

**MOTION BY SUPERVISORS MARK RIDLEY-THOMAS AND
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**AGN. NO.
April 5, 2016**

Improving Legal Representation For Indigent Juvenile Clients

The juvenile justice system was created over a century ago to recognize the unique needs of youth and to ensure they were provided opportunities for rehabilitation and not simply punishment. Today, well-regarded research on adolescent brain development has advanced the understanding of the physical, cognitive and emotional differences between youth and adults and the therapeutic interventions required to meet their unique psychosocial needs in these areas.

More than a decade ago and consistent with this research, the model of legal representation for children in the juvenile delinquency system evolved to include not only legal representation of young offenders, but also legal advocacy to holistically address the underlying contributing factors that bring youth into the juvenile delinquency system. This expanded model of legal representation based on best or promising practices now includes advocacy on behalf of the whole child in areas such as mental health, substance abuse, co-occurring disorders, developmental disability, special education, and abuse and trauma. Research has shown that this model of holistic representation improves outcomes for youth which, in turn reduces costs associated with cycling troubled youth in and out of the juvenile and, ultimately the adult justice systems. Moreover, Welfare and Institutions Code section 634.3 codified the specific duties and requirements of juvenile counsel including during the post-dispositional phase of juvenile delinquency proceedings.

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Evidence has demonstrated, however, that Los Angeles County's (County) juvenile indigent defense system has not caught up with these changes in practice. Concerns have been raised about the current structure of the system, particularly for youth whose cases, due to a conflict of interest with the Office of the Public Defender, are typically referred to "panel attorneys" (private lawyers operating independently of one another). As a result, the Board of Supervisors (Board) adopted a motion by Supervisor Mark Ridley-Thomas on February 11, 2014, titled "Reviewing Juvenile Indigent Defense System," to review the current system for providing legal representation in the juvenile delinquency courts, to assess any disparities that exist in representation, and to look at national standards and other county models. The County hired the Warren Institute on Law and Social Policy at UC Berkeley's School of Law (Warren Institute) to conduct the analysis. The information from this study, which included extensive interviews, surveys, billing and payment analysis, case file reviews, and data from the Juvenile Automated Index and the Professional Appointee Court Expenditures systems are of concern. It is now clear that the quality of legal representation of children in the County's juvenile delinquency system is markedly uneven, and that a key element of the current organizational structure involving panel attorneys is insufficient and lacks oversight and accountability.

The Warren Institute report entitled, "Los Angeles County Juvenile Indigent Defense System" highlights many key areas of concern. The County is the only county in California to compensate panel attorneys with a uniform per-case flat fee, which arguably disincentivizes spending additional time and effort on a youth's case. This practice is strongly criticized. While causal claims cannot be made, evidence shows that public defenders spend significantly more time per case than panel attorneys.

Resource utilization, and in some cases access, differs depending on attorney type. Though panel attorneys and public defenders have equal access to appointed experts under Section 730 of the Evidence Code (which also includes the ability to obtain social workers, psychologists and doctors for a client), panel attorneys utilize these resources less frequently. For example, social workers are used by panel attorneys only 1% of the time. Moreover, given the flat fee structure, panel attorneys do not have access to paid investigators or training, and must use their own resources for both.

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Youth at risk of being transferred to adult court by way of a Fitness Hearing pursuant to Welfare & Institutions Code Section 707(a) face the most serious outcomes, including potentially long sentences in jail or prison in the adult criminal justice system. These youth are appointed to panel attorneys 71% of the time due to a conflict of interest with the Public Defender's Office which precludes them from representing those youth. However when compared, panel attorneys spent far less time preparing and handling fitness cases than the public defender attorneys and a much larger and statistically significant percentage of panel attorney clients were transferred to the adult system.

Lastly, unlike the Public Defender's Office, there is no oversight body for panel attorneys. The Chief Executive Officer has administrative oversight over the panel attorney contracts, but this oversight is limited and the County lacks centralized quality control for indigent juvenile defense counsel. The result has ranged from minimal to no oversight in areas such as caseloads, training, and quality and scope of legal representation, including post-disposition advocacy.

The structure of the juvenile indigent defense system in the County has not changed in the twenty years since the contracts with panel attorneys were first developed, while the scope and quality of legal representation for youth in the justice system under recognized best practices standards have significantly evolved. The Warren Institute report also examined the different juvenile indigent defense structures in ten counties throughout California, including San Diego County. Likewise, it is also necessary to examine the County's indigent defense structure as currently designed with two separate Public Defender Offices to determine whether it provides youth (and adults) with efficient, data driven, best practices holistic legal representation that facilitates positive outcomes. The time has come for the County to take a serious look at how youth, including transitional age youth and adults are represented and find that reform is critically needed.

WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

1. Direct the Chief Executive Officer to report back in writing to the Board within 30 days outlining a draft Scope of Work for a Subject Matter Expert (consultant) in indigent defense systems and evaluation to help with the

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analysis and recommendations around various solutions to improve the indigent defense system in the County as described in a number of directives below.

2. Direct the CEO and County Counsel to examine the feasibility of the Los Angeles County Bar Association, Indigent Criminal Defense Appointments Program providing administration and oversight of juvenile defense panel attorneys when the Public Defender and Alternate Public Defender are unavailable or declare a conflict of interest.
3. Direct the CEO and County Counsel to reexamine the terms and conditions of future contracts with juvenile defense panel attorneys in areas that include, but are not limited to, elimination of the flat fee rate for juvenile delinquency cases, increased focus on broad, continuing and accessible education and training on juvenile law, including post-disposition advocacy, and meaningful access to appropriate experts.
4. Direct the CEO in collaboration with County Counsel and a consultant to examine the feasibility of merging the Alternate Public Defender's Office and the Public Defender's Office, into a new Consolidated Indigent Defense Public Defender's Office (Office) with the former Alternate Public Defender's Office structure designated as the conflicts division of this newly consolidated Office. (similar to the model utilized by San Diego County).
5. Direct the CEO to analyze the budgetary impacts of this consolidated organizational structure including cost savings and/or cost avoidance in areas that include, but are not limited to, administration, staffing, training, a single, unified and comprehensive case management system and information technology. The CEO shall also evaluate all current case management projects by either the Public Defender or Alternate Public Defender that are in the development stages as part of this analysis.
6. Direct the CEO in collaboration with County Counsel and a consultant to also examine the feasibility and cost savings/cost avoidance of maintaining the status quo of separate Public Defender and Alternate Public Defender's

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Offices and increasing the staff of the current Alternate Public Defender's Office to include the representation of juvenile delinquency cases in which there is a declared conflict of interest by the Public Defender.

7. Direct the CEO and County Counsel to report back to the Board in writing within 90 days with their findings and recommendations.
8. Direct the CEO in consultation with County Counsel and a consultant to devise standards of operation for developing ongoing evaluation and protocols for quality assurance that ensure holistic legal representation resulting in improved client outcomes across Indigent Defense model(s) ultimately adopted by the Board. Areas of program evaluation shall include, but not be limited to, outcomes for youth (and adults), and quality and scope of holistic legal representation using best practice standards to address areas such as mental illness, substance abuse, homelessness, special education and juvenile post-disposition/adult re-entry advocacy. Program evaluation shall also include an analysis of whether adequate resources are committed and utilized by attorneys across Indigent Defense model(s) to meet these best practice standards.
9. Direct the CEO and County Counsel to report back to the Board in one year following the Board's decision to adopt an Indigent Defense model(s) and provide a written Indigent Defense program evaluation report as referenced above.
10. Direct the CEO to hold in abeyance any possible pay raises for panel attorneys pending consideration by the Board.

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