

1. Program Title: Indigent Defense

Program Description: The Office of the Public Defender’s sole program is to *provide effective assistance of counsel* to any individual financially unable to employ private counsel in adult criminal, juvenile delinquency, mental conservatorship, and appropriate family law, and probate cases.

	Base	Unfunded	Funded Base	Percentage
Appropriations	29,317,309	649,853	28,667,456	2%
Reimbursements (-)				
Net Appropriations	29,317,309	649,853	28,667,456	2%
Revenues:				
Federal				
State	585,000		585,000	
Realignment	267,151		267,151	
Prop 172				
Fees	330,000		330,000	
Other	40,474		40,474	
Total Revenues	1,222,625		1,222,625	
Carryover	511,353		511,353	
Net Cost	27,583,331	649,853	26,933,478	2%
Fulltime Equivalent Positions	149.0	3.0	146.0	2%

Program Impact: Maintaining base funding and current staffing Fiscal Year 2012-2013 to the Office of the Public Defender is the **cheaper, faster, and better** way to deliver indigent criminal defense. The **\$649,853** cut to the Office of the Public Defender will result in:

- 1) the potential for an increase in the total actual costs of providing indigent defense in Sacramento County;
- 2) the weakening of a results driven and efficient and effective Office of the Public Defender; and
- 3) the potential for the filing of a civil lawsuit by the Sacramento County Attorney’s Association for Sacramento County Charter section 71-J violations based upon the displacement of civil servants, if the Public Defender is forced to declare “overloads” on criminal matters, which must then be outsourced to private attorneys.

The latest Fiscal Year 2012-2013 Revised General Fund Allocation amounts to a 2% reduction in net funding and staffing. In terms of loss of personnel, this equates to 3.0 staff members:

- 3.0 Attorneys Level I-IV

In Fiscal Year 2009-2010, our attorney workforce was 107 attorneys, plus 22 Legal Research Assistants. In Fiscal Year 2010-2011 our attorney workforce was reduced by 34, i.e., 12

Attorneys plus 22 Legal Research Assistants (which included 12 first year attorneys plus 10 law students certified to practice law by the California State Bar Association).

In Fiscal Year 2011-2012, the Public Defender was staffed with 99 attorneys. During the Fiscal Year 2011-2012 budget process, the County, Sacramento County Attorney's Association and the Public Defender entered into a one year agreement that the Public Defender would not declare "overloads" in Juvenile, Misdemeanor and Felony cases. The agreement excluded homicides and some other matters that had been historically handled by the Conflict Criminal Defender's Office. In exchange the Public Defender suffered no cuts to his staff. Pursuant to this agreement, the Sacramento Attorney's Association agreed to cease its litigation based on the County's alleged violation of County Charter section 71J.

For the Public Defender to declare no overloads we had to handle the increase in caseload and workload: it required that all management attorneys, including the two Chief Assistant Public Defenders, also handle a line caseload and workload thereby taking them away from supervisory and other management duties; and, the resulting increase in cases also increased the workload of all other non-attorney staff.

In Fiscal Year 2012-2013 with a staff of 96 attorneys we will continue our efforts and strategies to avoid declaring overloads while providing effective assistance of counsel to our clients in General Felony, Misdemeanor and Juvenile Cases as was successfully accomplished in Fiscal Year 2011-2012.

As always, the Public Defender's main focus is to provide effective assistance of counsel in all cases to which he is appointed. All caseloads and workloads are carefully monitored (consistent with legal, ethical and professional standards) to handle the maximum number of cases possible. As we are mandated by law, ethics and professional standards to provide effective assistance of counsel, an overload will only be declared when we are unable to meet this standard. Historically we have clearly demonstrated our diligence in controlling declarations of "overload". For example, overloads dropped from 1,500 to 0 between Fiscal Year 1994-1995 and Fiscal Year 2011-2012 without a drop in the level of representation mandated by law.

We do not shy away from work as evidenced by our accepting 15 homicide cases this fiscal year when we could have easily not absorbed them given the terms of the previously mentioned agreement between the County, Sacramento Attorney's Association and the Public Defender. We have been able to accomplish this increase in caseloads and workloads with a concomitant astonishing drop in overload declarations due to numerous factors not the least of which are our systemic efficiencies, economy of scale, expertise, knowledge of the criminal justice system, rigorous oversight, training and by placing our supervising attorneys on the line.

We continue to lead the state in settling 97% of felony matters within 30 days. See Report from the Administrative Office of the Court, 2011 Court Statistics Report: <http://www.courts.ca.gov/documents/2011CourtStatisticsReport.pdf> Those counties with the most similar populations to Sacramento, Alameda and Santa Clara, are comparatively 46% and 21%.

By law, the Court must first appoint the Public Defender, where one exists, to represent those who cannot afford to hire private counsel unless a conflict exists or the Public Defender cannot

provide effective assistance of counsel. In those instances, the Court will then appoint the Conflict Criminal Defender (CCD) to select a private attorney from the Sacramento County Bar Association's Panel. When CCD does not have available or qualified private attorneys from the panel, the Court can on its own appoint private counsel to represent the accused individual, which may result in higher hourly rates than CCD's established, i.e., predictable, rates.

The latest Fiscal Year 2012-2013 Revised General Fund Allocation may restrict the number of cases the Office of the Public Defender can handle and be a step backwards in obtaining budgetary stability to indigent criminal defense in Sacramento County. The more cases we are forced to overload, the bigger the County's indigent criminal defense budget will grow.

To be as effective and efficient as possible, the Public Defender will continue to staff all Sacramento County courtrooms at the arraignment and further proceedings stages. While all efforts will be made to maintain the trial caseloads, with reduced resources, the determination and declaration of an overload will be made when effective assistance of counsel cannot be provided.

If the Public Defender's funding is restored so that current staffing is maintained, the Conflict Criminal Defender's Office will have a continuing substantial reduction in their remaining overload caseloads from past years. Overload cases should be closing and there will be no cases, except legal conflicts, for them to handle.

Potential Impact on other Departments/Program Partners:

- The Public Defender's caseload and workload is reactive to the Polices & Practices of the District Attorney, Law Enforcement, Probation, Court and the passage of new laws and Court decisions.
- District Attorney's Office--The District Attorney's responsibilities and budget are very broad. The District Attorney can make changes and reductions in her organization that will have little to no impact on the Public Defender. As such, the full impact of any reductions to the Public Defender will not be known until the District Attorney announces and implements her budget reductions.
- County Counsel--It is projected that the Sacramento County Attorney's Association will file upon the "overloading" of any criminal matter and appointment of private counsel, a lawsuit based upon a Sacramento County Charter section 71-J violation for causing "the displacement of civil service employees."
- Criminal Justice System---A loss in efficiencies will occur with the loss of experienced Assistant Public Defenders trying cases to jury verdict in Sacramento County. This will increase the costs and delays for the Court, District Attorney, Sheriff and Probation.
- Department of Revenue and Recovery--Reduction in collections and fees.
- Conflict Criminal Defenders (CCD)—Potential overload costs for indigent defense will most likely be passed on to CCD or other private counsel appointed by the courts, increasing the total budget amount paid for indigent defense.