public Defender recently identified two areas that would contribute to full implementation of the Guidelines: (1) expansion of the ability to proactively contact and monitor clients in Camp, and (2) expansion of the existing CARE program (social workers and resources attorneys) to serve a greater percentage of Public Defender clients.

Part IX: Recommendations from County Guidelines

The Public Defender was asked to estimate the cost of full compliance with the Guidelines. The Public Defender's response to the Board's request for a cost estimate is quoted verbatim below:²¹⁰

The Los Angeles County Public Defender's Office, (hereinafter "Office") is a widely recognized, award winning, national leader in the area of juvenile justice and holistic legal advocacy on behalf of troubled children in the justice system. For this reason, the Office fully embraces many of the ideas, as well as the intent and spirit embodied in the recommendations of the Juvenile Delinquency Guidelines. In fact, the Office on its own initiative, thoughtfully implemented many of these ideas and recommendations well over a decade ago and these strategic decisions continue to yield very positive outcomes for many Public Defender clients and their families. Moreover, the Office regularly collaborates with numerous public and private sector stakeholders in order to continually improve the quality of legal services provided to clients.

Background

The Office was a key justice system stakeholder that successfully secured funding under the Schiff-Cardenas Crime Prevention Act to help establish the first full-time juvenile mental health court in the United States. The Office currently staffs this court with a public defender clinical social worker and an attorney. Moreover, the Office has played a key pioneering role in the state of California in implementing post-disposition advocacy on behalf of detained youth in juvenile detention camps. With the underwriting of federal grant funds, the Office created the Post-Disposition Program in 1999. This unique collaborative initiative with the Probation Department identified and assessed children who were inappropriately sent to camp and obtained juvenile court orders to place them in less restrictive settings in the community where they received appropriate treatment and services while still under Probation supervision. During the funding period of Post-Disposition Program, the juvenile courts throughout Los Angeles County overwhelmingly agreed with the joint recommendations of the Probation Department and the Public Defender's Office and over one thousand youth were served.

In addition, under authority of Senate Bill 459, the Office was one of the first public defender offices in the state of California to monitor post-disposition treatment of clients housed in the Division of Juvenile Justice (DJJ). An experienced attorney and paralegal monitor and visit clients at state juvenile facilities to ensure that they receive appropriate treatment and services as ordered by the juvenile court.

²¹⁰ Provided by Winston A. Peters, Assistant Public Defender, Branch & Area/ Special Operations Office of Los Angeles County Public Defender, on September 17, 2015.

Part IX: Recommendations from County Guidelines

Over fifteen years ago, the Los Angeles County Public Defender's Office successfully applied for a federal grant, referred to as the Juvenile Accountability Block Grant (JABG) and transformed its model of representation from a strictly legal model to a holistic legal model that focused on representing the whole child rather than solely on the defense of the underlying charge. In so doing, the Juvenile Division of the Office began to more specifically focus on many of the underlying causes that bring troubled children into the juvenile justice system such as mental illness, substance abuse, co-occurring disorders, developmental disabilities, and abuse and trauma.

The Office made the strategic decision based on evolving best practices to initiate a multi-disciplinary approach to its representation of children and used the JABG federal funding to hire twelve in-house clinical social workers and to deploy attorneys trained in mental health and educational advocacy. As a result, the CARE (Client Assessment Recommendation Evaluation) Unit was created. Under the CARE model, this multi-disciplinary team of professionals work with front line deputy public defenders in the juvenile courts from the arraignment stage of juvenile court proceedings to case disposition to identify and assess troubled children and make recommendations to the juvenile court to effectively address their psychosocial needs.

Under the CARE model of legal representation, the deputy public defender as the attorney of record is uniquely positioned to gain the youth's trust and secure personal and often previously undisclosed critical information in areas that often include incidents such as sexual abuse, chronic depression, drug addiction, homelessness and primary and secondary trauma. In many cases, with the youth's permission this information is shared with the juvenile court and appropriate treatment and services are then ordered to address these issues. Since the inception of the CARE Program in 1999, thousands of public defender clients in juvenile delinquency courts throughout Los Angeles County have received these services. Nonetheless, in light of limited funding, the Office employs a triage approach and estimates that it reaches only approximately 8-10 percent of youth who could truly benefit from CARE services.

Most recently, the Public Defender's Office submitted a program evaluation proposal which resulted in a grant of \$250,000 from the Los Angeles County Quality and Productivity Commission. The Master Agreement with the selected provider has been finalized and the scope of work for the evaluation is being defined. The Office expects that this study will validate the efficacy of the CARE Program as well as the Office's underlying model of representation. Further, it is anticipated that this evaluation will result in suggestions for Public Defender rates to the Office's programs consistent with accepted best practices.

The Juvenile Division of the Office has a staff of seventeen clinical social workers, eight resource attorneys specializing in mental health and educational advocacy, five

Part IX: Recommendations from County Guidelines

paralegals and secretarial support.²¹¹The Quality and Productivity Commission funded study will contextualize the Office's model of holistic legal representation within the framework of up-to-date research and data. The study will provide the foundation for moving forward to more comprehensively address the needs of children in the Los Angeles County juvenile delinquency system. In the absence of such an analysis, the Public Defender believes that it would be highly speculative to quantify numbers of staff that would be needed to represent the needs of all Public Defender clients in the juvenile delinquency system. However, it would be reasonable to conclude that if the Juvenile Guidelines were fully implemented, it would require a very substantial increase in Office Juvenile Division staff.

²¹¹ One social worker position counted here is now a paralegal position. One resource attorney counted here is also a DIC.

Conclusion

Los Angeles created its juvenile indigent defense system more than twenty years ago. Juvenile defense has gone through a revolution since that time, exponentially expanding the defense attorney's role and demanding that attorneys serve their clients well beyond the confines of the criminal charges. In a system that prosecutes thousands of children and teens each year and imposes consequences that can last a lifetime, this expanded representation is critical.

The revolution is long past, but the County's system has not changed. The question is thus whether the County's current system allows it to adequately ensure vigorous and high-quality representation for all of its indigent children and teens, regardless of the type of attorney assigned to them. As currently structured, the County does not appear to be able to provide the necessary oversight. The system is characterized by a transfer of substantive oversight, management, and quality control to the eight panel heads, combined with unusually low turnover amongst the panel attorneys and a payment structure that incentivizes rapid resolution of as many cases as possible. This has resulted in a lack of consistency between the eight branches and widely varying practices in areas such as resource use and, particularly for transfer cases, differences in outcomes. Moreover, the lack of substantive oversight leaves the County unable to identify and respond to critical issues such as ineffective assistance of counsel, unmanageable caseloads, and billing and contract irregularities. These unacceptable activities are certainly not widespread. But without any qualified oversight structure, the County cannot know the extent to which they occur.

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Appendix B: Office of the Public Defender, Juvenile Division Conflict Policy (p. 123)

Appendix C: Sample Los Angeles Panel Contract and Most Recent Extension (p. 139)

Appendix D: Panel Counsel IAC Case (p. 159)

Appendix E: Office of the Public Defender, Juvenile Division Training Materials and list of webinars (p. 195)

Appendix F: Panel Heads Annual Seminar Materials (p. 211)

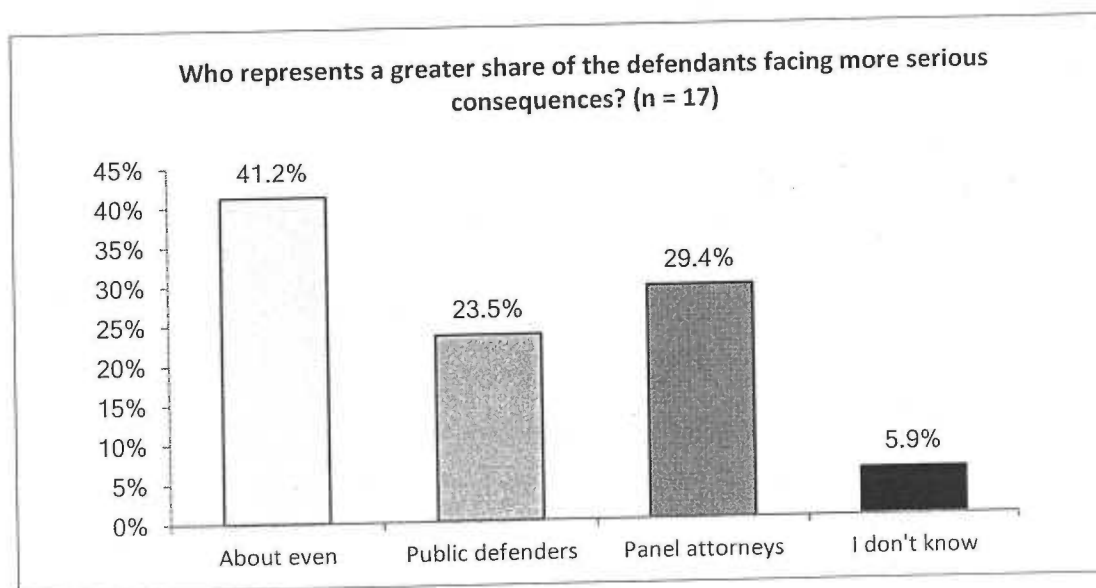
Appendix G: Los Angeles County Public Defender Attorney Performance Standards (February 8, 2010) (p. 222)

Appendix A:
Judicial Survey Highlights

Appendix A: Judicial Survey Highlights

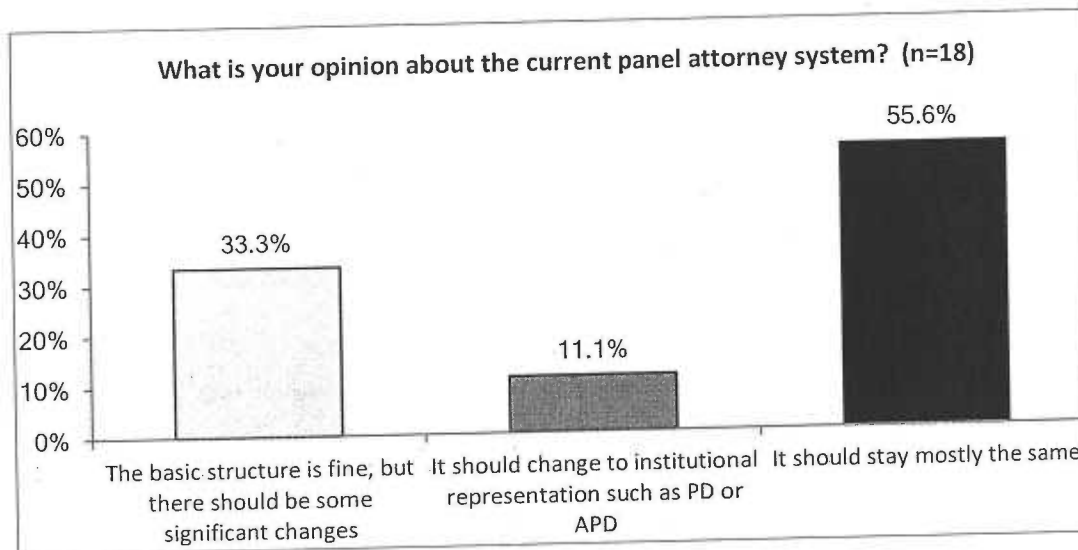
In July 2015, the 23 juvenile delinquency judges in Los Angeles County were sent an optional electronic survey. The survey contained three questions with answer choices, and an additional six optional narrative questions. The survey was anonymous and the judges were not asked to identify themselves or the branch in which they sit, nor were they asked any information about themselves such as how long they had been on the bench. Eighteen (18) of the 23 judges took the survey, although not all 18 answered every question. It should be noted the Judge Michael Nash, one of the principal authors of the Guidelines, chose not to take the survey because his views are reflected in the Guidelines.

The first question asked judges who, in their opinion, represents a greater share of the defendants facing more serious consequences. Opinions were split among the 17 respondents, as 41% (seven judges) said that they were about even across public defenders and panel attorneys, 24% (four judges) said that public defenders represent a greater share, and 29% (five judges) said that panel attorneys represent a greater share of defendants facing more serious consequences.



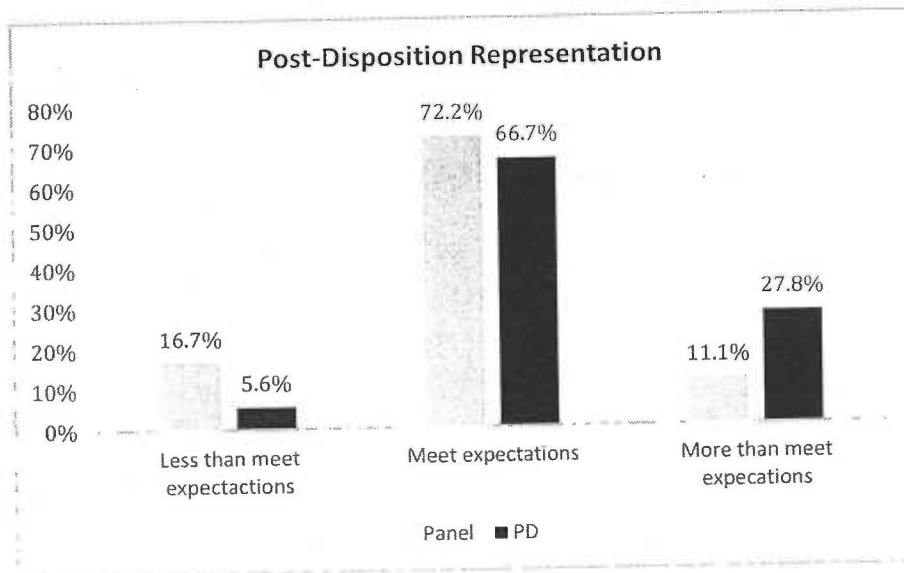
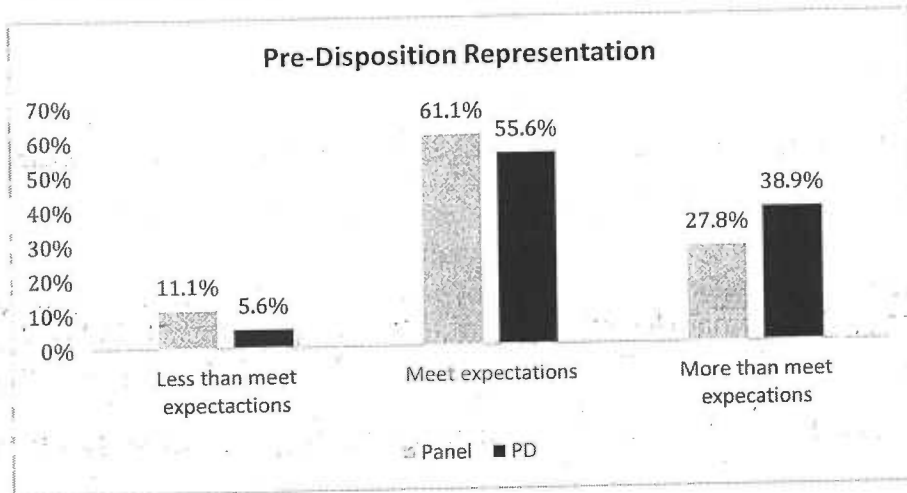
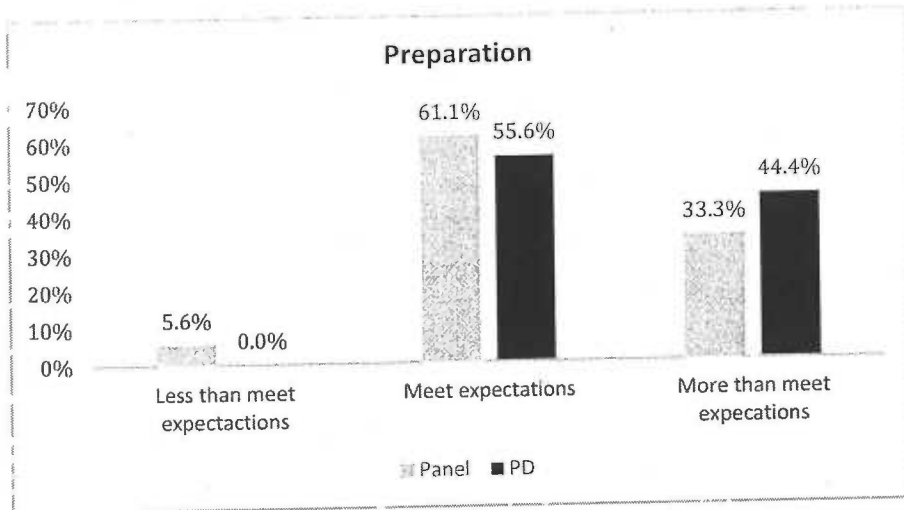
The second question asked judges about the extent of change needed in the current panel attorney system. Eighteen judges responded to this question. More than half of them said that it should stay mostly the same (10 judges, 55.6%). Six judges (one third of the respondents) believed that "the basic structure is fine, but there should be some significant changes." Only two responding judges (11%) said that the County should

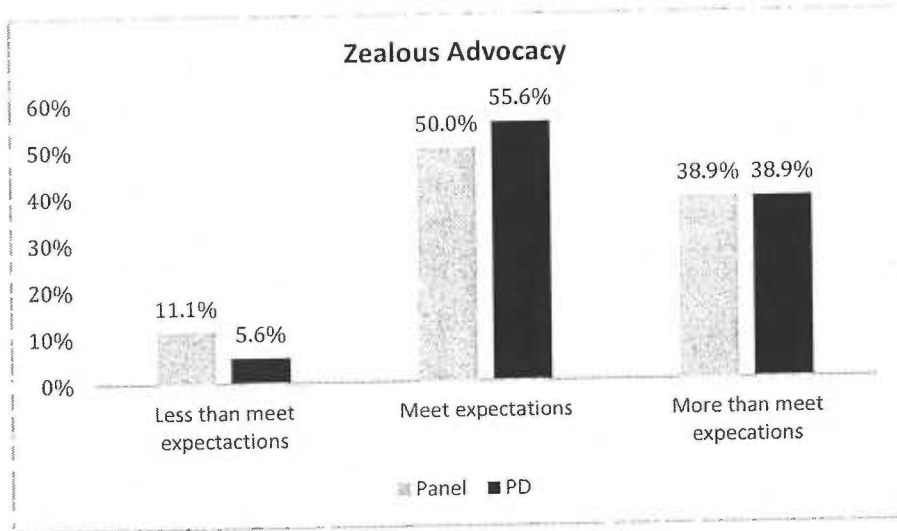
change to institutional representation such as PD or APD. Thirteen of the 18 then added a narrative comment about how the current panel system could be improved. Highlights of these narrative responses are referenced in the body of this report and focused mainly on the fact that panel attorneys should have access to social workers and the fact that panel attorneys should be paid more than they are currently paid.



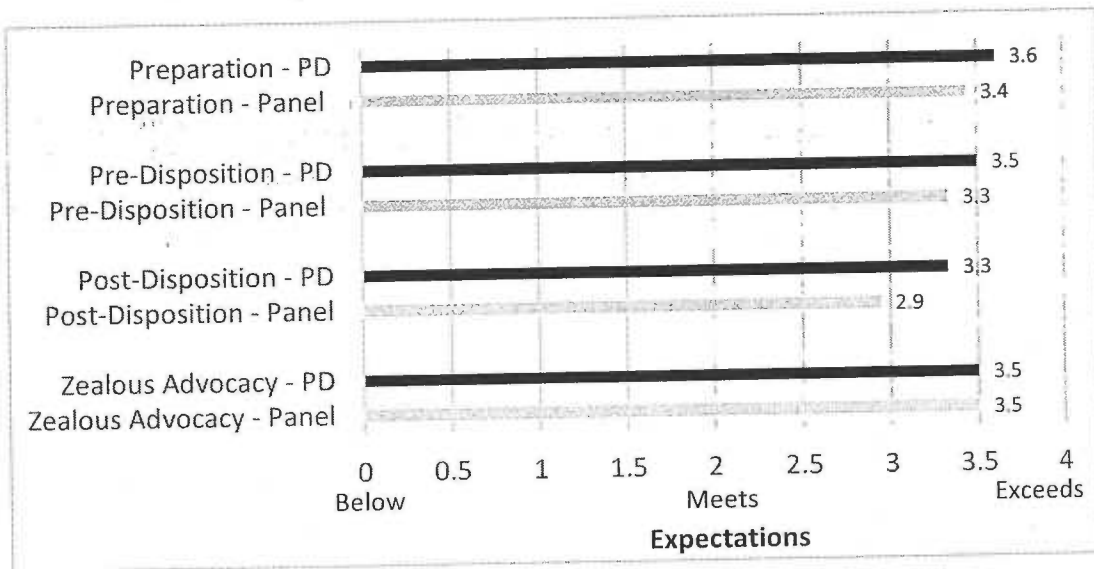
Finally, the judges were asked to evaluate public defenders and panel attorneys in their court along four dimensions: preparation, pre-dispositional representation, post-dispositional representation, and zealous advocacy. As the figures below show, the 18 judges generally felt that both public defenders and panel attorneys met or exceeded expectations in all four categories. Public defenders were rated somewhat more positively in terms of preparation, pre-dispositional representation, and post-dispositional representation.¹ In all categories, more panel attorneys than public defenders were rated as “less than meet expectations” but very few judges chose “less than meet expectation” for any response.

¹ The sample size is not large enough to test for statistically significant differences by attorney type.





Average of All Judicial Responses to Survey Questions Regarding Preparation, Representation, and Advocacy



Appendix B:
Office of the Public Defender, Juvenile Division
Conflict Policy

**LAW OFFICES
LOS ANGELES COUNTY PUBLIC DEFENDER**

POLICIES AND PROCEDURES

NUMBER: A-5

**CONFLICTS OF INTEREST
IN REPRESENTATION**

rev. February 5, 2010

<p style="text-align: center;">LAW OFFICES LOS ANGELES COUNTY PUBLIC DEFENDER POLICIES AND PROCEDURES</p>	<p style="text-align: right;">Supersedes Policy Dated 4/16/07 Date: February 5, 2010 Number: A-5 Page: 1 of 14</p>
<p>TITLE: CONFLICTS OF INTEREST IN REPRESENTATION</p>	<p>APPROVED: MICHAEL P. JUDGE PUBLIC DEFENDER</p>

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Conflicts of Interests in Representation

A. Statutory Basis for Protection of Client Confidences and Client Secrets

Chapter 3 of the Rules of Professional Conduct of the State Bar of California deals with "Professional Relationship with Clients." Rule 3-310 is the rule directly applicable to "Avoiding the Representation of Adverse Interests." That rule is intended to guide counsel in preserving the interests covered by Business and Professions Code section 6068(e) (1) which provides that:

"It is the duty of an attorney to do all of the following:

* * *

"(e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."

B. Text of Rules of Professional Conduct, Rule 3-310

Insofar as is applicable to the practice of a Public Defender, Rule 3-310 states as follows:

Rule 3-310. Avoiding the Representation of Adverse Interests

(A) For purposes of this rule:

(1) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;

(2) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;

(3) "Written" means any writing as defined in Evidence Code section 250.

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

(2) The member knows or reasonably should know that:

(a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and

(b) the previous relationship would substantially affect the member's representation; or

(3) The member has or had a legal, business, financial, professional, or Personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

(4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

(C) A member shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

Conflicts of Interests in Representation

- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

C. Application of Rule's Terms to Public Defender Practice

For the purpose of these rules, accepting appointment to represent a defendant is the same as "accepting employment" or "accepting representation." It is the policy of the Public Defender that confidences obtained by one member of the office are to be treated as confidences obtained by all the members of the office. (See Rules of Prof. Conduct, Rule 1-100(B); 59 Ops.Atty.Gen.27, 29.) The term "defendant" should be understood broadly to refer to Public Defender clients in criminal and civil matters, and in adult, juvenile, and mental health courts.

There is a difference between "client confidences" and "client secrets." For purposes of protecting those interests, they are defined as follows:

"Confidence refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." (Former American Bar Association Code of Professional Responsibility, Disciplinary Rule 4101(A) [supplanted by Model Rules of Professional Conduct, Rule 1.6], adopted by California State Bar opinion #1976-37.)

D. Multiple-Defendant Cases

The courts of California have been very strict in their application of the rules forbidding representation of adverse interests in criminal cases: "[W]e have held- regardless of whether there was an objection-that even a potential conflict may require reversal if the record supports 'an informed speculation' that [the defendant's] right to effective representation was prejudicially affected. Proof of an 'actual conflict' is not required. The same principles apply when counsel represents clients whose interests may be adverse even when they are not codefendants in the same trial." (People v. Mroczko (1983) 35 Cal.3d 86, 105.)

Conflicts of Interests in Representation

It is thus the policy of the Los Angeles County Public Defender that, absent extraordinary circumstances, the Public Defender will not represent more than one defendant in any multiple defendant case. This policy conforms with the rule adopted by the California Supreme Court that a trial court, when appointing counsel, must initially select separate and independent counsel for each defendant, permitting joint representation only after such counsel have investigated the case and consulted with their clients, and concluded that joint representation will best serve the interests of justice and of the clients. (People v. Mroczko, supra, 35 Cal.3d at p. 115.)

E. Meaning of "Currently Represented Client"

It is important to define who is a currently represented client. Obviously, a client against whom charges are pending is a currently represented client. A defendant whose case is final, and who is no longer in custody, on probation, or on parole, is obviously not a currently represented client. It is the policy of the Public Defender that a client against whom judgment has been pronounced, whether by imposition of sentence or grant of probation is not a currently represented client unless that client has a pending subsequent appearance before a bench officer in that client's case. A client whose case is being processed under Proposition 36, Drug Court (either pre- or post-conviction), or Sentenced Offender Drug Court, is a currently represented client until successful completion or conclusion of all proceedings. A defendant who has been placed upon a diversion program, adult or juvenile, and in whose case judgment has not yet been pronounced, including a defendant who has been admitted into a Deferred Entry of Judgment program, remains a currently represented client. A defendant for whom the office is seeking post-judgment relief remains a currently represented client.

The status of a client (i.e., whether currently represented client or a former client) is not affected by the issuance of a bench warrant. For example, a currently represented client who fails to appear for a hearing, and for whom a bench warrant is issued, remains a currently represented client. Likewise, a client who is determined pursuant to this policy to no longer be a currently represented client and for whom a bench warrant has been issued, remains a former client.

F. Application of Policy to Juvenile Clients (other than DJJ Wards)

Rules of Court, Rule 5.661 (formerly Rule 1479), sets forth the responsibilities of children's counsel in delinquency proceedings. Subdivision (c) provides as follows: "[Right to representation] A child is entitled to have his or her interests represented by counsel at every stage of the proceedings, including post dispositional hearings. Counsel must continue to represent the child unless relieved by the court upon the substitution of other counsel or for cause."¹

¹This rule was proposed to the Judicial Council by the Los Angeles County Superior Court and promulgated as a result of this Office's successful implementation of psychosocial dispositional advocacy within the delinquency courts. The rule was intended to foster such advocacy in other counsel.

Conflicts of Interests in Representation

Being fully cognizant of this Court Rule, it is the policy of the Public Defender that Rule 5.661 *authorizes* post dispositional advocacy by appointed counsel but does not *mandate* it. When the Public Defender has undertaken such post dispositional advocacy, including upon request of the child, the child's family, or some other entity, during the pendency of that advocacy the child shall be considered to be a *currently* represented client. The fact of such advocacy shall be entered into the Public Defender section of the Juvenile Automated Index (JAI), or such other database which is available to our office for determining the status of representation.

The pendency of periodic non-appearance post disposition status reports (e.g., Probation Department placement status reports) in the Juvenile Court does not, of itself, cause the child client to be considered a *currently* represented client. However, if counsel has continued actual representation of the client since the most recent hearing by affirmatively undertaking subsequent advocacy, or has been ordered by the court to provide such advocacy after the previous hearing, then that client is to be considered a *currently* represented client.

G. Application of Policy to Juvenile Clients (DJJ Wards)

Welfare and Institutions Code section 779 was amended by SB459 (2003) to require court monitoring of the treatment plan for all wards of the Department of Juvenile Justice (DJJ, previously known as the California Youth Authority). It is the policy of the Public Defender that clients who have been committed to the DJJ remain in the status of *currently* represented clients until their discharge from physical custody of the DJJ.

H. Currently Represented Client Witness in Defendant's Case

It is the policy of the Public Defender that, absent extraordinary circumstances, the Public Defender will not represent a defendant if a currently represented Public Defender client is a witness against that defendant. (As discussed fully below, it is important to recognize that this rule is applicable only to currently represented clients.)

Of course, there will generally not be a conflict if a witness supporting the defendant is a client or former client, since the representation in that case will not usually be adverse. This is not always the case, however. For instance, there may be a conflict if a currently represented client does not want to testify in favor of the defendant, due to self-incrimination or other adverse consequences to himself. An attorney should discuss such situations with his or her supervisor.

Whenever a conflict is declared because representation of the individual would conflict with current Public Defender representation of another client, the deputy who is currently representing such client shall be informed immediately of the conflict by the deputy declaring the conflict.

I. Possibility of Adversity Between Two Currently Represented Clients

Care must be taken when there is a possibility that the interests of two currently represented Public Defender clients may be adverse, as in a case where we are representing two defendants in unrelated cases, but it turns out that one client may desire to blame the other for the offense alleged against him. If such an accusation is actually made, we obviously cannot represent both clients, and may not be able to represent either if to do so would violate the duties to former clients discussed below. However, when there is only a possibility that the clients' interests will be adverse, counsel should not prematurely declare a conflict which may never arise. The question of whether and when to declare a conflict in such circumstances will depend upon the facts of each case, and the likelihood that an actual conflict will develop. An attorney should discuss such situations with his or her supervisor.

J. Former Clients

Rule 3-310(D), supra, prohibits an attorney from using the confidences of a former client against that client, and also prohibits an attorney from taking a position adverse to a former client upon the subject of that representation. In the leading case of Wutchumna Water Co. v. Bailey (1932) 216 Cal. 564, the rule was stated as follows, "[A]n attorney is forbidden to do two things after severing his relationship with a former client. He may not do anything which will injuriously affect his former client in any matter in which he formerly represented him nor may he at any time use against his client knowledge or information acquired by virtue of the previous relationship." (Id., at p. 573.) Representation of a present defendant is prohibited not only when the attorney will be called upon to use confidential information against a former client, but also when he may be called upon to use such information. (Galbraith v. State Bar (1933) 218 Cal. 329, 332-333; Earl Scheib, Inc. v. Superior Court (1962) 253 Cal.App.2d 703, 706-707.)

The mere fact that a witness adverse to the defendant had at one time been a public defender client does not constitute a conflict of interest in the defendant's case. Nor does access to or even actual possession of confidential information regarding that witness obtained as a result of such prior representation *ipso facto* constitute a conflict of interest.² However, the use of, or *potential use* of, such information against that witness does give rise to a conflict. For purposes of this policy statement, "potential use" means the reasonably predictable likelihood of an attempt to use that information against the former client in the current defendant's case. It does not mean the "possible" use of such information. Please note the limitation of "confidential information" in section O, below.

²This policy position is adopted notwithstanding the case of *Rhaburn v. Superior Court* (2006) 140 Cal.App.4th 1566. Though the *Rhaburn* court's opinion dealt extensively with "acquisition" of confidential information, it is apparent from the dispositional order that the court's concern was with confidential information which "may be acquired and used by counsel." *Rhaburn v. Superior Court, supra*, 140 Cal. App. 4th 1566, 1582 (continued...)

Conflicts of Interests in Representation

All motions or efforts by a prosecutor to seek a court order removing the public defender from representation of a defendant because of a purported conflict of interest must be immediately reported to the Head Deputy.

K. Special Rules Applicable to Juvenile Court

While the rules pertaining to conflicts have general application to juvenile court clients, we have established special protocols and conventions regarding juvenile court practice. When an adult is arrested along with a minor, the Public Defender will ordinarily represent the adult (in the absence of other bases for a conflict regarding that adult) and will declare a conflict as to the minor.³

The Public Defender provides services to minors inappropriately placed in Probation Department camps through evaluation by our social workers to support a Welfare and Institutions Code section 778 motion for modification of the dispositional order. It is the position of this office that notwithstanding a prior declaration by us of a conflict as to a ward who is being considered for such a motion, we will reexamine the status of the case of that ward and that of any others to determine whether the reason for the prior declaration of conflict still exists. If it does not, then the Public Defender may represent the ward in the 778 motion.

L. Adult Probation Violations

The Public Defender is obligated to strive to insure that indigent defendants receive effective representation in a cost-effective manner. Ordinarily, this objective can best be achieved by providing continuity of the attorney-client relationship in situations where a defendant has been represented by either the Los Angeles County Public Defender or the Alternate Public Defender.

²(...continued)

(emphasis added). The procedural setting presented by *Rhaburn* was an effort by the prosecutor to disqualify the Public Defender's office. The *Rhaburn* court refused to apply the concept of vicarious disqualification to an entire Public Defender office merely because that office had represented a witness in the past. *Rhaburn* relied heavily on the fact that the public defender office involved had established various limitations upon access to prior clients' files. The Los Angeles County Public Defender operates differently by not constructing such ethical walls. *Rhaburn* does not purport "to prescribe procedures which the public defender must follow in analyzing the possibility of conflict" *Id.*, at 1573. Using the language of *Rhaburn*, it is the position of the Los Angeles County Public Defender that "the attorneys involved could be trusted to obey not only the instructions of their superiors, but also the obvious dictates of their ethical duties." *Id.*, at 1576. The trial court may place substantial weight on counsel's assertion that no conflict of interest exists. (*People v. Lawley* (2002) 27 Cal. 4th 102, 146, *People v. Cornwell* (2005) 37 Cal. 4th 50, 76.)

³There are other conventions and protocols regarding conflicts unique to Juvenile Court practice which are not included within this policy.

Conflicts of Interests in Representation

The Public Defender shall accept the appointment to represent an indigent defendant who has allegedly violated probation when the Public Defender was counsel of record at the time of sentencing. The Public Defender should not accept appointment to represent an indigent defendant who has allegedly violated probation when the Alternate Public Defender was counsel of record in the underlying case for which the defendant is on probation.

If the former attorney was private counsel, either appointed or retained, the Public Defender will accept appointment by the Court to represent an indigent defendant on the probation violation case unless there is a conflict of interest that exists at the time of the alleged probation violation.

Notwithstanding these guidelines, if a new case has been filed, in addition to the probation violation, the attorney of record representing the defendant on the new case should also be appointed on the violation.

M. Waiver of Conflict

The law is clear that the mere fact that a former client is involved in present litigation, whether as a victim, witness, or otherwise, does not automatically mean that representation of the present defendant is prohibited. One exception to the prohibition upon the representation of adverse interests is waiver. It is the policy of the Public Defender that waiver of a conflict of interest is to be avoided except in exceptional cases where the adequacy of representation of both the present and former client will not be called into question as a result of such waiver. Remember that if such a waiver is obtained, it must be in writing and made by both the previously represented client and the new client. (See Alcocer v. Superior Court (1988) 206 Cal.App.3d 951, 962-963.) (Such a waiver could not apply to joint litigants with actually adverse interests at a contested hearing; see Klemm v. Superior Court (1977) 75 Cal.App.3d 893, 898; People v. Sanford (1985) 174 Cal.App.3d 11, 18-19.) Waiver may be used only after consultation with and approval from the Public Defender or his designated representative.

N. Formation of Actual Attorney-Client Relationship

Assuming that there is no waiver, the first question which must be answered is whether there was actually an attorney-client relationship between the Public Defender and the potentially adverse party. (See Hicks v. Drew (1897) 117 Cal. 305; Meechan v. Hopps (1956) 144 Cal.App.2d 284.) For such a relationship to exist, at a minimum, the Public Defender must have consulted with the client in such a manner that it could be assumed that confidential information was obtained. Thus, the mere appointment of the Public Defender in a case without such a consultation, if the Public Defender immediately thereafter was relieved from representation, would not create an attorney-client relationship requiring avoidance of adverse representation.

O. Possession of Information of Public Record

When the Public Defender's file contains information as a result of a previous attorney client relationship, it is the policy of this Office that the mere fact that such information exists does not necessitate a declaration of conflict if the information is equally available in the public record. For example, the Public Defender may know that a witness has been convicted of a felony (to be used for impeachment of the witness) by virtue of the Public Defender's representation of that witness. However, the fact of the felony conviction is also available in easily accessed public records, and thus knowledge of that fact does not require a conflict to be declared. Further, the possession of confidential information concerning a former client does not lead to a conflict if that information is completely irrelevant to the new matter. However, if the Public Defender is in possession of confidential information concerning a former client, and that information could be used against the former client in the new case, then the Public Defender cannot accept representation of the defendant in the new matter.

P. Wheeler Impeachment

Impeachment is no longer limited to proof of a prior felony conviction. A witness may be impeached with any conduct which amounts to moral turpitude, whether or not that conduct constituted a crime, and even if no conviction at all resulted. (See *People v. Wheeler* (1992) 4 Cal.4th 284.) Information dealing with prior misconduct of a witness who is adverse to the current client, which was obtained confidentially as a result of our prior representation of that witness in a case arising out of such misconduct, cannot ethically be used to impeach the witness. However, if the identical information is available through public records or other discoverable sources, the mere fact that it is also contained within a confidential case file does not *ipso facto* lead to a conflict. (See *Rhaburn v. Superior Court, supra*, 140 Cal. App.4th 1566, 1570, n.2.) The same considerations apply in any case in which the victim had previously been represented by the Public Defender, including deceased prior clients. In capital cases, care must be taken that conflicts not arise in the penalty phase as well as in the guilt phase. Thus we must be able to vigorously counter victim-impact testimony. (See, e.g. *Mickens v. Taylor* (123 S.Ct. 1237 (2002).) To avoid undue delay occasioned by late discovery of such information, investigations into prior *Wheeler* misconduct should be initiated in a timely fashion.

Q. Position Adverse to Subject Matter of Prior Representation

Finally, if no confidential information is involved, for a conflict to exist the new representation must, in fact, be adverse to the former client's interests in the matter in which he was represented. An attorney is not forbidden from taking a position adverse to a former client, so long as no confidences are involved and that adverse position has no reference to the former representation.

Conflicts of Interests in Representation

Caution must be used in a situation where a witness against a presently represented client is a former Public Defender client, whose confidences would not be used against him, but who is still on probation or parole. The question is whether the representation of the current client will be adverse to the former client in the matter in which the Public Defender formerly represented him. The question of whether or not a conflict exists in such cases should be discussed between the attorney and his or her supervisor.

The mere fact that the Public Defender previously represented a witness against a defendant does not automatically mean that there is a conflict in the absence of the Public Defender's possession of relevant and confidential information, and in the absence of the Public Defender's taking a position adverse to that witness in the matter in which the witness was represented. (See People v. Belmontes (1988) 45 Cal.3d 744, 776.)

If cross-examination of the witness would be limited to attacking the intrinsic characteristics of the witness's testimony, (e.g., ability to perceive), there is no conflict. On the other hand, there would be a conflict presented by cross-examination which directly involves the probationary status of the witness. An example of such cross-examination is a question which impugns the motivation of the witness's testimony as being to protect his own probationary status, i.e., a question which attacks the former client's interest in the matter in which the Public Defender had previously represented him.

Cross-examination which does not directly address the witness's probationary status could have an impact upon that probation. An example of this cross-examination is evidence which involves conduct specifically addressed in the former matter, and which could result in a violation of probation: e.g., presenting evidence that the witness, subject to a no alcohol condition, was drunk. However, evidence designed to show that the witness is presently lying, and thus committing perjury, is not conduct specifically addressed in the prior matter, and thus would not necessitate a conflict.

R. Physical Assault upon Counselor Staff

In the event of a physical assault by a client upon his or her attorney or another staff member, the attorney should determine whether the client's conduct has caused the attorney to be unable to represent the client to the best of his or her ability. If the attorney cannot overlook the indiscretion and determines that an "irreconcilable conflict" prevents competent and faithful representation, then a conflict of interest must be declared. In the event a prosecuting agency has filed a charge against the client alleging a Public Defender employee is a victim, or if the Public Defender is a witness to the act giving rise to such charge, then a conflict of interest must be declared. The

Conflicts of Interests in Representation

client's lack of trust in, or inability to get along with, his appointed attorney is not sufficient to compel the appointment of substitute counsel. (*People v. Crandell* (1988) 46 Cal.3d 833). Resolution of possible divergent views regarding potential complex legal and personal issues attendant to such a circumstance should not be left solely to the aggrieved attorney.

Any attorney or staff member who believes that he or she has come into contact with the bodily fluids of a client may employ the procedures of Penal Code sections 7500-7552 in order to obtain the results of testing of that client for HIV, Hepatitis B or Hepatitis C. It is the policy of the Public Defender that the seeking of such information does not create a conflict of interest. Nor do positive results of such testing give rise, *ipso facto*, to a conflict of interest.

It is the policy of the Los Angeles County Public Defender that the decision as to whether there is a conflict arising from the situations discussed in this section will be made only after consultation with and approval from the Department Head (or designated representative).

S. Preventing Harm to Others (Rules of Professional Conduct, Rule 3-100)

Rule 3-100 and Business and Professions Code 6068(e)(1), effective July 1, 2004, contains identical language intended to resolve the previous conflict between Business and Professions Code 6068(e) requiring a lawyer to "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets of his or her client" and Evidence Code 956.5 which provides an exception to attorney-client privilege when the lawyer reasonably believes that disclosure of a confidential communication is necessary to prevent "a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual."

Rule 3-100 states as follows:

(A) A member shall not reveal information protected from disclosure by B&P 6068(e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.

(B) A member may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(C) Before revealing confidential information to prevent a criminal act as provided in paragraph (B), a member shall, if reasonable under the circumstances:

Conflicts of Interests in Representation

- (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii); and
- (2) inform the client, at the appropriate time, of the member's ability or decision to reveal information as provided in paragraph (B).

(D) In revealing confidential information as provided in paragraph (B), the member's disclosure must be no more than is necessary to prevent the criminal act, given the information known to the member at the time of the disclosure.

(E) A member who does not reveal information permitted by paragraph (B) does not violate this rule.

In our highly complex environment possible scenarios regarding qualifying criminal threats, their timing, and sources of information other than the client, are limited only by the imagination. It must be recognized that the decision to disclose or to not disclose any given qualifying criminal threat may have legal, moral, and functional ramifications for the Law Offices of the Los Angeles County Public Defender which extend far beyond the parameters of the instant case.

It is thus the policy of the Los Angeles County Public Defender, and consistent with prior practice, that the decision(s) related to the following critical questions will be made only after consultation with and approval from the Department Head (or designated representative):

- (1) Can the subject information be disclosed?
- (2) Should the subject information be disclosed?
- (3) What portion of the subject information should be disclosed?
- (4) To whom, when, and under what circumstances should the subject information be disclosed?

It is the policy of the Los Angeles County Public Defender that, if a disclosure is made, a Conflict of Interest will be declared against the client about whom the disclosure is made. The timing of such a declaration may be arranged to reduce the level or scope of the risk to potential victims.

T. Challenging Adequacy of Prior Public Defender Representation

There are situations in which a Deputy Public Defender believes that he or she must challenge the adequacy of the representation provided by the Public Defender on a prior occasion. This can arise in the context of a challenge to a conviction of a prior offense in which the defendant had been represented by the Public Defender or in a case in which the current attorney believes that a Deputy Public Defender's previous

Conflicts of Interests in Representation

ineffective representation materially affected the client's current case. In either of these situations, when there exists a colorable claim of ineffective assistance of counsel with respect to the representation afforded by the Public Defender in the prior case, a conflict may be declared in the current case if no other effective remedy exists and failure to replace our office would substantially impair the right to assistance of counsel in the pending case.

For purposes of policy, a "colorable claim" is one which if presented to the court could credibly establish to the satisfaction of the court that prior counsel had, "failed to perform with reasonable competence and that it is reasonably probable a determination more favorable to the defendant would have resulted in the absence of counsel's failings." (See People v. Smith (1993) 6 Ca1.4th 684,696, People v. Fosselman (1983) 33 Ca1.3d 572,584.)

Before declaring a conflict in such circumstances, the attorney shall submit the matter to the Head Deputy for review. Should the Head Deputy determine there is a colorable claim, he or she shall report to the Public Defender or his designee for determination of the conflict issue. Reports of a potential conflict shall not become a part of the defendant's file, nor shall any department employee, as part of this process, render an opinion beyond whether the claim is "colorable", i.e., the "validity" of a claim is beyond the scope of this inquiry.

If the defendant claims inadequacy of the prior Public Defender counsel, but the claim is not colorable or would not substantially impair the right to assistance of counsel in the pending case, and current counsel is unable to resolve this difference with the client, the client shall be informed that he may utilize the procedures set forth in People v. Marsden (1970) 2 Cal.3d 118. This policy applies whether the prior offense is an element of the current offense or is alleged as an enhancement.

U. Conflict in Other Pending Case

If a defendant has a presently pending case in which the Public Defender has declared a conflict, or in which the Public Defender has been relieved pursuant to People v. Marsden, supra, (1970) 2 Cal.3d 118, it is the policy of this Office that a conflict will be declared in all pending cases and in any new case that arises during the pendency of any such conflicted cases. However, if a conflict was declared in a case which is no longer pending, a conflict shall not automatically be declared unless there is a conflict in the present case under the standards discussed in this memorandum. Thus it is not the case that once a conflict has been declared as to a specific individual, there is always a conflict as to him.

Conflicts of Interests in Representation

V. Duties Upon Being Relieved

Should this office declare a conflict or otherwise be relieved under the circumstances discussed, neither the reasons for the conflict nor the department's review shall be revealed to the client, court or subsequent counsel, including the Alternate Public Defender. However, if we are aware that the Alternate Public Defender would likewise be faced with a conflict of interest if that office were to undertake representation of the client, that conclusion should be brought to the attention of that office.

Material contained within the Public Defender file is the property of the client. When a conflict of interest is declared, subsequent counsel should receive all police reports, transcripts and other discovery contained in the case file, as well as client interviews, motions, investigation requests, reports and witness interviews. In the event that turning over particular material in the case file would violate our ethical duty to another client, that information shall not be given to subsequent counsel and shall be deleted from all documents that are transferred. If such material is withheld, subsequent counsel shall be given notice only that legal and ethical constraints preclude disclosure of some material. The Public Defender file shall be documented with the fact of the giving of such notice. The Public Defender's office must keep copies of all materials turned over to subsequent counsel except where little or no work product has been created (e.g., a conflict declared at the time of arraignment.)

Appendix C:
**Sample Los Angeles Panel Contract and Most
Recent Extension**

WHEREAS, [REDACTED], hereinafter referred to as "CONTRACTOR," desires to enter such contract with COUNTY to economically provide legal representation of such persons who are minors before the following courts: Juvenile Court - [REDACTED] District.

NOW THEREFORE, in consideration of the mutual covenants herein and the mutual benefits to be derived therefrom, the COUNTY and CONTRACTOR agree as follows:

1. Services to be Provided. CONTRACTOR'S members will provide complete legal defense services for all juveniles whom CONTRACTOR'S members are appointed to represent during the term of this Agreement or any extension thereof and who would be entitled to representation by the Office of the Public Defender in the courts covered by this Agreement but for the fact that the Office of the Public Defender is legally unavailable. Such services shall include all legal defense services typically provided by the Office of the Public Defender, including interview and preparation time, all necessary court appearances, all progress reports and change of plan reports for juveniles, hearings, motions, court waiting time, and trials at the trial court level and for writ proceeding and the filing of any notice of appeal that may be required by Penal Code Section 1240.1 or otherwise, including legal research, preparation of documents, secretarial and clerical support services, investigator services, and travel. CONTRACTOR'S members shall be responsible for handling the juvenile petition through completion of case. Once appointed,

during the term of this Agreement or any extension thereof, CONTRACTOR'S members shall be required to complete services for each juvenile who they are so appointed to represent regardless of any termination of this Agreement. Services to be provided by CONTRACTOR do not include services for court appointed experts or interpreters. CONTRACTOR'S members shall not be required to represent any such juvenile if the court makes a written finding that a conflict of interest or other legal disability precludes any of the CONTRACTOR'S members from being appointed to represent such defendant.

2. Number of Juveniles to be Represented. CONTRACTOR'S members agree to provide the services described in paragraph 1 for all juveniles described therein, regardless of the actual number thereof. The parties contemplate by this Agreement that the number of cases will not exceed 2,100 for the fourteen month period of August 31, 1996 through October 31, 1997 (1,800 cases per year). The cases upon which the contracting attorneys are appointed in excess of 2,100 (1,800 cases per year) are subject to the average cost per case provisions of paragraph 3bi.

3. Compensation.

3a. Contract Amount. Subject to the proportional payment provisions of paragraph 12, and the penalty provisions of paragraph 3b, CONTRACTOR shall be paid \$495,832 for providing the services described in paragraph 1. CONTRACTOR shall receive the quarterly

twenty-five (25) percent of the contract amount within approximately thirty days of submission of each quarterly billing that meets the requirements of paragraph 4.

3b. Additions in Contract Amount.

3bi. Additions. In the event that CONTRACTOR is required to represent more than 2,100 juveniles under this agreement (1,800 annually), or if the contract term is for less than 365 days, then the proportional number of juveniles calculated in accordance with paragraph 12, CONTRACTOR shall be paid the sum of \$250.00 for each juvenile represented in excess of that number.

3bii. Manner of Counting Juveniles. As used herein, a juvenile shall be counted as one juvenile for all counts and petitions consolidated together; and as more than one juvenile for petitions not consolidated together. Once a juvenile has been counted for a particular petition under this contract, that juvenile will not be counted again for that petition or petitions in this contract or any extensions thereof.

3c. Pro Bono Publico Services. To the extent that CONTRACTOR'S members are required to provide services for a juvenile under this

contract for which the limitations in this contract precludes them from being compensated, CONTRACTOR'S members shall provide those services Pro Bono Publico without cost.

4. Billing.

4a. CONTRACTOR shall submit its billing statement quarterly in arrears, no later than the fifteenth of the months of February, May, August, and November. For the first quarter only following execution of this agreement, CONTRACTOR may request and receive an advance payment of up to 25 percent of the total anticipated annual contract amount. The amount of the advance shall be credited by the COUNTY against all subsequent quarterly billings in lieu of further payments until fully earned.

4b. The billing shall be submitted in a form approved by the COUNTY'S Project Director to the person designated by COUNTY'S Project Director.

4c. Each billing statement shall contain at least the following information:

4ci. A running total of the actual number of juveniles represented by CONTRACTOR'S members under this Agreement for the period covered by the Agreement or for any extension thereof; and a running total of the actual number of such juveniles whose

cases have been completed.

4cii. A running total of the total amount of dollars billed, and of payments received under this Agreement for the period covered by the Agreement or any extension thereof.

4ciii. The case name, case number, court, juvenile name, and case type of each juvenile for whom services were provided and for which payment is sought under this Agreement, and the name of CONTRACTOR'S members representing such juvenile.

5. Penalty. In the event that a court covered by this Agreement is required to appoint an attorney other than a deputy Public Defender or one of CONTRACTOR'S members whose services are compensated pursuant to this Agreement to represent a juvenile due to any reason other than in conjunction with a written finding of a conflict of interest or legal disability that precludes CONTRACTOR from being appointed to represent such juvenile, then CONTRACTOR and its members shall be liable for any attorney's fees that COUNTY is required to pay the attorney appointed to represent such juvenile.

6. Cooperation in Recovering 987.4 & 987.8 Costs. CONTRACTOR and its members agree to cooperate to the full extent ethically permitted in assisting the COUNTY and the courts, and those acting on their behalf in recovering costs pursuant to Penal Code Sections 987.4 and 987.8.

7. Contract Term. The term of this contract shall be from the date it was approved and that this agreement has been executed by CONTRACTOR and COUNTY until the thirty-first day of October 1997, following the date of execution and court approval. No attorney may provide services pursuant to this Agreement or any extension thereof unless and until he/she has signed this Agreement or has provided COUNTY'S Project Director with a copy of this Agreement signed by him/her.

8. Contract Extensions. Upon the mutual written Agreement of CONTRACTOR, its members and COUNTY'S Project Director filed with the Clerk of COUNTY'S Board of Supervisors no later than the first business day of November 1997, or if the Agreement has previously been extended, no later than the first business day of November following the date of the last extension of this Agreement, this contract may be extended annually for a period not to exceed one year per extension. In executing any such contract extension, COUNTY'S Project Director shall have full authority to mutually agree with CONTRACTOR to adjust up or down the number of juveniles estimated to require representation under the contract extension, modify the designation of the courts at which the juveniles are to be represented, to adjust up or down by an amount not to exceed five percent (5%) the amount of compensation to be paid pursuant to the contract extension and the amount of any penalties to be paid.

9. Budget Reductions. In the event that the COUNTY'S Board of Supervisors adopt reductions in the salaries and benefits paid to a majority of COUNTY employees and impose similar reductions with respect to COUNTY contracts, COUNTY reserves the right to reduce its payment obligation correspondingly for Fiscal Year 1996-97 services provided by CONTRACTOR under this agreement. COUNTY'S notice to CONTRACTOR regarding said reduction in payment obligation shall be provided within 30 days of the Board's approval of such action. CONTRACTOR shall continue to provide all of the said services set forth herein.

10. Annual Audit. CONTRACTOR and its members shall maintain, on a current basis, adequate records to permit an audit of their performance under this Agreement and the accuracy of billing statements. COUNTY may audit such records at any time for up to five years beyond the termination of this Agreement. CONTRACTOR agrees to maintain such records for at least five years after the termination of this Agreement.

11. Termination.

11a. COUNTY may terminate this contract at any time upon thirty days' written notice thereof, effective thirty days after such notice is deposited in the United States Mail to CONTRACTOR at the following address:

[REDACTED ADDRESS]

In the event of termination, payment shall be made on a proportional basis as set forth in paragraphs 3bi and 12.

11b. Upon the written request of CONTRACTOR'S Project Director, COUNTY'S Project Director may agree to accept a written request from any of CONTRACTOR'S members to terminate his/her obligations under this Agreement. In the event of such termination, such member shall remain jointly and severally liable with CONTRACTOR for all liabilities of CONTRACTOR to COUNTY stemming from acts or omissions occurring prior to such termination.

12. Proportional Payments Upon Termination. In the event that this contract terminates for any reason in less than one year from the date of court approval and execution by the parties or from the date of execution of any extension thereof, then the contract amount shall be reduced proportionately by one twelfth (1/12th) for each thirty (30) day period that the actual term of this contract or any extension thereof is less than three hundred and sixty-five (365) days.

13. Project Directors. COUNTY'S Project Director shall be its Chief Administrative Officer or his/her designate. CONTRACTOR shall designate a Project Director and an Alternate Project Director who may act in the absence of CONTRACTOR'S Project Director. Until COUNTY receives ten days' written notice of a change in Project Directors, CONTRACTOR'S Project Director and Alternate

Project Director, together with their addresses and telephone number are as follows:

a. CONTRACTOR'S PROJECT DIRECTOR

[REDACTED]

b. CONTRACTOR'S ALTERNATE PROJECT DIRECTOR

[REDACTED]

COUNTY'S and CONTRACTOR'S Project Directors shall have full authority to act on behalf of the COUNTY and CONTRACTOR, respectively, consistent with the terms of this contract.

14. Compliance with Laws. CONTRACTOR and its members, in performance of this contract, shall comply with all applicable Federal, State and Local laws, and the regulations, guidelines, procedures and standards promulgated thereunder, including specifically the procedural requirements of Penal Code Section 1050, as well as all applicable professional standards.

15. Performance Standards. CONTRACTOR and its members shall be responsible for complying with all applicable professional standards, and shall be responsible for the internal monitoring of the work of his/her employees pursuant to this contract.

16. Independent Contractor. Both parties hereto in the performance of this contract will be acting as independent contractors and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be agents or employees of the other party for any purpose whatsoever.

CONTRACTOR'S members are not entitled to any benefits that COUNTY provides its employees, including, but not limited to, vacations, holidays, sick leave, retirement, workers' compensation, unemployment insurance, medical or hospital insurance, or legal defense costs or representation, EXCEPT for provisions contained in this contract requiring insurance to be carried by CONTRACTOR at COUNTY'S demand.

CONTRACTOR shall be considered an independent contractor with the right to control, conduct and direct the manner and means of performing the work contracted for herein, subject only to the conditions and obligations established by this Contract. CONTRACTOR shall not represent that it or any of its members are agents, employees, partners or joint venturers of COUNTY.

17. Assignments and Subcontracts. This contract is not assignable in whole or in part by CONTRACTOR or its members. Neither CONTRACTOR nor its members will, without consent of COUNTY, assign any right, duty or interest herein to any other person. All appropriate provisions and requirements of this contract shall apply to any subcontracts or assignments.

18. Insurance and Indemnification. CONTRACTOR and its members agree to indemnify, defend, and hold harmless the COUNTY and its Special Districts, elected and appointed officers, employees and agents (County) from and against any and all liability expense, including defense costs and legal fees, arising from or connected with claims and lawsuits for damages or workers' compensation benefits relating to Contractor's operations or its services, which result from bodily injury, death, personal injury, or property damage (including damage to Contractor's property). Contractor shall not be obligated to indemnify for liability and expense arising from the active negligence of the County.

Without limiting CONTRACTOR'S indemnification of COUNTY, and during the term of this Agreement, CONTRACTOR and its members shall provide and maintain at their own expense during the term of this contract the following program(s) of insurance primary to and not contributing with any other insurance maintained by the County. Such insurance shall be provided by insurers satisfactory to the COUNTY'S Risk Manager, and evidence of such programs, satisfactory to COUNTY, along with significant endorsements, shall be delivered to the Project Director on or before the effective date of this contract. Such evidence shall specifically

identify this contract and shall contain express conditions that COUNTY is to be given written notice at least thirty (30) days in advance of any modification or termination of any program of insurance.

Professional Liability: Such insurance shall provide an amount not less than \$500,000 per claim, endorsed as follows:

"Insurance afforded by this policy shall apply also to the liability assumed by the insured under the contract with the County of Los Angeles for Defense Services, provided such liability results from an error, omission, or negligent act of the insured, its members, officers, employees, agents, or subcontractors, if any. All other provisions of this policy remain unchanged."

This insurance requirement may be reduced or waived at the COUNTY'S sole discretion during periods of reasonable unavailability or excessive cost to purchase this coverage.

19. Warranties: CONTRACTOR warrants that it has the authority, under the laws of California and under its own rules, articles of association and bylaws, to enter contracts of the type contemplated herein. Each of CONTRACTOR'S members shall be jointly and severally liable for CONTRACTOR'S liabilities, if any, to COUNTY pursuant to this Agreement.

20. Failure to Procure Insurance: Failure on the part of CONTRACTOR or its members to procure or maintain required insurance shall constitute a material breach of contract under which COUNTY may immediately terminate this contract.

21. Evaluation and Monitoring. COUNTY through its Project Director shall monitor the progress and effectiveness of CONTRACTOR'S performance under this contract. Monitoring may include, but not limited to, verifying that the program is operating in accordance with the project specifications and regulations, the law, and applicable professional standards. COUNTY'S Project Director may assign other COUNTY personnel to evaluate and monitor the performance of this Agreement by CONTRACTOR. It is mutually understood that such assigned personnel are COUNTY employees and have no authority over the work of the office of CONTRACTOR.

22. Contract Modifications. COUNTY'S Project Director may for good cause grant written modifications to the Agreement upon written request of CONTRACTOR, if approved in writing by an attorney from COUNTY'S Office of County Counsel. CONTRACTOR shall initiate no modification of this contract without such approved written approval.

23. Notices. All notices shall be deemed effective upon deposit in any regularly maintained U.S. Postal receptacle. Notices and other correspondence shall be addressed to the COUNTY as follows:

Chief Administrative Office
Budget & Operations Management Branch
500 West Temple Street
Room 754 Kenneth Hahn Hall of Administration
Los Angeles, CA 90012

Attention: Debbie Lizzari

24. Debt Limitation. Both parties to this contract expressly acknowledge the fiscal year debt limitations imposed upon COUNTY by Article 16, Section 18 of the California Constitution.

25. Affirmative Action. CONTRACTOR shall make every effort to ensure that all programs funded wholly or in part by general funds shall provide equal employment and career advancement opportunities for minorities and women.

26. Discrimination. No person shall, on the grounds of race, sex, creed, color, or national origin, be excluded from participation in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs, or employment under this contract.

27. Amendments and Variations. This writing embodies the whole of the Agreement of the parties hereto. There are no oral agreements not considered herein. No addition or variation of the terms of this contract shall be valid unless made in the form of a written amendment to this contract formally approved and executed by both parties.

28. Professional Liaison. CONTRACTOR shall maintain ongoing communication with the judiciary and clerks of all the courts covered by this Agreement. CONTRACTOR shall also maintain ongoing communication with the Los Angeles County Bar Association and other interested professional groups to assure that its operations meet the established professional standards for adequate legal representation.

29. Consideration of Hiring County Employees Targeted for Layoffs. Should CONTRACTOR require additional or replacement personnel after the effective date of this contract to perform the services set forth herein, CONTRACTOR shall give first consideration for such employment openings to permanent County employees who are targeted for layoff after the effective date of this contract.

IN WITNESS WHEREOF THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES has caused this contract to be subscribed by its Chairman and the seal of said Board to be hereto affixed and attested by the Executive Officer-Clerk thereof, and has caused this contract to be subscribed in its behalf by its authorized officer, on the day, month, and year indicated.

COUNTY OF LOS ANGELES

DATE: AUG 20 1996

BY Mike Antonio
Chairman, Board of Supervisors

ATTEST:

JOANNE STURGES
Executive Officer-Clerk
Board of Supervisors



By Janette M Bennett
Date: 8-7-96

CONTRACTOR:

By

Approved as to form:
DE WITT W. CLINTON
County Counsel

By F. R. Bennett
FREDERICK R. BENNETT
Assistant County Counsel

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

10

AUG 20 '96

Joanne Sturges
JOANNE STURGES
EXECUTIVE OFFICER

[REDACTED]
Contract Amendment and Extension – Conflict Administrator Services
at [REDACTED] Juvenile Court
Contract #70279 – SYN #10 of 08/20/96
November 1, 2013 – through October 31, 2015

Pursuant to the provisions of Paragraph 8 (Contract Extensions) and Paragraph 23 (Contract Modifications), and as approved by the Board of Supervisors, the current contract between the County of Los Angeles (COUNTY) and [REDACTED] (CONTRACTOR) for Juvenile Delinquency Defense Services is hereby amended to read:

3. Compensation.

3a. Contract Amount: Subject to the proportional payment provisions of Paragraph 13, and the penalty provisions of Paragraph 5, CONTRACTOR shall be paid \$ 333 for each case they are assigned to provide the legal representation services as described in Paragraph 1. Contractor shall receive the quarterly payment within approximately thirty days of submission of each billing that meets the requirements of Paragraph 4. CONTRACTOR shall be entitled to a two percent rate increase to \$340 effective October 1, 2014, and another two percent to \$347 increase effective April 1, 2015.

7. Contract Term. CONTRACTOR, its members, and COUNTY'S Contract Manager mutually agree to amend and extend said contract through the 31st day of October 2015, on the same terms set forth in the original contract, previous amendment or unless otherwise amended by this document. Stated contract provisions shall become effective upon execution of this document by all parties.

11. Termination. Only during the term of this extension, the County will not terminate the contract for convenience before October 31, 2014. However, the County shall have the right to terminate the contract for convenience in the second year of this extension, anytime between November 1, 2014 through October 31, 2015, with thirty (30) days advance written notice to CONTRACTOR.

13. Proportional Payments Upon Termination. In the event that this contract terminates for any reason in less than one year from the date of Board approval and execution by the parties, or from the date of most recent extension thereof, then the payment amount shall be \$ 333 per case (or such increased rate as authorized in Paragraph 3(a)) for the number of cases handled by CONTRACTOR during the period between the latest paid invoice and the contract termination date.

The undersigned mutually agree to this amendment and extension.

Date



Date:

Handwritten signature of the County's Contract Manager.

County's Contract Manager

Approved as to Form:
County Council

Date:

Handwritten signature of the Senior Deputy County Counsel.
Senior Deputy County CounselHandwritten signature of the Executive Officer, Board of Supervisors.
Executive Officer, Board of Supervisors

Date:

Handwritten signature of the Auditor-Controller.
Auditor-Controller

Appendix D:
Panel Counsel IAC Case

(Faint, illegible handwritten text)

SUPERIOR COURT OF THE STATE OF CALIFORNIA FILED
Superior Court of California
County of Los Angeles
FOR THE COUNTY OF LOS ANGELES

September 25, 2013

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY *Sherri R. Carter* Deputy
Sheryl Ritchey Humber

In re

) NO. BA401965

)

) ORDER GRANTING

) WRIT OF HABEAS CORPUS

)

)

On Habeas Corpus

)

)

ANTONIO H [REDACTED]

GOOD CAUSE APPEARING THEREFOR,

IT IS HEREBY ORDERED that the juvenile court vacate its finding of unfitness for juvenile court and conduct a new and different fitness hearing. The Alternate Public Defender's Office is appointed to handle the new hearing.

SO ORDERED this *25* day of *September*, 2013.



[Signature]

JUDGE OF THE SUPERIOR COURT

WILLIAM C. RYAN

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION _____

IN THE MATTER OF

ANTONIO H [REDACTED],

On Habeas Corpus.

) No. B- _____
)
) LASC No. BA401965
)
)
)
)
)
)
)

PETITION FOR WRIT OF HABEAS CORPUS
(Exhibits Filed Separately)

JANICE Y. FUKAI,
ALTERNATE PUBLIC DEFENDER
OF LOS ANGELES COUNTY
Felicia Kahn Grant (State Bar No. 143798)
Jeffrey E. Cohen (State Bar No. 240537)
Deputy Alternate Public Defenders

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Attorneys for Petitioner, Antonio H [REDACTED]

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5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION _____

IN THE MATTER OF)	No. B-_____
)	
ANTONIO H [REDACTED],)	LASC No. BA401965
)	
On Habeas Corpus.)	
)	
)	
)	
)	
)	

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES
OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND
APPELLATE DISTRICT:

INTRODUCTION¹

Petitioner Antonio H [REDACTED] is a 15 year old minor with no prior juvenile or criminal record who is currently being prosecuted as an adult in Los Angeles Superior Court on two attempted murder charges, after a fitness hearing in juvenile court. Both the offenses charged and the fitness hearing occurred when petitioner was still 14 years old. If convicted of all the charges and enhancements alleged in the felony complaint,

¹All factual assertions in the "Introduction" will be described in greater detail in the body of this motion and will be substantiated by citations to exhibits attached hereto.

petitioner is facing multiple life sentences.

Despite the severity of these charges and the potential consequences if convicted, petitioners' attorney in juvenile court declined to litigate the Edsel P. hearing, or to present any testimony at the fitness hearing. Instead, the prosecution presented the court with a transcript of the adult co-arrestee's harmful and legally inadmissible preliminary hearing (without objection from petitioners' lawyer), the incident and follow-up reports, three field identification cards, and information regarding predicate acts. The defense offered only one document—the report prepared by Dr. Fairbanks finding petitioner fit. No records were obtained by counsel or given to Dr. Fairbanks and no witnesses were provided, despite the fact that compelling mitigating circumstances regarding the minor's recent life history, as well as the facts of this case, were easily discoverable simply by speaking with the family. Additionally, information obtained from the minor himself inculpated him only as an accessory after the fact, yet nothing was done to convey this to the court or to probation.

In addition to the documents provided by the prosecution and Dr. Fairbanks report, the juvenile court also reviewed the Probation Officer's Report. A review of that report shows that probation attempted to schedule a video conference with petitioner but when told that no videos were being scheduled due to building repairs, no follow-up was done and petitioner was never interviewed. The purpose of interviews between juveniles and

the Probation Department is in part to assemble all available information relevant to assist in the evaluation of the minor's fitness for treatment as a juvenile and should be based on the most complete knowledge of the defendant's background that is possible.

Additionally, the minor's description and explanation of the circumstances of the alleged offense may significantly affect decisions about transfer to adult proceedings. (*Ramona R. v. Superior Court* (1985) 37 Cal.3d 802.) Yet, petitioners' counsel provided nothing to probation—no documents or records and no witnesses, and counsel failed to ensure that the minor was available for an interview.²

Both counsel submitted on the documents presented and the probation report, without argument.

Counsel for petitioner provided the juvenile bench officer with nothing that the court could consider to overcome the apparent gravity of the offense, even though there existed substantial evidence that could have been used to argue that the minor's participation was not nearly as grave or serious as the charges would lead the court to believe. This is especially egregious since the fifth criterion (the gravity of the offense) is the *only* criterion under which the court found the minor unfit.

²While under some circumstances defense counsel may make a tactical decision to order probation not to interview the minor regarding the facts of the case, there are other circumstances where, regarding the circumstances and gravity of the offenses alleged, the juvenile may be the only witness who can present any mitigating circumstances. (See *Sheila O. v. Superior Court* (1981) 125 Cal.App.3d 812,815.) Counsel can always be present for these interviews. In any event, there can be no tactical reason for failing to provide probation with mitigating documents and statements from family members or other witnesses.

Counsel's representation fell below any objective standard of reasonableness under the prevailing professional norms. Additionally, petitioner suffered prejudice in that there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different. (*Strickland v. Washington* (1984) 466 US 668.)

Petitioner asserts that he is in custody, facing illegal prosecution as a certified juvenile in adult court because he was denied his right to effective assistance of counsel under the 6th Amendment to the United States Constitution and Art. I, Section 15 of the California Constitution and his Due Process right under the 5th and 14th Amendment of the United States Constitution and Article 1, section 7 of the California Constitution, when petitioners' attorney failed to effectively represent him at the fitness hearing.

Accordingly, petitioner, by and through his attorney, Janice Y. Fukai, Alternate Public Defender of Los Angeles County, respectfully petitions this court to issue its Writ of Habeas Corpus, to vacate the juvenile court's finding of fitness, and order that the matter be transferred back to the jurisdiction of juvenile court for further proceedings, and for such other and further relief this court may deem just and proper.

By this verified petition, the following facts and causes are set forth for issuance of the writ.

I

Petitioner, Antonio H [REDACTED], a 15-year-old minor, is currently in the custody of

the Los Angeles Sheriff's Department being held by the Los Angeles County Probation Department at Juvenile Hall in Los Angeles, California, under booking number [REDACTED].

II

Petitioner is currently illegally and unlawfully awaiting trial in adult criminal court, Los Angeles Superior Court case number BA401965. (Complaint and Information attached as "Exhibit A", Superior Court Minute Orders attached as "Exhibit B.") The illegality of petitioners' custodial restraint is set forth in the following paragraphs.

III

On April 26, 2012, at Eastlake Juvenile Court, the People filed a "Petition Under Section 602 of the Welfare and Institutions Code" Case Number FJ [REDACTED], alleging that minor Antonio H [REDACTED] committed two counts of Penal Code section 664/187 on April 24, 2012. In addition, it was further alleged that the offenses were for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct by gang members, pursuant to Penal Code section 186.22(b)(1)(C), and that the minor personally used a firearm, discharged a firearm, and caused great bodily injury, pursuant to Penal Code sections 12022.53(b), 12022.53(C) and 12022.53(d.) On the same date, April 26, 2012, the People filed a Motion to Find Minor Unfit Under Welfare and Institutions Code sections 707(b) and (c.)

(Juvenile Court Register of Action for Case Number FJ50288 attached as "Exhibit C," Juvenile Petition attached as "Exhibit D," and Notice of Motion to Find Minor Unfit attached as "Exhibit E.") Petitioner H [REDACTED] was 14 at the time of the alleged offense.

IV

On April 26, 2012, David N. Villa, was appointed to represent petitioner H [REDACTED] in Juvenile Court.

V

On June 2, 2012, pursuant to Court Order dated May 15, 2012, and at the request of David N. Villa, minors' attorney, Ronald R. Fairbanks, PhD. examined petitioner H [REDACTED] at Eastlake Juvenile Hall. On the same date, Dr. Fairbanks interviewed a member of the Eastlake staff who confirmed that the minor was "doing good." In conjunction with this evaluation, Dr. Fairbanks reviewed the following information described by him as follows: "15 pages of medical records for [REDACTED] clearly indicating that he had been shot five times. He also alleged that the minor had a weapon, but indicates that he was shot by the minor's companion and not by the minor. 10 pages of Probation Officer's report dated 5-15-12 from two Probation Officers, Jerry Powers and June Small, both of which (sic) were indicated by the minor during the interview that he did not know them, never met them or ever talked to them... They recommend him as

unfit.” (Dr. Fairbanks Report, attached as “Exhibit F.”) No documents were presented for review to Dr. Fairbanks and no witnesses were interviewed, other than the Eastlake staff member and the juvenile himself.

After interviewing the minor and conducting several psychological tests, the doctor described the minor as “a very pleasant young man, being very transparent.” He found the minor to be somewhat naive, with good communication skills and above average intelligence. He noted a substance abuse problem and recommended counseling to address this issue. The minor told Fairbanks that at the time of the offense he was upset because two of his friends had passed away. He described himself as depressed all the time. He also noted that there were problems at home with family arguments and money issues. Additionally, he admitted that at the time of the incident he had been abusing drugs and alcohol. He admitted to having a fight at school and cutting classes, resulting in him being transferred to another school. Regarding his history, the minor told Dr. Fairbanks that he is the youngest of four siblings. His father was a drug addict and left the family when he was approximately two years old. His mother raised them on her own from then on, working as a house cleaner and getting welfare.

As to fitness, Dr. Fairbanks found the minor to be fit on all five criteria. On the fifth criterion, the doctor noted that while it was alleged that the minor had a weapon, none was found and it is “clear from the statements of the alleged victim that the

companion was the shooter.”

VI

Minors’ case was set for Edsel P. and Fitness Hearing on August 28, 2012, before Judge Pro-Tempore Benjamin Campos, in Department 202 of the Eastlake Juvenile Court. (Transcript of Fitness Hearing attached as “Exhibit G.”) Initially, the court noted that counsel provided a number of documents that were reviewed by the court. The documents from the prosecution included: A transcript of the June 27, 2012 preliminary hearing transcript of the adult co-arrestee, the police report and follow-up reports, and copies of documents showing “predicate acts” for the gang enhancement. (Transcript of the June 27, 2012 Preliminary Hearing attached as “Exhibit H,” Police Reports (Incident Reports and Follow-Up Reports) attached as “Exhibit I.”) The one document presented by the defense was the report prepared by Dr. Fairbanks dated June 15, 2012. In addition, the court reviewed the May 15, 2012 Fitness Report prepared the Los Angeles County Probation Department. (Probation Department Report attached as “Exhibit J.”) The probation report found the minor unfit on three criteria– the degree of criminal sophistication, his prior delinquent history, and the circumstances and gravity of the offense. The minor was not interviewed by probation due to “building repairs.”³

Both counsel submitted on those documents, as to both the Edsel P. issues and the

³The Juvenile Court Register of Actions contains a computerized notation that Probation is ordered not to speak to the minor about the facts of the case.

fitness issues. (Exhibit G, page 2, lines 9-15.) Initially the court noted that the evidence was more than sufficient to find that a crime was committed and that the minor committed the crime. The court then addressed fitness. At the outset the court stated that, "Moving to the question of fitness, it is a troubling case, and in reviewing the probation report and the police reports, there is a degree of conflict." The court went on to disagree with probation as to the degree of sophistication and the minor's delinquent history, finding him fit on those criteria. However, the court found the minor unfit on the circumstances and gravity of the offense, stating, "The real crux of this matter is criteria five, the circumstances and gravity of the alleged offense. And in reviewing all of the material, including Dr. Fairbanks' report, the court can't think of a more serious or grave or heinous kind of offense, and all of that belies the minor's stature and his passive demeanor in court, but this was a vicious attack like hunting humans. And I--it just-- quite frankly, to the court, it's mind boggling that-- the kind of conduct that's alleged, chasing a person down. There were, according to the reports and the transcript, at least four or five other people in the alleyway, and one, maybe two people opened fire indiscriminately. Just horrific events. Based on the court's analysis, the court would find the minor unfit due to the seriousness, the circumstances and the gravity of the alleged offense." (Exhibit G, page 4, lines 13-28.) (Minute Order finding petitioner unfit for juvenile court attached as "Exhibit K.")

VII

On August 29, 2012, a felony complaint was filed against petitioner, Los Angeles Superior Court case number BA401965. ("Exhibit A.") Petitioner is charged in that complaint, with two premeditated attempted murders pursuant to Penal Code section 664/187 and gang and weapons enhancements as to both counts under Penal Code sections 186.22(b)(1)(C), and 12022.53(b), 12022.53(C) and 12022.53(d.)

On August 30, 2012, the Office of the Alternate Public Defender was appointed ("Exhibit B.") The matter is currently set for pretrial hearing on April 30, 2013 in Department 115 of the Los Angeles County Superior Court, in the Clara Shortridge Foltz Criminal Justice Center.

VIII

Upon review of the file, counsel for petitioner obtained the following documents:

- Typed letter from Samuel Kaplan, Berendo Middle School Mathematics Department Chair (Attached as "Exhibit L.")
- Handwritten note from Miss Carpenter, a former teacher (Attached as "Exhibit M.")
- Handwritten note from Dr. F. De La Pena (Attached as "Exhibit N.")
- Declaration of [REDACTED] petitioner's mother (Attached as "Exhibit O.")
- Current Positive Performance Report from Los Angeles County Office of Education, Division of Juvenile Court and Community Schools (Attached as "Exhibit P.")

The letters from the teachers describe positive qualities exhibited by Antonio both as a student and a person. Mr. Kaplan states that he was "an amazing student" and "sweet, intelligent and thoughtful" young man. He stated that he was concerned that Antonio had

no connection with the adults in his life and no male role model. Miss Carpenter simply stated (in a letter to Antonio) that his “awesome personality and intelligence will really get you to positive places in life if you make good decisions– which I know you are capable of doing.” Dr. De La Pena is Antonio’s dentist and has known him for seven years. He stated that Antonio is a mild-mannered child who pays attention to what he says and is generally one of his patients who listens to authority.

The declaration from petitioner’s mother, Antonia C [REDACTED], gave insight into petitioner’s life. She stated that from Kindergarten through 5th grade, Antonio thrived, getting superb grades. Antonio’s teachers told her that he was “gifted” and he consistently received “advanced” scores on his annual assessments in school. He was almost never absent and performed above grade level, according to his school administrators. Comments on his report cards said that he was a “deep thinker,” “an exceptionally bright child,” and a “natural leader.”

In 2010 the family started having problems with the manager of their apartment and Antonio’s older brother started to have problems as well. Ms Casas made the decision to move to Westmoreland St. Before that, they stayed for about two months with her sister in Simi Valley. After the move, Ms. Casas could tell that Antonio resented his older brother for the move. She started noticing that petitioner was hanging out with a different group of people, older kids whom she didn’t have a good feeling about. These kids made

Antonio feel “cool” because they were older, but they did not have any respect for their parents. They didn’t seem to listen to authority and they acted disrespectfully. Ms. Casas felt that Antonio liked being with these older kids because it made him feel better about the fact that he is so small.

The family moved again in August of 2011 to 41st Street and Broadway. During this time, the ex-boyfriend of Antonio’s sister, who was like a member of their family, was shot and killed. This was especially hard on Antonio, since he had been one of Antonio’s only male role-models. As soon as they left Westmoreland St., Ms. Casas could tell that Antonio was depressed and that he missed his old friends. His behavior started to change, and he was getting into fights. His grades began to drop. He began ditching school: His behavior reached a point where the school’s guidance counselor required Ms. Casas to attend weekly meetings with the counselor. Ms. Casas also noticed that Antonio was smoking marijuana.

Antonio told Ms. Casas that he was being threatened by kids in the new neighborhood. He was accused of being in a gang. He started coming home from school scared. Once, when he was walking home from the store with his older sister, another kid approached, picking a fight and making fun of Antonio. The taunting and teasing got so bad that eventually, Antonio’s older brother, Ernesto, started picking Antonio up from school and walking home with him, or waiting for him on their front steps.

In the summer of 2011, Antonio was in a fight in school and was slammed onto the ground, landing on his knee. He couldn't walk for a week and a half and had to stay home from school for a couple of weeks. A few months later, around the beginning of 2012, he was jumped while walking by himself with his bike. Three or four guys took his bike and kicked him to the ground, chipping his tooth and causing him to get an emergency root canal.

At some point, Antonio became friends with "Proz," a 21-year-old. Ms. Casas didn't not like them hanging out together, since Proz was 21 and Antonio was only 14. Proz is Christian Moraga, the co-arrestee in this case.

IX

Counsel for petitioner, Jeffrey S. Cohen prepared a declaration regarding the defense in this case. (Jeffrey S. Cohen declaration attached as "Exhibit Q.") In that declaration he states as follows:

The defense in this case will likely involve the following facts: After his court appearance on April 23, 2012, petitioner, Antonio, left his mom and went to his friend Proz's house. Proz was 21 years old at the time. Antonio was 14. Proz bought some beer. Another friend of Proz's "Bruno" arrived. The older boys bought more beer and they drank all afternoon until Antonio was "wasted." Bruno suggested they go to McDonald's to get something to eat. Antonio thought that Proz and Bruno were acting "suspicious"

but he just figured they were going to do some tagging since he'd been with them when they had done that before. They left Proz's house and encountered a group in an alley. The group consisted of at least ten people and Antonio recognized at least one of them as someone Proz and Bruno didn't like. As soon as they got to the alley, the shooting began. Antonio took the gun afterward, so that he could give his sweatshirt to the shooter and change shoes with him. He then gave back the gun. Until the shooting started, he had no idea that it was going to occur.

X

Maureen T. Pacheco is a professor and clinical director at the Center for Juvenile Law and Policy at Loyola Law School, and is an expert in the area of standards of competence in the representation of indigent juveniles in delinquency cases. (Declaration of Maureen T. Pacheco, attached as "Exhibit R") She has practiced in the areas of juvenile and criminal law for over 25 years.

From 1987– 2010 she worked as a Deputy Public Defender for the Office of the Los Angeles County Public Defender. For eight of those years she served as one of two juvenile appellate and training attorneys for the Juvenile Division. In that position, one of her primary responsibilities was to assist the defense attorneys with questions about fitness hearings, and to review every finding of unfitness to determine if appellate relief should be sought. During her last two years in this office she served as special assistant to

the Chief Public Defender as the Juvenile Legislative and Policy Advisor.

In 2010 she joined Loyola Law School's Center for Juvenile Law and Policy. As assistant Director, she teaches juvenile court trial skills and juvenile law and policy. She is also responsible for legislative and policy advocacy for the center. Her current position is Director of a post-conviction project, the Juvenile Innocence and Fair Sentencing Clinic. As part of this work, she evaluates cases for claims of ineffective assistance of counsel and is familiar with the legal standards applicable to such a claim.

She has been a Board member of the Pacific Juvenile Defender Center, a regional division of the National Juvenile Defender Center, for the last 10 years. In 2011, she helped organize and teach a special National Institute of Trial Advocacy delinquency course for California juvenile court practitioners, the first of its kind in the State. She is regularly invited to speak on juvenile law issues in California and nationally. For the last three years she has held the position as Chair of the National Juvenile Defender center's Juvenile Justice Committee. On behalf of the California Public Defenders Association, and for the Center for Juvenile Law and Policy, she has testified as an expert on juvenile delinquency on numerous occasions before various committees of the California Legislature. In 2011, she was chosen along with approximately 20 people from around the country to attend the National Juvenile Defender Center's working group on its forthcoming Guidelines. As background for the Guidelines, she reviewed numerous sets

of juvenile practice standards from around the country, and she is familiar with the California State Bar Standards on Indigent Defense, the Guidelines of the National Council of Juvenile and Family Court Judges, and the "Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense delivery Systems," of the NJDC/NLADA. Finally, in 2012 she co-organized and moderated a panel for the Center's annual Symposium on Ineffective Assistance of Counsel. The day long symposium included experts from around the country on the topic of Effective Assistance of Counsel in juvenile court.

In December 2012, Ms. Pacheco agreed to review petitioner's claim that his trial counsel failed to adequately, effectively and competently represent him in the course of his hearing to determine fitness to be tried in juvenile court. In connection with this, she reviewed everything presented to the juvenile court, as well as the exhibits attached to this petition.

At the outset, she notes that there is no more crucial proceeding in juvenile court than a fitness hearing. The stakes are the absolute highest. In this case, petitioner would face, at most, a commitment to the Department of Juvenile Justice until the age of 25. He could be paroled far earlier based on behavior, and would have access to many services. Given his age (14 years old,) lack of any prior juvenile court "convictions," and given a thorough investigation and development of a disposition plan, there is a likelihood that he

might have received a long term camp commitment. In contrast, a 14-year old in adult court, if convicted as charged would receive multiple life sentences. Because these stakes are so high, Ms. Pacheco states that a reasonable competent attorney must undertake a thorough and far reaching investigation into the facts and circumstances of the youth's life, as well as the circumstances of the crime.

Specifically, she states, "The investigative process includes researching every aspect of the client's background and history. School and health records must be obtained and reviewed, and interviews with family, friends, teachers, and health care providers must be conducted. Once trial counsel has obtained the requisite records, mental health experts are retained to review the records, conduct a comprehensive mental health evaluation of the defendant, and testify, if necessary. In cases such as this one, where there are also gang allegations, a crucial part of the defense would be exploring the youth's level of gang involvement, and retaining a gang expert to explain the forces at play which led to the youth's affiliation. Finally because the gravity of the offense is the focal point of the contention, where the case involves a very young youth (and 14 is the youngest), retention of and consultation with an expert in adolescent brain development, who can testify why the youth's participation was less than a deliberate, reasoned, planned action, and therefore makes his actions less serious, is critical."

In reviewing this case, Ms. Pacheco noted that by failing to litigate the Edsel P.

hearing, the court gave up an opportunity to explore any actions that might demonstrate a lesser degree of culpability. In this case, the lawyer instead allowed the adult co-arrestee's preliminary hearing, which contained damaging testimony, to be admitted against the minor. The minor was not represented at that hearing. The lawyer for the adult actually had a disincentive to minimize the minor's involvement. Because petitioner's counsel did not have an opportunity to challenge the evidence presented at the preliminary hearing, the transcript would not have been admissible in petitioner's Edsel P. hearing or fitness hearing. She further noted that there could be no possible strategic or tactical explanation for submitting or stipulating to the admission of otherwise inadmissible evidence that is damaging.

While the submission on the preliminary hearing transcript was clearly unreasonable, Ms. Pacheco stated that it is further exacerbated by trial counsel's failure to ensure that the probation report and the expert's reports were both accurate (to prevent damaging information) and complete, in that they including all mitigating evidence.

Ms. Pacheco pointed out that the probation report in this case, which is typically the only basis of the prosecution's case, and therefore a crucial part of the fitness hearing— was prepared for a hearing to take place on May 15, 2012. Antonio was arrested on April 23, 2012 and the petition was filed on April 26th. This means that there were only two weeks between the minor's first appearance in court and the preparation of a report

which would form the basis of the prosecution's presentation. She stated that reasonably competent counsel would have asked for a continuance of the probation evaluation so that there was time to investigate, have experts appointed and consult with any experts that could provide mitigating evidence to the probation officer who would be preparing the report. She stated that counsel's performance fell below reasonable competence standards when he failed to do so. Counsel had a duty to share mitigating information with the probation officer, to ask for a new report based on this information, and finally, to challenge the unfounded and incomplete report.

Additionally, Ms. Pacheco asserts that the use of expert witnesses is an almost absolute necessity in a fitness hearing. Here, although trial counsel engaged the use of a qualified witness, he failed to ensure that his witness had the necessary information to provide the compelling story that would convince the court of the juvenile's amenability. Counsel did not ensure that this expert spoke with the parents or review records. Even a simple interview with the mother would have provided mitigating evidence to bolster his opinion. While the report was favorable, it was incumbent upon counsel to provide the expert with the mitigating information that would have been compelling enough to convince the court to find Antonio fit.

Ultimately, however, Ms. Pacheco finds that the crux of the problem is the "inexplicable" decision on counsel's part to simply submit on the documents at hand. She

states that “in a case that one can clearly win— a very small and very young man, not gang-entrenched, in the presence and possibly under the direction of a much older man, with a history of being jumped and attacked by others in his neighborhood, with a loving and supportive family who has encountered the difficulties too common in particular Los Angeles neighborhoods with severe economic difficulties, and with the shooting and death of his only male role model, where the evidence from medical and police records indicate that he was present but leave completely ambiguous whether or not he fired a weapon, I can simply not find *any* legitimate strategical or tactical reason to waive a hearing. There is absolutely no downside, and a very significant upside, in litigating this case fully...In my opinion, this case could likely have been won simply on the basis of a proper Edsel P., a proper cross-examination of the probation officer, and presentation of Dr. Fairbanks. But a reasonably competent attorney would not have stopped there. It is my opinion that the failure to call any witnesses also fell below the standards required.”

In sum, it is her opinion that counsel for petitioner in the juvenile court performed below the standard of practice of a reasonably competent attorney acting as a diligent, conscientious advocate, and that he rendered ineffective assistance of counsel to petitioner to the extent that he (1) failed to litigate the Edsel P. hearing, which would have given the court an understanding of the minimal involvement of petitioner, and instead submitted, in part, on damaging evidence contained in the adult co-arrestee’s preliminary

hearing, which should not have been admissible; (2) failed to conduct an adequate investigation, including failing to obtain records, which led to a failure to provide any mitigating information to either his “expert” or the probation officer, and then inexplicably failed to challenge the unfounded conclusions in the probation report; (3) failed to consult with and have appointed additional experts, including (a) an expert on adolescent development appointed to testify regarding the level of immaturity, lack of comprehension of consequences, and susceptibility to peer influences of a 14-year old, (b) an expert witness on gang involvement, and (c) an expert to testify as to the programs available in the juvenile court system, including the 11 years available to the court if the youth was placed in DJJ.

Furthermore, Ms. Pacheco is of the opinion that, based on her review of the case, and her experience in the field of juvenile defense, had an investigation been conducted, evidence challenged, and evidence presented, there is a reasonable probability that the matter would not have resulted in a finding of unfitness for juvenile court.

XI

Petitioner is in illegal custody because he was denied a fundamental Constitutional right to Effective Assistance of Counsel under the 6th Amendment to the United States Constitution and Art. I, Section 15, of the California constitution and to Due Process under the 5th and 14th Amendment of the United States Constitution, when his juvenile

attorney's representation fell below an objective standard of reasonableness under prevailing professional norms. Furthermore, there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. Petitioner's contentions in this regard are more fully set forth in the accompanying points and authorities which are incorporated herein by reference.

XII

Petitioner is in custody solely on this matter.

XIII

Petitioner has no plain, speedy or adequate remedy at law. An ineffective assistance of counsel claim is properly raised in a habeas corpus proceeding. (*People v. Menoza Tello* (1997) 15 Cal.4th 264, 266-267.)

XIV

On January 7, 2013, a habeas corpus writ on this matter was filed in Department 100 of the Los Angeles Superior Court. (Superior Court Habeas Corpus, attached as "Exhibit S.") It was transferred by Department 100 to the Juvenile Court, where the Hon. Christina L. Hill in Department 203 summarily denied it on March 6, 2013. (Minute Order Denying Writ attached as "Exhibit T.") This writ seeks de novo review.

XV

The following exhibits reflecting the above proceedings are attached hereto and incorporated herein by reference:

Exhibit "A": Complaint BA401965 and Information BA401965

Exhibit "B": Superior Court Minute Orders BA401965

Exhibit "C": Juvenile Court Register of Action FJ50288

Exhibit "D": Juvenile Petition FJ50288

Exhibit "E": Notice of Motion to Find Minor Unfit

Exhibit "F": Dr. Fairbanks Report

Exhibit "G": Transcript of Fitness Hearing

Exhibit "H": Transcript of June 27, 2012 Preliminary Hearing, Christian Moraga

Exhibit "I": Police Reports (Incident and Follow-Up Reports)

Exhibit "J": Probation Report

Exhibit "K": Minute Order Finding Minor Unfit

Exhibit "L": Letter from Samuel Kaplan

Exhibit "M": Letter from Miss Carpenter

Exhibit "N": Letter from Dr. F. De La Pena

Exhibit "O": Declaration of [REDACTED]

Exhibit "P": Positive Performance Report LACOE

Exhibit "Q": Declaration of Jeffrey S. Cohen

Exhibit "R": Declaration of Maureen T. Pacheco

Exhibit "S": Superior Court Habeas Corpus

Exhibit "T": Superior Court Minute Order Denying Habeas Corpus Writ

WHEREFORE, petitioner prays that this court issue its writ of habeas corpus, and vacate the order finding Petitioner unfit and certifying Petitioner to be tried in adult court and return the jurisdiction in this matter back to Juvenile court. Or alternately, petitioner prays that this court enter an order for such other and further relief this court may deem just and proper.

Respectfully submitted,

JANICE Y. FUKAI
Alternate Public Defender
Los Angeles County

By: _____
Felicia Kahn Grant
Deputy Alternate Public Defender

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, declare under penalty of perjury as follows:

I am an attorney at law licensed to practice in all the courts of California, and I am employed as a Deputy Alternate Public Defender for the County of Los Angeles.

In that capacity I am an attorney of record for petitioner in the foregoing petition for writ of mandate, and I make this verification on his behalf for the reason that the facts alleged herein are more within my knowledge than his.

I have read the foregoing petition and the exhibits attached thereto and I know the contents thereof to be true based upon my representation of petitioner.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____th of April, 2013, at Los Angeles, California.

Felicia Kahn Grant,
Deputy Alternate Public Defender

POINTS AND AUTHORITIES

I. PETITIONER'S JUVENILE COURT LAWYER FAILED TO ACT IN A MANNER TO BE EXPECTED OF A REASONABLY COMPETENT LAWYER ACTING AS A DILIGENT ADVOCATE AND, AS A RESULT OF HIS LAWYER'S ACTS AND OMISSIONS, PETITIONER WAS DENIED A POTENTIALLY MERITORIOUS DEFENSE TO TRANSFER TO ADULT COURT.

In *People v. Ledesma* (1987) 43 Cal.3d 171, 215, the California Supreme Court explained that “[u]nder both the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution, a criminal defendant has the right to the assistance of counsel. The ultimate purpose of this right is to protect the defendant’s fundamental right to a trial that is both fair in its conduct and reliable in its result. Construed in light of its purpose, the right entitles the defendant not to some bare assistance but rather to effective assistance. Specifically, it entitles him to ‘the reasonably competent assistance of an attorney acting as his diligent conscientious advocate.’ (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 726.)

In order to demonstrate ineffective assistance of counsel, a defendant must first show counsel’s performance was ‘deficient’ because his ‘representations fell below an objective standard of reasonableness...under prevailing professional norms.’ (*In re Harris* (1993) 5 Cal.4th 813, 832, citing to, *Strickland v. Washington* (1984) 466 U.S. 668, 687-688.) Second, he must also show prejudice flowing from counsel’s performance or lack thereof. (Prejudice is shown when there is a reasonable probability that but for counsel’s unprofessional errors the result of the proceeding would have been different. A

reasonable probability is a probability sufficient to undermine confidence in the outcome. (*Strickland v. Washington, supra*, 466 U.S. 668, 694.) The United States Supreme Court recently explained that this second prong of the Strickland test is not solely one of outcome determination. Instead, the question is “whether counsel’s deficient performance renders the result of the trial unreliable or the proceedings fundamentally unfair.” (*Lockhart v. Fretwell* (1993) 506 U.S. 364.)

As described above in this petition, the minor was 14 years old at the time of this incident and at the time of the fitness hearing— the absolute youngest age in California that a child can be to face transfer to adult court. As noted by courts, “The result of a fitness hearing is not a final adjudication of guilt; but the certification of a juvenile offender to an adult court has been accurately characterized as “the worst punishment the juvenile system is empowered to inflict.” (*Ramona R. v. Superior Court* (1985) 37 Cal.3d 802, 810, internal citations omitted.) Petitioner had no previous record. Had he stayed in juvenile court he could not be confined past his 25th birthday. Now, in adult criminal court, he is facing multiple life sentences.

And yet, almost nothing was done on his behalf at the very hearing that would determine if he could stay in juvenile court. And there was much that could have been done. There was a mitigating story to tell about this minor, about how he had gotten to the point where he was failing in school and hanging out with adults who he had no business being with. This is a child who had potential— who admittedly lost his way in middle

school but who never had the benefit of juvenile court intervention.

No records of any kind were ordered by his lawyer, or if they were, they were not presented to the court— no medical records, no school records, nothing. If interviews were conducted, they were not presented to the court at the hearing. No experts, other than Dr. Fairbanks, were appointed. And Dr. Fairbanks had to rely on what the minor, a 14-year old, self-reported. He was given no documents by defense counsel and no witnesses were made available for interviews. No experts on adolescent development were appointed, even given this minor's young age. No gang experts were appointed or consulted. No experts on the services available to rehabilitate this juvenile were requested. No information was conveyed to the probation department, even though, as explained by Maureen Pacheco, these reports are generally what the prosecution relies on in this hearing. The probation report wasn't objected to, even though it contained legally and factually inaccurate statements and findings.

Counsel for petitioner decided to simply submit on documents presented by the prosecution and the probation report and Dr. Fairbanks's report. This decision was described as inexplicable and completely lacking in any strategic or tactical strategy by our expert, Ms. Pacheco. One of the documents submitted by the prosecution was the preliminary hearing of the adult co-arrestee. This was from a proceeding that the minor was not represented at, a proceeding where the attorney for the co-arrestee had no incentive to minimize the minor's involvement— in fact, quite the opposite. This

preliminary hearing transcript was damaging and should have been legally inadmissible. Yet, counsel for the minor did not object to its admission.

Nothing was done on the part of minors' counsel to present documents or testimony or argument that the minor's participation was less grave than the charges or incident report would lead the court to believe. And it's very clear from the transcript of the fitness hearing that it was only because the facts were so bad that the court found the minor unfit. It is clear from the transcript that had the court had information that the minor's participation was less than described, either because the minor did not have a gun, or did not know what was going to happen until it did, or even that the co-arrestee was 21 years old and coerced him, that the court would have given weight to those facts. But nothing was presented to mitigate the facts of the offense. Counsel for petitioner didn't even bother to argue based on the records that the court did have. It is hard to imagine anything less being done. As noted by Ms. Pacheco. There was no downside and a very significant upside to litigate this case fully.

Counsel's performance in juvenile court was below any objective standard of reasonableness under the prevailing professional norms. Furthermore petitioner was prejudiced because had counsel actually litigated the Edsel P. hearing and the fitness hearing there is a reasonable probability that the minor would have been found fit for juvenile court. At the very minimum, his performance undermines confidence in the outcome and renders the results of the hearing unreliable, as well as making the

proceeding fundamentally unfair.

For all these reasons, petitioner respectfully requests that this court grant its writ of habeas corpus, reverse the juvenile court's finding of unfitness and remand for a new fitness hearing.

Respectfully submitted,
JANICE Y. FUKAI
ALTERNATE PUBLIC DEFENDER

By: _____
Felicia Kahn Grant
Deputy Alternate Public Defender

Appendix E:
Office of the Public Defender, Juvenile Division
Training Materials and list of webinars

Summary of Recent Juvenile Division Training Programs

Recent Trainings:

All Day In-House Seminar (11/29/2012) at Inglewood Courthouse: Trial Advocacy Training: Topics included: Effective Advocacy, Case Preparation, Direct Examination, Expert Witnesses, Cross Examination and closing argument.

All Day In-House Seminar (12/3/2013) at Loyola Law School: Topics included: Competency, Update on DJJ, STAR Court, and Juvenile Mental Health Court; Competency Attainment with Creative Support; Extended Foster Care (AB12/212); Winning Strategies for Contested Dispositions

Annual Delinquency Law Seminars:

Most recent Annual Seminar: March 31, 2015

Webinars offered

March 2015: Ethics

November 2014: Psychotropic Medications

September 2014: Forensic examinations

August 2014: In-Home Counseling Services

July 2014: Internet and social media

June 2014: Collateral consequences

May 2014: Investigators

October 2013: Forensic Audio, video, cellphone and GPS devices

Follow up trainings for new attorneys:

March 2015

August 2014

Branch trainings:

February 2015: Compton – DJJ training
February 2015: Compton – Competency training
January 2015: Sylmar – 317(e) Panel information
December 2014: Sylmar – Methamphetamine
November 2014: Sylmar - Secondary Trauma
November 2014: Sylmar – ADHD
October 2014: Sylmar – Knives 101
October 2014: Sylmar – Crossover cases
September 2014: Sylmar – Attachment disorders
August 2014: Sylmar – Phoenix House Programs
June - August 2014: Trainings at all 9 branches on 9 different days – Confidentiality and privilege issues regarding mental health information
June 2014: Sylmar – JSORRAT – II

Tours of Juvenile facilities organized for staff

April 2015: Boys Republic
April 2015: Ventura Youth Correctional Facility
October 2014: Rosemary's Cottage
September 2014: Dorothy Kirby
September 2014: Camp Rocky
June 2014: Hathaways- Sycamore
May 2014: Vista Del Mar
May 2014: David and Margaret Girls Group Home

April 2014: Ranch San Antonio
March 2014: Phoenix House
February 2014: Camp Scott and Scudder
February 2014: Optimist
January 2014: San Gabriel Children's Center
December 2013: Penny Lane
June 2013: Pacific Lodge

Trainings/monthly meetings for social workers:

February 2015: Writing effective reports for our clients
January 2015: A program presentation for AB109 clients
September 2014: Restorative Justice
August 2014: Speaker from a program at Hollygrove
July 2014: Vera Institute of Justice
June 2014: Updated psychological instruments
May 2014: JAI/TCIS training
February 2014: Field Safety
January 2014: Inside Out Writers and VIP Community Mental Health
November 2013: Hard to Place Youth and AB 12/212
October 2013: Effective Communication Training
October 2013: Common Street Drugs
September 2013: DSM V Training

Trainings/monthly meetings for resource attorneys:

March 2015: Topic: Regional Center Issues

February 2015: Topic: Educationally Related Mental Health Services.

June 2014: Topic: Filing Compliance Complaints

May 2014: Topic: Ins & Outs of IEPs

The Los Angeles County Public Defender's Office
33rd Annual Juvenile Delinquency Law Training Seminar

Tuesday, March 31, 2015

- 8:45 A.M. **Welcome**
Winston A. Peters, Assistant Public Defender
- 9:00 A.M. **2015 Delinquency Case Law & Legislative Update**
Michael Theberge, Appellate Attorney,
Los Angeles County Public Defender's Office
- 10:00 A.M. **BREAK**
- 10:15 A.M. **Unpacking the Culture of Bias:
Exploring the Impacts(s) on Youth of Color**
Dr. Monique W. Morris, Author of "*Black Stats: African Americans by the
Numbers in the Twenty-First Century*"
- 11:15 A.M. **IS THE JUVENILE PRISON OBSOLETE?**
Keynote Speaker: Nell Bernstein
Author of "*Burning Down the House: The End of Juvenile Prison*" and
"*All Alone in the World*." **Special Guest: James P. Anderson** of the Anti-
Recidivism Coalition
- 12:15 P.M. **LUNCH**
- 1:00 P.M. **Undocumented Youth: A Pathway to Citizenship**
Jesus Mosqueda, Equal Justice Works Emerson Fellow, Immigrants' Rights
Project at Public Counsel
- 1:45 P.M. **SB 9 & SB 260: Justice for Juveniles Serving Life or Its Equivalent**
Peter E. Chung & Katherine Bonaguidi, Attorneys,
Los Angeles County Public Defender's Office
- 2:15 P.M. **BREAK**
- 2:30 P.M. **Incorporating Adolescent Brain Development Research into Client
Advocacy**
Maureen Patti & Lisa Brackelmanns, Attorneys,
Los Angeles County Public Defender's Office
- 3:30 P.M. **Your Fitness: Throw Out the Cookie-Cutter**
Julia Know & Robert Krauss, Attorneys,
Los Angeles County Public Defender's Office
Alison Seeger, Psychiatric Social Worker,
Los Angeles County Public Defender's Office
- 4:30 P.M. **Adjournment**

**The Los Angeles County Public Defender's Office
32nd Annual Juvenile Delinquency Law Training Seminar**

Monday, March 31, 2014

- 8:45 A.M.** **Welcome**
Ronald L. Brown, Public Defender
- 9:00 A.M.** **Defending 288 Cases and Cross-Examining Child Witnesses**
Sue Clemens, Deputy Public Defender,
Office of the Public Defender, San Diego County
Kate Coyne, Highly Qualified Expert,
USMC Defense Services Organization
- 10:00 A.M.** **BREAK**
- 10:15 A.M.** **From Behind Bars to the State Bar:
A Discarded Youth's Story of Redemption**
Keynote Speaker: Frankie Guzman
Soros Justice Fellow, Attorney, National Center for Youth Law
- 11:15 A.M.** **Competency Remediation**
Kimberly Larson, Ph.D., J.D.,
Asst. Professor, Psychiatry Department, Law and Psychiatry,
University of Massachusetts Medical School
- 12:15 P.M.** **LUNCH**
- 1:00 P.M.** **Arrested Development: Adolescent Development and Juvenile Justice**
Elizabeth Cauffman, Ph.D.,
Professor & Chancellor's Fellow, Director, Center for Psychology & Law,
University of California, Irvine
- 2:00 P.M.** **BREAK**
- 2:15 P.M.** **2014 Juvenile Delinquency Case Law Updates**
Megan Gallow, Appellate Attorney,
Los Angeles County Public Defender's Office
- 3:15 P.M.** **It Could Happen to You: Ethics Hypos in Juvenile Practice**
Tina Katz, Paralegal, Appellate Division,
Los Angeles County Public Defender's Office
Albert Menaster, Head Deputy, Appellate Division,
Los Angeles County Public Defender's Office
- 4:15 P.M.** **Adjournment**

**The Los Angeles County Public Defender's Office
31th Annual Juvenile Delinquency Law Training Seminar**

*Cathedral of Our Lady of Angels
555 W. Temple St.
Los Angeles, CA 90012*

Monday, April 1, 2013

- 8:45 A.M.** **Welcome**
Ronald L. Brown, Public Defender
- 9:00 A.M.** **2013 Juvenile Delinquency Case Law Update**
Megan Gallow, Appellate Attorney,
Los Angeles County Public Defender's Office
- 10:00 A.M.** **BREAK**
- 10:15 A.M.** **Appellate Perspectives of Juvenile Practice**
Gary Mandinach, Appellate Attorney,
California Appellate Project Attorney, and
Albert J. Menaster, Appellate Head Deputy,
Los Angeles County Public Defender's Office
-
- 11:15 A.M.** **Disproportionate Minority Contact and Confinement**
Keynote Speaker: James Bell, Attorney,
W. Haywood Burns Institute
- 12:15 P.M.** **LUNCH**
- 1:00 P.M.** **Major Crimes and Minor Defenses**
Toral Malik and
William Hovsepyan, Deputies in Charge, Juvenile Division,
Los Angeles County Public Defender's Office
- 2:00 P.M.** **BREAK**
- 2:15 P.M.** **Human Trafficking**
Humberto Benitez, Deputy in Charge, Juvenile Division, and
Haidee Cuasim, MSW,
Los Angeles County Public Defender's Office
- 3:15 P.M.** **Secondary Trauma**
Venise Burwell, LCSW, Supervising Psychiatric Social Worker,
Los Angeles County Public Defender's Office
- 4:15 P.M.** **Adjournment**

30th Annual Juvenile Delinquency Law Training Seminar

Friday, March 30, 2012
Our Lady of Angels Cathedral
555 W. Temple Street, Los Angeles, CA 90012

Agenda

Registration and Reception

Welcome

Ronald L. Brown, Public Defender Los Angeles County

JDB v. North Carolina, Implications for Juvenile Law Practitioners
Marsha Levick, Deputy Director and Chief Counsel Juvenile Law Center, Philadelphia, PA

2012 Juvenile Delinquency Case Law Updates
Michael Theberge, Appellate Attorney
Los Angeles County Public Defender's Office

Break

A framework for Investigating Mental Health Issues
Jennifer Friedman, Forensic Consultant/Asst. Special
Circumstance Coordinator
Los Angeles County Public Defender's Office

Lunch

Convenient Scapegoats: The Dixmoor Five, The Englewood Four, and Juvenile Confessions
Keynote Speaker: Joshua Tepfer, Attorney and Assistant Professor Northwestern
University's Center on Wrongful Convictions of youth

Break

Using Expressive and Receptive Language Disorders In Your Case
Nancy Pina, Speech and Language Pathologist
Los Angeles County Office of Education

Jonathan Cruz, Juvenile Trial Attorney
Los Angeles County Public Defender's Office

Jennifer Walker, Psychiatric Social Worker
Los Angeles County Public Defender's Office

The Ethical Duty to Investigate Your Case
Albert J. Menaster, Head Deputy of the Appellate Branch

Los Angeles County Public Defender's Office Closing Remarks:
Winston Peters, Assistant Public Defender

Los Angeles County Public Defender's Office

Los Angeles County Public Defender's Office
Juvenile Services Division

29th Annual Juvenile Delinquency Law Training Seminar

Saturday, April 9, 2011
555 W. Temple St.
Los Angeles, CA 90012

- 8:30 **Welcome**
 Ronald L. Brown, Public Defender
- 8:35 **Juvenile Delinquency Case Law Updates**
 Michael Theberge, L.A. County Public Defender's Office
- 9:30 **Break**
- 9:40 **School Rules: What You Need to Know About
Litigating Cases Involving Schools**
 Rourke Stacy and Sonjia White, L.A. County Public Defender's Office
- 10:35 **Keynote Speaker**
 California Supreme Court Associate Justice Carlos R. Moreno
- 11:30 **Lunch**
- 12:00 **Identifying Autism Spectrum Disorder in Adolescence**
 Mandy Moradi, Psy.D, Licensed Clinical Psychologist Consulting with
 Lanterman Regional Center; Maureen Patti and Jeff Treloar, L.A. County
 Public Defender's Office
- 12:55 **Child Witnesses**
 Denise Gragg, Senior Assistant Public Defender,
 Orange County Public Defender's Office
- 1:50 **Break**
- 2:05 **The Science of the Courtroom: Juvenile Delinquency and the Brain**
 Kimberly Papillon, Esq., California Judicial Council's Administrative
 Office of the Courts
- 3:00 **Conference Concludes**

**The Los Angeles County Public Defender's Office
28th Annual Juvenile Delinquency Law Training Seminar**

5855 W. Century Boulevard
Los Angeles, CA 90045

Saturday, May 8, 2010

- | | |
|---------------|--|
| 8:15 - 8:30 | Welcome
Michael P. Judge, Public Defender |
| 8:30 - 9:45 | What's Interrogation Gotta Do With It? Litigating Confession Cases in Juvenile Court
Deja Vishny |
| 9:45 - 10:45 | Father Gregory J. Boyle, S.J. , Founder and Chief Executive Officer of Homeboy Industries |
| 10:45 - 11:00 | BREAK |
| 11:00 - 12:00 | Case Law and Legislative Updates
Michael Theberge |
| 12:00 - 1:00 | Lunch |
| 1:00 - 2:00 | Effective Cross-Examination
Pamela Mackey |
| 2:00 - 3:00 | Conducting Effective Competency Hearings for Clients in Juvenile Court
Celia Benitez-Balderrama, Angela Cheung, Donna Gomez, Olivia Wang |
| 3:00 - 3:15 | Break |
| 3:15 - 4:15 | Storytelling Even in Juvenile Court
Steven Harmon |

2009

- **Mike Theberge, Los Angeles County Public Defender's Office: *"Case Law and Legislative Updates"***
 - **KEYNOTE SPEAKER, Rebecca Snyder, Assistant Detailed Defense Counsel for Guantanamo Bay Juvenile Detainee Omar Khadr**
 - **Steve Harmon, Attorney, Riverside, California: *"Storytelling Even in Juvenile Court"***
 - **Cari Caruso, RN SANE-A: *"Deconstructing the SART Exam"***
-
- **Kyana Stephens, The Defender Association, Seattle, Washington: *"No Jury, One Judge: Trying a Sex Offense Case in Delinquency Court"***
 - **Rourke Stacy, Los Angeles County Public Defender's Office: *"My Kid Confessed -- Now What Do I Do?"***
 - **Bill Gallagher, Law Office of Arenstein & Gallagher, Cincinnati, Ohio and Michael Shultz, Center for Juvenile Law and Policy, Loyola Law School: *"Social Networking Sites and Beyond -- Discovery in the Electronic Age"***

The Los Angeles County Public Defender's Office

26th Annual

Juvenile Delinquency Law Training Seminar

Radisson Hotel at Los Angeles Airport

6225 West Century Boulevard

Los Angeles, California

Monday, March 17, 2008

- 8:00 A.M. **Welcome**
Winston Peters
- 8:15 A.M. **Case law and legislative updates**
Michael Theberge
- 9:00 A.M. **Reflections on the Jena Six Case**
Keynote Speaker: David Utter
- 10:00 A.M. **BREAK**
- 10:15 A.M. **Risk Assessment of Youth: What Attorneys Need to Know**
Gina Vincent, Ph.D.
- 11:15 A.M. **Get 'Em Out: Effectively Litigating Detention Issues**
Joseph Burghardt
- 12:00 P.M. **LUNCH**
- 1:00 P.M. **Creative Strategies for Litigating Bench Trials and Engaging the Judge**
Kristin Henning
- 2:00 P.M. **BREAK**
- 2:15 P.M. **So Many Children: Fetal Alcohol Spectrum Disorders in Delinquency Court**
Lyn Laboriel, M.D.
- 3:15 P.M. **Ethical Issues in Delinquency Court**
Murrey Correa and Bella Dilworth
- 4:15 P.M. **Adjournment**

The Los Angeles County Public Defenders Office

25th Annual

Juvenile Delinquency Law Training Seminar

Los Angeles Airport Marriott

Los Angeles, CA

Monday, April 16th, 2007

8:00 A.M.

Welcome

Candis Glover, Jane Newman, Karen Thompson

Opening Remarks

Michael P. Judge, Public Defender, Los Angeles County

8:15 A.M.

Case Law and Legislative Update

Michael Theberge

9:00 A.M.

**Defending the Brainwashed Juvenile:
Dealing with a Child Soldier, Cultic Relationships,
Video Game Desensitization and Much More**

Keynote Speaker, Craig S. Cooley

9:45 A.M.

Break

10:00 A.M.

Are Adolescents Different From Adults?

Biological, Social, and Cognitive Considerations

Elizabeth E. Cauffman Ph.D.

10:45 A.M.

**Incorporating What We Know About
Adolescent Differences at All Stages of Litigation**

Professor Simmie Baer

11:30 A.M.

Revoke, Reinstate, Litigate, Terminate!

Navigating Through 654, 725, 790 and 777

Jan Datorni

12:00 P.M.

Lunch

1:00 P.M.

Representing LGBT Youth In Delinquency Proceedings

Shannan Wilber

1:45 P.M.

CLICK ON THIS - A Guide to Juvenile Justice Resources

Akemi Arakaki

2:00 P.M.

BREAK

2:15 P.M.

One Day is Too Many: Detention's Harmful Effects

Elizabeth Calvin

3:00 P.M.

**"Staying Fit In 2007", Using Rene C. To Help Prepare, Argue
and Win Your 707(b) Case**

Tracie Jones and Lynn Norton

4:00 P.M.

Adjournment

The Los Angeles County Public Defender's Office

24th Annual

Juvenile Delinquency Law Training Seminar

Hacienda Hotel

525 N. Sepulveda Blvd.

El Segundo, California

Friday, April 28, 2006

- 7:30 A.M. **Registration.**
- 8:00 A.M. **Case law and legislative updates**
Michael Theberge
- 9:00 A.M. **Adolescent cutting, suicide and other self injurious behaviors**
Dr. Mark DeAntonio
- 10:00 A.M. **BREAK**
- 10:15 A.M. **There is no such thing as a lost cause**
Keynote Speaker, Joshua DeLeeuw
- 11:00 A.M. **Meet the parents – How to work effectively with our clients' families**
Professor Paul Holland
- 11:45 P.M. **LUNCH**
- 12:45 P.M. **Are juvenile sex offenders tomorrow's adult predators?**
Professor Franklin Zimring
- 1:45 P.M. **CYA to DJJ: Has more than the name changed?**
Humberto Benitez and Shelan Joseph
- 2:15 P.M. **BREAK**
- 2:30 P.M. **Juvenile adjudications: How culpability is impacted by immaturity and adversity**
Dr. Mark Cunningham
- 3:30 P.M. **A look to the future – Juvenile Delinquency Guidelines**
Jennifer Mayer and Maureen Pacheco
- 4:00 P.M. **Adjournment**

The Los Angeles County Public Defender's Office

23rd Annual

Juvenile Delinquency Law Training Seminar

Furama Hotel
8601 Lincoln Blvd
Westchester, California
Friday, April 15, 2005

8:00 A.M.	Registration	
8:30 A.M.	Case Law and Legislative Updates.....	Michael Theberge
9:15 A.M.	Special Education Advocacy for Children In the Delinquency System	<i>Keynote Speaker</i> Joseph Tulman
10:15 A.M.	BREAK	
10:30 A.M.	Justice for Girls: Defense Strategies.....	Sandra Simkins
11:30 A.M.	Representing the Dependent Child in Delinquency Court	Barbara Duey, Maureen Pacheco, Amy Pellman and Lara Holtzman
12:15 P.M.	LUNCH	
1:15 P.M.	Close Encounters of the Adolescent Kind.....	Abigail A. Baird, Ph.D.
2:15 P.M.	Special Immigrant Juvenile Status: A Path to Lawful Permanent Residency for Undocumented Youth in the Juvenile Justice System Who Have Been Abused, Abandoned or Neglected	Kristen Jackson
3:00 P.M.	BREAK	
3:15 P.M.	Ethical Issues in Juvenile Delinquency Practice.....	Cyn Yamashiro
5:15 P.M.	ADJOURNMENT	

Appendix F:
Panel Heads Annual Seminar Materials

**JUVENILE DELINQUENCY ATTORNEYS
JUVENILE DELINQUENCY SEMINAR**

PROVIDER NUMBER: 16650

MARCH 15, 2014

**EMBASSY SUITES GLENDALE- 800 N. CENTRAL
REGISTRATION 8:30**

CREDIT: HOURS- 6 TOTAL/ ETHICS- 1 HOUR

9:00- 10:00- 1 HOUR

SOCIAL WORKERS IN JUVENILE DELINQUENCY COURT

MONICA LUJAN, LCSW; TIFFINI COLEMAN-HUBBARD,MSW

JOAN HUBBELL, LCSW; RAQUEL WARLEY, LCSW

ROSA LESLIE, MSW

10:00-11:00- 1 HOUR

PREPARING FOR AND CONDUCTING FITNESS HEARINGS

TONY GOVEA, J.D., MARLENE KABERT, J.D. ,YVONNE MASSAIS-JOBY, J.D

11:00-12:00- 1 HOUR

CASE LAW UPDATE

CYNTHIA BARNES, ATTORNEY AT LAW

12:00-12:30- LUNCH

12:30-1:30- 1 HOUR

ETHICS ISSUES CONFRONTING DELINQUENCY ATTORNEYS

JARED EISENSTAT J.D. & INGLEWOOD PANEL

1:30-3:30- 2 HOURS

DEPARTMENT OF JUVENILE JUSTICE

GEORGE VALENCIA: PAROLE AGENT

ELEANOR SILVA: ASSOCIATE DIRECTOR

DR. HEATHER BOWLDS: SEXUAL BEHAVIOR TREATMENT

COORDINATOR

rites of passage- SHAWN LENAHAN

JUVENILE DELINQUENCY ATTORNEYS

JUVENILE DELINQUENCY SEMINAR

PROVIDER NUMBER: 16650

FEBRUARY 2, 2013

EMBASSY SUITES GLENDALE- 800 N. CENTRAL

REGISTRATION 8:30

COSTS: \$80.00 PANEL ATTORNEYS/ \$90.00 NON - PANEL

CREDIT: HOURS- 6 TOTAL

ETHICS- 1 HOUR

9:00- 10:00- 1 HOUR

**JED MINOFF: LOS DIRECTOR OF PROBATION-
TRANSITIONAL SERVICES FOR YOUTH**

10:00-12:00- 2 HOURS

JUDGE KURT KUMLI: CASE LAW UPDATE

12:00-12:30- LUNCH

12:30-1:30- 1 HOUR

**ATTORNEY ANDREW A. SERVAIS: ETHICS ISSUES
CONFRONTING JUVENILE ATTORNEYS**

1:30-3:30- 2 HOURS

**PROFESSOR SANDRA GRAHAM: CHAIR IN EDUCATION AT
UCLA- ADOLESCENT DEVELOPMENTAL PERSPECTIVE ON
JUVENILE OFFENDERS.**

**DR. HEIDI ROTHEIM: MENTAL HEALTH SERVICES IN
DETENTION FACILITIES: WITH A FOCUS ON DOROTHY KIRBY
PROFESSOR ANDREA RAMOS: DIRECTOR OF IMMIGRATION
LAW CLINIC SOUTHWESTERN LAW SCHOOL**

JCBA- JUVENILE COURTS BAR ASSOCIATION

JUVENILE DELINQUENCY SEMINAR

PROVIDER NUMBER: 1118

JUVENILE COMPETENCY

1 HOURS MCLE

DATE: September 1, 2011

TIME: 2:00 PM- 3:00 PM

LOCATION: SYLMAR JUVENILE COURT

SPEAKER:

COMM. ROBERT LEVENTER

JCBA- JUVENILE COURTS BAR ASSOCIATION
JUVENILE DELINQUENCY SEMINAR

6 HOURS MCLE

DATE: SATURDAY MARCH 12, 2011

TIME: 9:00 AM- 3:00 PM

COFFEE WILL BE PROVIDED IN THE MORNING AND
LUNCH IS INCLUDED

PLACE: GLENDALE HILTON HOTEL

100 W. GLENOAKS BLVD., GLENDALE (818)551-4021

SPEAKERS:

HONORABLE KURT KUMLI: CASE LAW UPDATE

COMPETENCY TESTING, EXPERT TESTIMONY, CHANGES IN THE
LAW & LEGISLATION AND EFFECTIVELY LITIGATING
INCOMPETENCY BY:

ARTHUR L. BOWIE- SUPERVISING ATTORNEY, SACRAMENTO P.D.

DR. SANJAY SAHGAL- PSYCHIATRIST

DOUGLAS ALLEN, Ph.D. - PSYCHOLOGIST

FOR ATTENDANCE INFORMATION TALK TO YOUR PANEL HEAD

FOR PRIVATE ATTORNEYS PLEASE CONTACT:

Marlene Kabert- Gerson: Sylmar Panel Head (213)389-2266 or
marlenekabert@mccl.com

COST FOR THE CONFERENCE WILL INCLUDE FUNDS TO BUY GIFTS FOR KIRBY

PARKING- THERE IS AN \$8.00 FEE FOR HOTEL PARKING

**JCBA-JUVENILE COURTS BAR ASSOCIATION
JUVENILE DELINQUENCY SEMINAR**

PROVIDER NUMBER: 1118

2 HOURS MCLE CREDIT

JULY 21, 2010

12:00 PM- 2:00 PM.

**LOCATION: SPORTSMEN'S LODGE
STUDIO CITY, CA**

OUR SPEAKERS:

CYNTHIA BARNES: CASE LAW UPDATE

SYLMAR PANEL ATTORNEYS: JUVENILE PROCEDURES

FOR FURTHER INFORMATION & COSTS- CONTACT YOUR PANEL HEAD OR

ATTORNEY MARLENE KABERT-GERSON (213)389-2266

JCBA-JUVENILE COURTS BAR ASSOCIATION

JUVENILE DELINQUENCY SEMINAR

5 HOURS MCLE CREDIT

MARCH 6, 2010

8:30 AM- 2:30 PM.

BREAKFAST & SNACKS PROVIDED

LOCATION: DOROTHY KIRBY CENTER

1500 S. McDONNELL, COMMERCE

OUR SPEAKERS:

HONORABLE KURT KUMLI- CASE LAW UPDATE

**CALIFORNIA SUPERIOR COURT JUDGE FOR THE COUNTY OF SANTA
CLARA**

NATIONALLY RECOGNIZED EXPERT IN JUVENILE LAW & POLICY

MELISSA A. PITTS- DEPARTMENT JUVENILE JUSTICE

DJJ INTAKE & COURT SERVICES LIAISON AND CONSULTANT

ATTORNEY CLAUDETTE BROSSARD-

PANEL ATTORNEY FOR PASADENA 241.1 COURT-

HANDLING CROSS-OVER DEPENDENCY/ DELINQUENCY CASES

VISIT WITH KIRBY KIDS

FOR FURTHER INFORMATION & COSTS- CONTACT YOUR PANEL HEAD OR

ATTORNEY MARLENE KABERT-GERSON (213)389-2266

JCBA—JUVENILE COURTS BAR ASSOCIATION
JUVENILE DELINQUENCY SEMINAR

HONORABLE KURT KUMLI- CASE LAW UPDATE

CALIFORNIA SUPERIOR COURT JUDGE FOR THE COUNTY OF SANTA CLARA

NATIONALLY RECOGNIZED EXPERT IN JUVENILE LAW & POLICY

DIRECTOR OF DOROTHY KIRBY- MIKE VARELLA

ADMISSION PROCEDURES FOR SUITABLE PLACEMENT & TOUR

JANUARY 24, 2009 * 8:30 AM- 12:30 PM

LOCATION: DOROTHY KIRBY- 1500 S. McDonnell, Commerce

CERTIFICATE OF ATTENDANCE
FOR CALIFORNIA MCLE

Eligible California Minimum Continuing Legal Education (MCLE) Credit:

TOTAL HOURS: THREE HOURS

TO BE COMPLETED BY ATTORNEY AFTER PARTICIPATION IN ACTIVITY*

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE hours, including:

TOTAL HOURS: **THREE HOURS**

Legal Ethics: _____ Substance Abuse/Emotional Distress: _____

Law Practice Management: _____

Elimination of Bias: _____ Prevention of Violations of Civil Rights and Hate Crimes: _____

DATED: _____

SIGNATURE: _____

REMINDER: Keep this record of attendance for four (4) years. In the event you are audited by the State Bar, you may be requested to submit this record of attendance to the State Bar. Send to the State Bar only if you are audited.

*If the provider has not granted credit for legal ethics, elimination of bias, substance abuse/emotional distress, law practice management, or prevention of violations of civil rights and hate crimes, you cannot claim credit in those areas.

MCLE PROVIDER NUMBER: 1118

JCBA—JUVENILE COURTS BAR ASSOCIATION.

JUVENILE DELINQUENCY SEMINAR
EDUCATION RIGHTS AND PROCEDURES
FOR MINORS
APPOINTING EDUCATION ATTORNEYS

BY: SUSEL ORELLANA

JULY 10, 2008** 12:00-2:00 PM

At Sylmar Juvenile Court
CERTIFICATE OF ATTENDANCE
FOR CALIFORNIA MCLE

Eligible California Minimum Continuing Legal Education (MCLE) Credit:

TOTAL HOURS: TWO HOURS

TO BE COMPLETED BY ATTORNEY AFTER PARTICIPATION IN ACTIVITY*

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE hours, including:

TOTAL HOURS: TWO HOURS Substance Abuse/Emotional Distress: _____
Legal Ethics: _____ Law Practice Management: _____
Elimination of Bias: _____ Prevention of Violations of
Civil Rights and Hate Crimes: _____

DATED: _____

SIGNATURE: _____

REMINDER: Keep this record of attendance for four (4) years. In the event you are audited by the State Bar, you may be requested to submit this record of attendance to the State Bar. Send to the State Bar only if you are audited.

*If the provider has not granted credit for legal ethics, elimination of bias, substance abuse/emotional distress, law practice management, or prevention of violations of civil rights and hate crimes, you cannot claim credit in those areas.

MCLE PROVIDER NUMBER: 1118

JCBA—JUVENILE COURTS BAR ASSOCIATION
JUVENILE DELINQUENCY SEMINAR

MENTAL HEALTH ISSUES

SPEAKER JODI OGURO

MENTAL HEALTH ADVOCATE

THURSDAY JANUARY 17, 2008

At Sylmar Juvenile Court
**CERTIFICATE OF ATTENDANCE
FOR CALIFORNIA MCLE**

Eligible California Minimum Continuing Legal Education (MCLE) Credit:

TOTAL HOURS: TWO HOURS

TO BE COMPLETED BY ATTORNEY AFTER PARTICIPATION IN ACTIVITY*

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE hours, including:

TOTAL HOURS: TWO HOURS	Substance Abuse/Emotional Distress: _____
Legal Ethics: _____	Law Practice Management: _____
Elimination of Bias: _____	Prevention of Violations of Civil Rights and Hate Crimes: _____
DATED: _____	SIGNATURE: _____

REMINDER: Keep this record of attendance for four (4) years. In the event you are audited by the State Bar, you may be requested to submit this record of attendance to the State Bar. Send to the State Bar only if you are audited.

**If the provider has not granted credit for legal ethics, elimination of bias, substance abuse/emotional distress, law practice management, or prevention of violations of civil rights and hate crimes, you cannot claim credit in those areas.*

MCLE PROVIDER NUMBER: 1118

JCBA—JUVENILE COURTS BAR ASSOCIATION
JUVENILES DELINQUENCY

AB3632 & IEP

With Speaker Mary Chester

From the Hart School District

Friday, November 16, 2007

At Sylmar Juvenile Court
CERTIFICATE OF ATTENDANCE
FOR CALIFORNIA MCLE

Eligible California Minimum Continuing Legal Education (MCLE) Credit:

TOTAL HOURS: TWO HOURS

TO BE COMPLETED BY ATTORNEY AFTER PARTICIPATION IN ACTIVITY*

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE hours, including:

TOTAL HOURS: **TWO HOURS** Substance Abuse/Emotional Distress: _____
Legal Ethics: _____ Law Practice Management: _____
Elimination of Bias: _____ Prevention of Violations of
Civil Rights and Haté Crimes: _____

DATED:

SIGNATURE:

REMINDER: Keep this record of attendance for four (4) years. In the event you are audited by the State Bar, you may be requested to submit this record of attendance to the State Bar. Send to the State Bar only if you are audited.

**If the provider has not granted credit for legal ethics, elimination of bias, substance abuse/emotional distress, law practice management, or prevention of violations of civil rights and hate crimes, you cannot claim credit in those areas.*

MCLE PROVIDER NUMBER: 1118

Appendix G:

**Los Angeles County Public Defender Attorney
Performance Standards (February 8, 2010)**

<p style="text-align: center;">LAW OFFICES LOS ANGELES COUNTY PUBLIC DEFENDER POLICIES AND PROCEDURES</p>	<p style="text-align: right;">Supersedes Policies Dated 4/15/1991, 2/10/1983 DATE: February 8, 2010 PAGE: 1 of 6</p>
<p>TITLE: ATTORNEY PERFORMANCE STANDARDS</p>	<p>APPROVED:</p> <p style="text-align: center;">MICHAEL P. JUDGE PUBLIC DEFENDER</p>

These Attorney Performance Standards have been developed by the Law Offices of the Angeles County Public Defender to provide raters in the office with a reference guide for observing and evaluating performance and to provide attorneys with information as to how their performance will be rated. They provide a basic for communication about expectations, level of performance being achieved, career development, desirable training and assignment considerations. Although the factors and items described below to not track the categories in the current Performance Evaluation Form (attached) word for word, they embody the standards to be used in evaluating the quality of work done by the Department's attorneys.

APPLICATION

The factors and items contained in the Performance Evaluation for Deputy Public Defenders have been selected to provide a consistent set of subject matter for discussion when rating attorneys in the office.

It is recognized that the great variation in assignments precludes a single definitive statement of expectations that will cover all circumstances. Further, very few aspects of an attorney's performance can be evaluated in quantitative or purely objective terms. For this reason, the "standards" provided for use with the Performance Evaluation form should be applied as general guidelines. Specific expectations must remain a function of the individual assignment situation and the rater's professional judgment in view of departmental requirements.

No effort should be made to establish a set mathematical relationship between "items" or "factors" in order to weigh their influence on either overall factor ratings or overall performance ratings. The significance of a particular aspect of performance must be judged in the context of its importance to the effectiveness of the individual's performance and the circumstances of the specific assignment. An attribute could be of overriding importance in one situation but not in another.

The factors (categories) of "Preparation and Knowledge" and "Advocacy" include most key aspects of the attorney's technical abilities as a lawyer. It is important to reflect how well the attorney's practice meets the demands of a public defender environment. Ratings are specifically of the attorney's performance in the role of Deputy Public Defender in accordance with the attendant classification standards.

In this regard there is some concern with the use of the term "competent" as the phrase "competent counsel" has legal significance of constitutional dimension. An attorney renders adequate assistance of counsel when he acts in a manner to be expected of reasonably competent attorneys acting as diligent advocates. (People v. Pope (1979) 23 Cal.3d 412, 425.) However, it must be assumed that any attorney regularly employed by the Public Defender is "competent" in the constitutional sense. That being the case, "constitutional competence" has little or no relationship to a "Competent" rating on a Performance Evaluation. A Deputy Public Defender who is rated overall "Improvement Needed" or "Unsatisfactory" must be "legally competent" while he continues to represent indigent defendants. "Constitutional competence" is, therefore, the minimum standard for employment as a Deputy Public Defender. It cannot be equated with a "Competent" rating on a Performance Evaluation.

The Deputy Public Defender is evaluated as a county employee working for the Public defender, not as an attorney in a vacuum.

SUPERVISORY ASSIGNMENTS

When an attorney is assigned in a supervisory capacity, technical skills should still be rated. If the assignment does not involve handling cases, the rating can be based on how well the attorney uses knowledge and experience to provide guidance and advice to subordinates in the various skill areas.

A. PREPARATION AND KNOWLEDGE

1. RECOGNIZING LEGAL ISSUES: The lawyer recognizes such items as demurrers, statutes of limitation, joinder and severance, search and seizure issues, issues regarding confessions and admissions, destruction of evidence, and any other issue presented.
2. INTERVIEWING TECHNIQUES: The lawyer guides interviews efficiently and effectively. The lawyer gains the client's confidence, gathers necessary case information, takes an appropriate role in the decision-making process, and allocates time according to assignment demands.
3. LEGAL RESEARCH: The lawyer has a satisfactory working knowledge of resource materials, maintains an adequate trial notebook, and keeps current on the law.
4. INVESTIGATION: The lawyer recognizes those cases in which investigation is required. Requests are reasonable and prepared in a clear and timely fashion, and generally should include the prosecution theory of the case, the defense theory, and the specific actions requested.
5. WRITTEN MOTION PRACTICE: The lawyer prepares clear and succinct written points and authorities and files them timely in

appropriate cases. The lawyer exercises creativity and initiative in preparing motions and does not excessively rely on boilerplate motions.

6. USE OF EXPERTS: The lawyer seeks assistance of experts *only* in appropriate cases. The lawyer provides appropriate information to the expert in a timely fashion and the client is prepared for the expert's examination. The lawyer adequately prepares for presentation of expert testimony.
7. PREPARATION OF WITNESSES: The attorney makes proper evaluations concerning scheduling of witnesses and preparation of witnesses and clients in such areas as courtroom procedures, direct and cross-examination, importance of demeanor, volunteering of information, arguing with prosecutors, and physical appearance.

B. ADVOCACY

1. COURTROOM PRESENCE: In all courtroom appearances, the lawyer seeks, collects, and organizes the facts, and then presents them in a cogent and coherent manner. The lawyer's demeanor and appearance are professional and consistent with effective representation.
2. TRIAL SKILL: As an advocate, the lawyer demonstrates effective trial skills including but not limited to such items as voir dire; direct and cross-examination, introduction of, objection to, and admissibility of evidence. Although each individual skill need not be rated, overall practice is discussed with respect to appropriate application of skills in given assignment situations. This should be based on the attorney's understanding of underlying legal principles and exercise of proper judgment as to when and how skills are utilized. Strengths and weaknesses should be commented upon and an evaluation made of the attorney's performance on balance as a defense advocate.
3. CASE NEGOTIATIONS AND SENTENCING: The lawyer enters into case negotiations conversant with the significant issues and ascertainable facts. The lawyer recognizes plea alternatives and consequences and properly advises the client in a manner which develops a sense of trust and confidence. The lawyer communicates effectively with the other parties involved in the case. The lawyer makes thorough use of sentencing laws, seeking imaginative and creative sentencing alternatives.

C. ATTITUDE, ADAPTABILITY AND PRODUCTIVITY

1. ETHICS AND INTEGRITY: The lawyer is aware of and appropriately observes the Rules of Professional Conduct and other ethical obligations of the defense bar. The integrity of the lawyer positively affects client representation with court personnel and other members of the Criminal Justice System.
2. WILLINGNESS TO TRY CASES: The lawyer takes cases to trial when appropriate after consideration of disposition alternatives.
3. VOLUME AND CALENDAR MANAGEMENT: The lawyer satisfactorily handles the number of cases required by the assignment and manages time and schedule to maximize personal effectiveness and benefit to clients. The lawyer completes cases in a timely fashion without abuse of continuances, recognizing and effectively using case settings, scheduling of motions and court calendar conditions.
4. AVAILABILITY AND ASSIGNMENT FLEXIBILITY: The lawyer willingly accepts unscheduled assignments, including probation violations and bench warrants. The lawyer can perform and does accept assignments that involve varying difficulty, location and functional responsibility.
5. WORKING INDEPENDENTLY: The lawyer demonstrates the skills and confidence to effectively handle the assigned caseload. The lawyer makes those decisions required in cases but seeks consultation when appropriate.
6. PAPERWORK PROCESSING AND TIMELINESS: The lawyer maintains notes and records of pertinent case facts sufficient to provide proper client representation, to facilitate case coverage in the lawyer's absence and to allow for appellate review. The lawyer processes necessary administrative forms and reports in a complete and timely fashion.
7. PUNCTUALITY AND ATTENDANCE: The lawyer's attendance and work hours comply with office policy. The lawyer appears in court punctually and keeps the office and court informed of his or her whereabouts.

D. EFFECTIVENESS OF PERSONAL INTERACTIONS

1. CLIENT: The lawyer interviews both custody and non-custody clients sufficiently to provide competent representation for each court appearance. The lawyer develops and maintains the client's

trust and confidence. The lawyer keeps the client advised as to the status of the case and explains constitutional and statutory rights. The lawyer meets the challenge of handling problems including but not limited to mentally disordered client, hostile clients, and resistive clients. The lawyer maintains effective rapport with client family and friends without compromising client confidence.

2. PUBLIC DEFENDER STAFF: The lawyer's interactions with other lawyers in the office, secretarial and clerical staff, investigators, and other Public defender staff demonstrates a spirit of mutual cooperation and assistance. The lawyer treats colleagues including support staff with due respect. The lawyer is considerate of the time and volume requirements and resource limits of the office.
3. MEMBERS OF THE JUSTICE SYSTEM: The manner in which the lawyer interacts with judicial officers, prosecutors, courtroom personnel, law enforcement personnel, co-counsel, and other members of the Justice System contributes to the effective representation of the Department's clients.
4. OTHERS: The manner in which the lawyer interacts with witnesses, the press, and the public contributes to the effective representation, of the Department's clients.

E. SUPERVISORY SKILLS:

1. PLANNING AND ASSIGNING: The supervisor organizes the work of the office through systems and procedures that are efficient and effective, allowing for individual court requirements and extraordinary situations. The supervisor anticipates workload variations and staffing availability in scheduling work. The supervisor maintains effective coordination with other justice system agencies at the location. The supervisor knows and considers such variables as individual attorney skills, court idiosyncrasies, and case volume and substance so as to achieve effective assignments and minimize unavailability.
2. TRAINING AND DEVELOPMENT: The supervisor identifies training needs both for individual attorneys and overall staff development. The supervisor provides training either personally or through seeking appropriate assistance and acquiring resources and making them available. The supervisor orients attorneys to the court facility and its personnel and provides guidance that will assist individuals in becoming more skillful and effective as public defense attorneys.

3. EVALUATING PERFORMANCE: The supervisor accurately assesses the level of work performance and documents both positive and negative exceptional performance. The supervisor regularly communicates attorney performance to management and the attorney in an objective, comprehensive and effective manner.
4. LEADERSHIP: Through personal example, the supervisor sets a standard for the office in maintaining workload, credibility, and attitude toward the role of a public defender. The supervisor keeps personally informed of both legal and administrative procedures, policies, and developments and informs or instructs office members so as to maintain current, effective operations consistent with the Department as a whole. The supervisor makes timely, informed decisions which reflect judgment, perspective, and exercise of authority appropriate to the supervisory level. The supervisor is available, approachable and is fair and impartial in the treatment of individuals and direction of office activities. When conflicts arise with other justice agency members, the supervisor supports attorneys in appropriately representing the best interests of the Department's clients. The supervisor effectively represents the needs of the office in departmental management and interagency planning and problem, solving. The supervisor maintains effective communication with higher management. The supervisor promotes cohesiveness and cooperation among office members to maintain their morale and productivity as a group.
5. DISCIPLINARY CONTROL: The supervisor stays well informed of employee work progress and level of performance and takes preventive or corrective measures promptly as exceptions develop. The supervisor maintains a positive approach to discipline by emphasizing constructive criticism and an active interest in employee development. The supervisor understands and effectively employs a progressively severe process of disciplinary action when problems are not corrected. The supervisor implements Department rules and regulations, and carries out decisions of higher management effectively. The supervisor handles necessary disciplinary confrontations without delay and in a forthright, objective and firm manner.

**Law Offices of the Los Angeles County Public Defender
REPORT ON ATTORNEY PERFORMANCE EVALUATION**

Overall Rating Included Yes No

Attorney	Employee Number	Position/Grade	Item Number
Evaluation Period to	Assignment(s)		Status

This report is based upon my observation and/or knowledge. It represents my best judgement of the employee's performance.

Name	Title	
Rater's Signature	Date	
Print Reviewer's Name	Reviewer's Signature	Date
Print Reviewer's Name	Reviewer's Signature	Date
Department Head/Authorized Representative	Date	

This report has been discussed with me. I am aware of the appeal procedure. I am aware that county policy requires compliance with insurance and seat belt laws. The required information is as follows:

Home Address	Zip Code	Telephone Number	
State Bar Number	Bar Dues Current (Circle One) Yes No	Driver's License Number	Expiration Date
Auto Insurance Company/Name	Policy Number	Limits	
In Case of Emergency Notify: Name	Telephone Number	Relationship	
Employee's Signature	Date	Supervisor's Signature	Date

A copy of this Report was	<input type="checkbox"/> Mailed To	<input type="checkbox"/> Given to Employee By _____
On:	Address Mailed:	

PERFORMANCE AND EVALUATION STANDARDS

These Performance and Evaluation Standards have been developed for attorney positions in the Law Offices of the Los Angeles County Public Defender. They are intended as a reference guide for observing and evaluating performance and conversely to provide attorneys with information as to how their performance will be rated. They establish a basis for communicating about expectations, level of performance achieved, career development, desirable training, and assignment considerations.

APPLICATION

The components contained in the Performance Evaluation for Deputy Public Defenders have been selected to provide a consistent set of subject matter for discussion when rating attorneys in the office. It is recognized that the great variation in assignments precludes a single definitive statement of expectations that will cover all circumstances. Further, very few aspects of an attorney's performance can be evaluated in quantitative or purely objective terms. Specific expectations must remain a function of the individual assignment situation and the rater's professional judgment in view of departmental requirements.

For ease of rating, a lawyer's evaluation has been divided into three main skill areas. These three skill areas have been further divided into 10 components. Although these divisions exist, no rating will be rendered either for such a skill area or "overall" for the lawyer except when a lawyer is eligible for a merit based pay increase. The significance of a particular aspect of performance must be judged in the context of its importance to the effectiveness of the individual's performance and the circumstances of the specific assignment.

The components include most key aspects of the attorney's technical abilities as a lawyer. It is important to reflect how well the attorney's practice meets the demands of a Public Defender environment. Evaluations are not to be viewed as an attorney in a vacuum, they are specifically of the attorney's performance as a County employee in the role of a Deputy Public Defender in accordance with the Attorney Grade Level (classification) standards.

In the preparation of this evaluation, a rater shall encourage a lawyer to provide direct input, through a meeting and/or memorandum regarding rating period performance in relation to the components. Raters shall consider this input, along with personal observations, Deputy-in-Charge input, and work product. At the conclusion of the rating process the rater shall discuss the current evaluation with the lawyer and strive to set goals for the next rating period. The lawyer should view the process as a continuing one of evaluation and goals.

EVALUATION CATEGORIES

STRENGTH OF PERFORMANCE - Numerical score of 1, 2, 3, or 4 (increasing with the higher number).

IMPROVEMENT NEEDED - A lawyer who needs improvement in the Department standards as defined in the skill area.

UNSATISFACTORY - A lawyer who fails to meet the Department Standards as defined in the skill area.

A lawyer rated "Improvement Needed" or "Unsatisfactory" must be "legally competent" (People v. Pope (1979) 23 Cal.3d 412, 425) in order to continue to represent clients.

STRENGTH OF PERFORMANCE

The components have been drafted as ideals/the desired level of performance for all lawyers. The numerical score (1, 2, 3, 4) reflects the strength of performance with which the lawyer approximates the standard. Strength of performance is measured by any or all of the following:

- The **consistency** and **frequency** of cases in which the lawyer approximates the standards;
- The **degree of excellence** in the work product of the lawyer;
- The **independence** with which the lawyer approximates the standards;
- The **special flairs** used by the lawyer to approximate the standards, such as **creativity, personality, confidence, etc.**

FORM APPLICATION

Each component of a skill is to be assessed by circling the appropriate evaluation category. If the component has been evaluated using the strength of performance criteria, the appropriate number is circled. Space has been provided beneath each component for the rater to enter appropriate comments. These comments should succinctly record particular strengths and weaknesses. These comments are informative for the office and provide feedback to the attorney. In case of an "Improvement Needed" or "Unsatisfactory" rating, raters must provide more detailed comments.

OVERALL RATINGS

Overall performance ratings will be given only to those attorneys who are eligible for a merit based step increase. "Eligible" means a Grade III or Grade IV attorney who is on step 6 or above and has not yet reached the highest level of any merit based step increase. An overall rating will be determined by use of the total numerical score obtained on the component ratings applying the formula as described below.

The only overall rating to be considered is the category of "outstanding". An attorney will receive an overall rating of "outstanding" only if the adjusted final score is 82 points and above, based on a 100 point scale.

To obtain the adjusted final score, the raw point total obtained from the 10 components shall be multiplied by 2. Twenty points shall then be added to this total, yielding a final score.

The raw point total for those attorneys who are in assignments in which they do not receive a rating in every component will be calculated by multiplying the average of the rated components by 10. This result shall be multiplied by 2 and 20 points added to obtain the final score. If the final score is not a whole number, then it will be rounded off to the closest whole number--utilizing one decimal point (e.g., a total of 81.4 and below will be rounded off to 81 and a total of 81.5 and above will be rounded off to 82).

ADVOCACY AND COMMUNICATION SKILLS

CLIENT RELATIONS

The lawyer develops a professional relationship and rapport with the client. This includes gaining the client's trust and confidence, and obtaining from the client the information that is necessary to effectively and efficiently prepare the case for trial and/or disposition. The lawyer fully advises the client of all rights and options, and meaningfully and effectively imparts his or her opinion of those alternatives which best serve the interests of the client.

The lawyer interacts with the client's family in a professional manner, protecting client confidences. The lawyer demonstrates maturity and professionalism when faced with difficult clients.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

COURTROOM EFFECTIVENESS

The lawyer develops a working professional atmosphere in the courtroom. The lawyer gains the respect of, and is able to communicate openly with the courtroom participants. The lawyer has a willingness and a reputation to try cases. The lawyer has a professional demeanor and is appropriately attired.

Prior to court appearances, the lawyer is familiar with the facts and the law relating to the case, and thereafter presents them in a logical and effective manner. The lawyer thinks on his or her feet, makes appropriate decisions under pressure, and shows spontaneity, judgment and common sense in the courtroom.

The lawyer is effective during jury selection, direct and cross examination, and is aware of and applies the laws of evidence. The lawyer argues zealously, but with judgment on behalf of the client.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

CASE NEGOTIATIONS AND SENTENCING SKILLS

The lawyer maintains open lines of communication with the prosecution and bench officers. The lawyer gathers background information, reviews resources and develops appropriate strategy to reach the desired outcome. The lawyer recognizes the strengths and weaknesses of the case, including plea alternatives and with knowledge of sentencing laws, negotiates the best dispositions after appropriately advising the client. The lawyer counsels the client for pre-sentencing interviews and, when appropriate, furnishes additional information to benefit the client. The lawyer participates in the sentencing hearing and demonstrates knowledge of applicable procedural and substantive laws so as to insure protection of the client's rights.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

CASE ANALYSIS AND PREPARATION SKILLS

LEGAL ANALYSIS, RESEARCH, AND WRITING SKILLS

The lawyer recognizes legal issues and has a working knowledge and understanding of resource materials while staying informed of current law. The lawyer exercises creativity and initiative in preparing motions and develops case strategy and alternative approaches to effectively represent the best interests of the client.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

EFFECTIVE USE OF INVESTIGATORS, PARALEGALS, EXPERTS AND WITNESSES

The lawyer recognizes cases in which the use of an investigator and/or paralegal would be appropriate. Requests are reasonable and timely and information is provided that presents clear guidance and specific objectives.

The lawyer seeks the assistance of experts in appropriate cases, exercising judgment in matching the needs of the case with the qualifications, abilities and reputation of the expert. The lawyer provides relevant information to the expert in a timely fashion.

All witnesses, including experts, are interviewed to determine if and in what order they should be called. The lawyer prepares witnesses and clients before presentation of testimony, covering such areas as courtroom procedures, demeanor and appearance and direct and cross examination.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

WORK HABITS AND ORGANIZATIONAL SKILLS

The lawyer demonstrates sound judgment and reasoning in evaluating and allocating time and resources to each case, and makes use as appropriate of methods and tools that achieve productivity and quality. The lawyer meets the challenge and demands of calendar and case management with confidence, skill and effectiveness. Assignments are completed in a timely fashion and reflect a consistently high quality. The lawyer budgets time in a manner that allows for the interview of clients and witnesses, preparation of investigation requests, acceptance and return of telephone calls, and all other steps necessary to provide quality representation for the client. Case files are appropriately documented and the lawyer's office, files, and legal materials are organized in a manner that facilitates retrieval, review, and use by the lawyer and others.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

ROLE ATTITUDE AND EXPERIENCE

EXPERIENCE

The lawyer's level of experience is demonstrated by past and present ability to handle cases of increasing complexity and difficulty at his or her grade level. The lawyer increasingly is more adept and skilled in handling case responsibilities in and out of the courtroom. Experience as defined in this component emphasizes the degree of wisdom, knowledge, judgment, professional care, maturity, and practical abilities with which the lawyer performs the assigned responsibilities.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

PROFESSIONAL RELATIONS AND ROLE ATTITUDE AS A DEFENSE ATTORNEY

The lawyer interacts and communicates with colleagues, court personnel, resource persons, and the community to enhance efforts on behalf of the client. While appreciating the adversarial role of a defense attorney, the lawyer projects a professional image and adheres to the highest ethical standards while using judgment and common sense. The lawyer exhibits a positive attitude towards clients and is understanding and tolerant of all persons, lifestyles, and beliefs.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

COMPLIANCE WITH POLICIES AND PROCEDURES

The lawyer complies with County and departmental directives, policies and procedures. Attendance is regular and proper office hours are observed. The lawyer makes punctual court appearances, keeps appointments and informs the office of his or her whereabouts.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

ROLE ATTITUDE AS A PUBLIC DEFENDER, ASSIGNMENT FLEXIBILITY, AND LEADERSHIP

The lawyer acts professionally and is a credit to the Office of the Public Defender. The lawyer accepts any assignment or special tasks, including the responsibility of representing clients in more complex cases. As a team player, the lawyer accepts emergency assignments of cases, handles a fair share of bench warrant pick-ups and probation violations, assists court partners when necessary and handles matters for unavailable colleagues. The lawyer's interaction with all staff contributes to office morale and demonstrates an attitude and knowledge that commands respect, trust, and cooperation. The lawyer establishes effective working relationships through objectivity, openness, and impartiality. The lawyer is accessible and helpful to others while being a resource and setting an example for other lawyers.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

ONLY DPD III (6TH STEP) AND DPD IV (7TH STEP)

OVERALL RATING FORM

<p>Name of Employee:</p> <p>Deputy Public Defender</p>
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Final Score	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; padding: 5px; margin-right: 5px;">0</div> X 2 = <div style="border: 1px solid black; padding: 5px; margin-right: 10px;">0</div> + 20 = <div style="border: 1px solid black; padding: 5px; margin-left: 10px;">20</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px; font-size: 10px;"> Raw Score Final Score </div>
<p>For Rating Period</p> <p>Outstanding</p>	<p>From: </p> <p>To: _____</p>
Rater's Signature	Date

FOR PERSONNEL OFFICE USE ONLY		
1. Current Year Rating	From: _____ To: _____	Outstanding <input type="checkbox"/>
2. Previous Year Rating	From: _____ To: _____	Outstanding <input type="checkbox"/>
3. Previous Year Rating	From: _____ To: _____	Outstanding <input type="checkbox"/>