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AB-690 Criminal procedure: indigent defense compensation. (2025-2026)

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CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

ASSEMBLY BILL

NO. 690

Introduced by Assembly Member Schultz

February 14, 2025

An act to amend Section 987.2 of, and to add Section 987.7 to, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 690, as amended, Schultz. Criminal procedure: indigent defense compensation.

Existing law grants a defendant the right to counsel in a noncapital case, and requires a defendant to be represented by counsel in a capital case. Existing law requires specified assigned counsel to receive a reasonable sum for compensation and for necessary expenses, as determined by the court, to be paid out of the general fund of the county.

This bill would, commencing with contracts for indigent defense services entered into after January 1, 2027, revise the process and require a county or court, when contracting for *the provision or administration of* indigent defense services, to include certain elements in the contract or other agreement for indigent services, including requirements for compliance with the Office of the State Public Defender's ~~standards for contract systems~~ *California Standards for Contract and Panel Defense Systems. The bill would specify that, in the absence of a contract for indigent defense services, an agreement for the services shall meet the Office of the State Public Defender's California Standards for Contract and Panel Defense Systems, as specified.* The bill would prohibit a county or court from entering into flat fee contracts, as defined, or per case compensation contracts. The bill would require the structure of the contract for indigent defense services to ensure that attorneys have the resources and time necessary to provide competent legal representation. The bill would require counties *that contract with a private entity or law firm to manage and provide indigent defense services* to provide all *those* contracts to the Office of the State Public Defender every 2 years. The bill would require counties to ensure that all contracts provide for an hourly rate or the hourly rate equivalent anticipated under the contract, as specified. ~~By increasing duties on local officials, the bill would impose a state-mandated local program.~~

The bill would make related findings and declarations.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: ~~yes~~no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares that the constitutional guarantee of free and effective assistance of counsel to indigent people facing criminal charges is threatened where counties and attorneys enter into flat fee agreements. Experts and policymakers around the country have condemned flat fee contracts for legal services because they undermine effective representation for the client by creating a financial conflict of interest for attorneys when the more the attorney works, the lower their hourly rate. These types of arrangements have been outlawed in several ~~states~~; ~~states~~ including Idaho, Michigan, Nevada, South Dakota, and Washington. Indigent defense counsel in California already labor under high caseloads, sometimes as high as 1,000 cases or more each year, exacerbating the financial conflict of interest.

(b) It is the intent of the Legislature to ensure that all Californians have access to effective assistance of counsel, regardless of wealth or income, geographic location, or type of indigent defense system. It is further the intent of the Legislature to provide a mechanism for counties to structure their indigent defense systems in a manner that encourages vigorous representation, pays attorneys a fair wage for work completed, and requires that if contracts are used, they have the structure and support to ensure the promise of constitutionally effective representation.

SEC. 2. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county:

(1) In a county or city and county in which there is no public defender.

(2) In a county of the first, second, or third class where there is no contract for criminal defense services between the county and one or more responsible attorneys.

(3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.

(4) In a county of the first, second, or third class where attorneys contracted by the county are unable to represent the person accused.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases. A contract entered into pursuant to these provisions shall meet the requirements of Section 987.7. In the absence of a contract, any other agreement pursuant to these provisions shall meet the requirements of Section 987.7.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or 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 do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(d) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel.

Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, and if the quality of representation provided by the second public defender is comparable to the quality of representation provided by the public defender, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the second public defender or a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(f) In any case in which counsel is assigned as provided in subdivision (a), that counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator. It is the intent of the Legislature in enacting this subdivision to equalize any disparity that exists between the ability of private, court-appointed counsel and investigators, and public defenders and public defender investigators, to represent their clients. This subdivision is not intended to grant to private investigators access to any confidential Department of Motor Vehicles' information not otherwise available to them. This subdivision is not intended to extend to private investigators the right to issue subpoenas.

(g) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

- (1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.
- (2) The court finds that the interests of justice and economy will be best served by unitary representation.
- (3) Counsel appointed in the first county consents to the appointment.

(h) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in a misdemeanor case, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant. Appointment of counsel in an infraction case is governed by Section 19.6.

(j) As used in this section, "county of the first, second, or third class" means the county of the first class, county of the second class, and county of the third class as provided by Sections 28020, 28022, 28023, and 28024 of the Government Code.

(k) This section shall become operative on July 1, 2021.

SEC. 3. Section 987.7 is added to the Penal Code, to read:

987.7. (a) A contract between a county or court and a law firm, individual attorney, or other legal entity for the provision *or administration* of indigent defense services shall use the following procedure:

- (1) A *final contract and solicitation or agreement for the contracting of indigent defense services, including a* request for proposals, *a* request for qualifications for indigent defense services contracts, or ~~other~~ *another* policy for the contracting of indigent defense ~~services~~ *services*, shall require ~~proposals and all final contracts to include~~ all of the following:

(A) Requirements for compliance with the Office of the State Public Defender's ~~standards for contract systems.~~ *California Standards for Contract and Panel Defense Systems.*

~~(B) Explicit language demonstrating a direct relationship between the contract amount and the total number of cases to be handled during the contract period. The number of cases handled over the contract period shall be informed by caseload limits defined in the National Public Defense Workload Study by the RAND Corporation published in 2023, or a later workload study. When determining the scope of work and number of cases to be handled, the county or court shall take into~~

~~consideration the percentage of the attorney or firm time for work in other cases in addition to work performed pursuant to the indigent defense services contract.~~

(B) When determining the scope of work and number of cases to be handled, the county or court shall take into consideration, among other factors, both of the following:

(i) The National Public Defense Workload Study by the RAND Corporation published in 2023, or a later workload study identified by the Office of the State Public Defender and agreed upon by the California Public Defenders Association and California Attorneys for Criminal Justice.

(ii) The percentage of the attorney or firm time for work in other cases in addition to work performed pursuant to the indigent defense services contract.

(C) The contract amount and structure shall ensure that attorneys have the resources and time necessary to consult with clients, assess discovery, conduct fact investigations, file motions, and perform any other relevant tasks to ensure competent legal representation.

(D) All contracts shall provide a separate allocation of funds for case-related defense services, including, but not limited to, investigators, social workers, and immigration counsel. These ancillary service funds shall be separate and in addition to funds allocated for attorney compensation, and there shall not be a penalty for contracted attorneys accessing those funds.

(2) (A) A county or court shall not enter into flat fee or per case compensation ~~contracts.~~ *contracts for the administration or provision of indigent defense services.*

(B) For the purposes of this paragraph, "flat fee" means a compensation structure that provides a fixed dollar amount for each case, or for an unlimited number of cases, without regard to the actual time and resources required to provide competent and zealous representation in each case.

(3) Contract amounts shall account for all ~~dimensions of modern criminal defense practice, including, but not limited to, the costs of technology, support staff, and ancillary legal services,~~ *costs related to the provision of indigent legal services,* including, but not limited to, immigration support, ~~paralegals,~~ *paralegals and case support services,* social workers, mitigation specialists, experts, and investigators.

(4) The contract shall include a provision that affords the contractor a process to seek a modification of the contract amount if the number of cases handled or the costs of providing a modern criminal defense practice exceed the amount contemplated at the beginning of the contract period.

(b) A request for proposals pursuant to paragraph (1) of subdivision (a) shall be disqualified from consideration if it does not meet all of the requirements of subdivision (a).

(c) Counties *that contract with a private entity or law firm to manage and provide indigent defense services for that county* shall provide ~~all these~~ contracts for indigent defense services to the Office of the State Public Defender every two years, beginning on January 1, 2027. If the contract does not provide for an hourly rate, the county shall provide to the Office of the State Public Defender the hourly rate equivalent anticipated under the contract.

(d) The provisions of this section shall apply to any memorandum of agreement, contract, contract amendment, or contract extension for the provision *or administration* of indigent defense services entered into or elected by any county or court in California on or after January 1, 2027.

(e) This section shall become operative on January 1, 2027.

~~SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~