

**MOTION BY SUPERVISORS HOLLY J. MITCHELL
AND SHEILA KUEHL**

January 5, 2021

Empowering Indigent Defense Services in the County of Los Angeles

In 2019 alone, Los Angeles County (County) Public Defender (PD) attorneys have represented over 80,000 adult indigent clients with over 230,000 felony and misdemeanor charges filed against them—a historically demanding mission that became exponentially more challenging this year with the current public health crisis.

On March 17, 2020, the Chief Justice of the California State Supreme Court granted an application for an emergency order, allowing judges to continue cases for 30 days. Since then, the Los Angeles Superior Court (LASC) has continued to seek sequential emergency orders from the Chief Justice, most recently obtaining another order through December 31, 2020. Case continuations in turn delay trials, impacting favorable dispositions, diversion and release plans for PD clients. Additionally, continuations increase the chances of COVID-19 spread in lockup facilities as defendants are being detained longer for trials. This has resulted in a backlog and a ballooning of PD attorney caseload/workload across the County.

In addition, the Judicial Council of California imposed a zero-bail order on April 13, 2020 (which ended on June 20, 2020) that set bail to \$0 for misdemeanors and most nonviolent felonies, and specifically indicated that the new bail order would apply not only to new arrests, but also to those being held in custody on such charges. The LASC extended an amended order, which increased the number of people arrested who were

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not released. The resulting delay of filings and exceptions under the amended order further increased the number of pending cases that PD attorneys now carry.

The moratorium on state prison transfers has also contributed to increased caseloads/workload. Individuals sentenced to the California Department of Correction and Rehabilitation awaiting transfer may not receive the same good conduct and other credits as those residing in state prison. As such, there is a disincentive for indigent clients charged with crimes to accept a disposition which includes a state prison sentence.

Moreover, even important reform advances have had unintended negative impacts on case resolution. Key programs such as Alternatives to Incarceration, every diversion court that opens, and every programmatic link for Collaborative Courts and the Office of Diversion and Re-entry, necessitates a PD attorney to first vet the person's case for legal defenses. A PD attorney must then represent the person in court to implement the programs. Expansion of these transformative programs requires increased participation by PD attorneys, further stretching already-thin resources.

Furthermore, on December 7, 2020, newly elected District Attorney (DA) George Gascon announced several sweeping reforms which promise to change the landscape of the criminal justice system. The DA's Special Directives include: end of cash bail (20-06); prohibition on prosecution of certain misdemeanors (20-07); the striking of certain sentencing enhancements (20-08); prohibition of prosecution of misdemeanors for youth (20-09); establishment of an independent habeas corpus unit (20-10); re-sentencing in death penalty cases (20-11); establishment of a conviction integrity unit (20-13); and resentencing in cases where defendants have served more than 15 years in prison (20-14). Implementation of many of these Special Directives are a very welcome shift to the justice system, but it also requires robust action by PD attorneys, underscoring the need for increased PD attorney involvement.

Finally, budget curtailments along with hiring and promotional freezes have had operational effects on caseloads/workloads as attorneys must absorb cases from

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colleagues leaving PD service. As the COVID-19 pandemic continues, isolation, quarantine, and requests for leave of PD staff also impact staffing and result in higher caseload/workload. Internally, the PD has taken steps to manage the increases, assigning cases to lawyers in special units, collapsing some special units, assigning cases to managers, and seeking exception to hire and promote to attrition. However, certain work requires a unique level of skill and experience, and when attrition removes a lawyer with certain skills, their cases cannot always be distributed equitably among available attorneys.

Ensuring the protection of constitutionally guaranteed due process rights of the accused, as well as the advancement of the Board of Supervisors' rehabilitative vision of criminal justice, requires an assessment of the various factors impacting caseload/workload for PD attorneys. With the recent rollout of the PD's client case management system, more insightful data will enable informed decision making to best assess business impact, dynamically take action, and track measurable outcomes accordingly.

WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

1. Instruct the Public Defender (PD), in close consultation with the Acting Chief Executive Officer (CEO), and in collaboration with the District Attorney, Alternate Public Defender, County Counsel, and other relevant stakeholders, to report back in writing in 90 days (with a written status update with initial findings in 60 days), with an assessment of and recommendations for addressing the current challenges caused by the health crisis, any anticipated budget curtailments, as well as the increasing demand for PD attorneys to implement new reforms, including:
 - a. An assessment of current operations, including measures to ensure the safety of PD attorneys and staff as well as their clients. The assessment should also identify and isolate the factors that impact caseload/workload,

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including the complexity of cases and other factors, such as new District Attorney policies, any anticipated delays related to the public health crisis, as well as current staffing levels and existing shortages;

- b. Recommendations for addressing issues identified in the above assessments, including consideration for health and safety measures related to COVID-19 in courtrooms, PD offices as well as lockup facilities; and technology necessary to maximize productivity and efficiency, where it is consistent with the Sixth Amendment rights of indigent accused clients including telework.
 - c. Report back in writing on a biannual basis, with relevant data regarding caseloads and other appropriate case management information.
2. Direct the Acting CEO, in consultation with the PD, to report back in writing in 30 days with an update on efforts to streamline current processes for filling PD attorney positions and hiring needed staff.

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(CG/CAS)