Indigent Defense Update

August 24, 2009

Indigent Defense

- Focus Issues:
  - Conflict Panel – Control Costs
  - Ability to Pay - Increase Revenue
  - Cost of Indigent Defense

Indigent Defense Budget

- No Conflict Panel Reductions made to address Tier 1 or Tier 2
  - Based on Staff “Furlough” Value
- Tier 3 Reduction
  - Identified as % of Net County Cost
  - Tier 3 Target for Indigent Defense Budget $58,417

Conflict Panel

- Currently 10 Contract Attorney's $794,000
  - $6,612 monthly ($79,344 annually per attorney)
    - Three Year Agreement July 1, 2008 – June 30, 2011
    - No increase in compensation for 3 year term
      - Prior agreement included a 7% increase each year
      - Increase was not included in recognition of County Budget problem
      - FY 05-06 $5,775 & FY 06-07 $6,179
    - Fiscal Out Clause – 60 days notice

Conflict Panel

- CAO Recommendation from June 18, 2009
  - Reduce Panel Compensation 10%
  - $5,951 Monthly (Diff of $661/Mo)
  - Reduce Number of Panel Attorneys
    - From 10 to 8
- Projected 09-10 Savings at this point in time $60,000

Conflict Panel

- CAO Recommendations August 24, 2009
  - Reduce Panel Compensation 10%
    - If only this option approved, FY 2009-10 Savings approx $60,000
    - Future Full Year Year savings of $79,320 based on 10 Attorneys
  - Reduce Number of Panel Attorneys
    - From 10 to 7 – Increase of 1 from June 18, 2009 due to continuing budget shortfalls
    - Invoke the 60 Day Fiscal Out Clause
    - Cancelled Attorney's will go into Hold Over Status and be paid at $70/hr while finishing open cases. Savings will not be recognized in FY2009-10 due to Hold Over.
    - Hold Over could continue into future fiscal year

Conflict Panel

- Next Steps
  - Letters to Conflict Attorneys – By end of August
    - 10% Reduction
    - 60 Day Notice
  - Prepare Amendments for 10% Reduction
  - Distribute to Attorneys for signature
  - Discussions with Judges to identify how many attorneys to eliminate and who
  - Coordination with Courts for assigning conflict cases with reduced number of Attorneys

Conflict Panel

- Discussion and Questions

Ability to Pay

- Activity Since October 2008
  - Judges have ordered in excess of $20,000 in fees
    - Public Defender spoke with Judges in October 2008 about ordering fees
    - Confirmed through data received from Courts
  - Revenue received from ordered fees FY 2008-09
    - $8,708 between Public Defender & Indigent Defense budget
  - Question – How do we generate more revenue to offset the cost of defense?

Ability to Pay

- Revenue Recovery (RR) pilot program.
  - Effective July 1, 2009
  - Judge Bailey's court in South Lake Tahoe
    - Review defendants ability to pay
    - Making recommendation to the Judge
      - Can't pay
      - Could pay a minimal fee
      - Could pay full attorney cost
      - Can get their own representation

Ability to Pay

- Between July 1 & August 19, 2009
- 82 Interviewed
- RR Recommended:
  - 39 Can't pay
    - Determined be below the Federal Poverty Guideline level
  - 36 Could pay a minimal fee ($100/$300)
  - 2 Could possibly pay the full Attorney Cost
  - 5 Could get their own representation

Ability to Pay

- How was the Revenue Recovery Recommendation determined?
  - Defendant completes financial statement developed by Courts
  - RR reviews with defendant and makes determination
  - Consideration for Federal Poverty Guidelines

Ability to Pay

- Pilot Program Considerations:
  - Did the Judge take RR recommendation?
    - Follow up is required to answer the question
    - A longer period of analysis by Revenue Recovery is needed in order to get a larger sampling to determine if the pilot is effective
    - Additional Courts may need to be added
  - What fee structure should be assessed?
    - Misdemeanor $100
    - Felony $300
    - Other? $500

Ability to Pay

- Collections Prior to July 1, 2009
  - The $20,000+ ordered by the Courts is also being collected thru the Courts and remitted to the County monthly.
  - Fees ordered for services such as Probation fees and Public Defender fees are low in the order of collection as defined by State Legislation
- Need to evaluate other counties charges

Ability to Pay

- Discussion and Questions

Cost of Indigent Defense

- Two individual budgets
  - Public Defender
  - Conflict Attorneys separate from Public Defender

Cost of Indigent Defense

- Examples of County Models
  - County Public Defender office & Contract Attorneys
  - County Public Defender office & County Alternate Defense office
  - County Public Defender office & Alternate Defense office & Contract Attorneys
  - All Contracted out

Cost of Indigent Defense

- Measuring Cost for Indigent Defense
  - The previous slide suggests 4 examples of different models found in California Counties
  - When comparing what each County is doing it is difficult to always compare apples to apples
  - Question - What is the more relevant comparison – cost per case or per capita? Both have been suggested in previous discussions

Cost of Indigent Defense

- Measuring – Per Capita
  - Static population is one factor in determining how many defendants may need services
  - Other population related factors may include:
    - Crime statistics
    - Transient population
    - Seasonal Employment
    - Relative wealth of population either in County or in specific geographic area within County

Cost of Indigent Defense

- Measuring – Cost per Case
  - Caseload is a measure of workload
  - Relating caseload to filings recognizes system relationship of Public Defender to District Attorney
  - Types of cases can affect cost i.e. death penalty

Cost of Indigent Defense

- Public Defender Office Model
  - Cost for defense includes more than just attorneys & overhead (clerical, office space, supplies)
  - Other costs may include:
    - Investigation
    - Expert Witnesses
    - Drug and Alcohol Testing
    - Medical Examinations
    - Psychiatric Evaluations
    - Number of Court Locations serviced

Cost of Indigent Defense

- Conflict Panel Attorneys Model
  - Cost for defense includes more than just attorneys
  - County gives no consideration for overhead.
  - County DOES bear other costs such as:
    - Investigation
    - Expert Witnesses
    - Drug and Alcohol Testing
    - Medical Examinations
    - Psychiatric Evaluations
    - Other

Cost of Indigent Defense

- Contracting out Model
  - Contracts with law firms may not include the “Other” costs
  - Contracts may not include defense of capital cases
  - Unless contract is “all inclusive” the base cost of the contract will not tell the story.
  - Cost of defense ends up costing more once all costs are factored in

Cost of Indigent Defense

- How do we compare apples to apples?
  - The CAO's office has established the following criteria for conducting a comparison of cost among counties:
    - A reliable data source consistent among all counties
      - Auditor's Final Budget Document. Submitted to the State Controller's Office
      - Population Data – CSAC Website as of January 2008
    - Static verifiable data
      - Actual, NOT budget from the Schedule 9
    - Relevant time period
      - 2007-08 – First full year actuals available in Schedule 9
      - Personnel Allocations obtained from the Auditor's Final Budget Document

Cost of Indigent Defense

- Placer County Model – 3 Contracts
  - Primary Contract
    - 27 Attorneys plus 2 independent contractor attorneys (total 29)
    - 8006 Cases (276 per attorney, $516 per case)
    - Base Contract of $4,333,650
    - Contract does not include investigation, experts or other ancillary expenses
    - Contract limited to one death penalty case
    - County bears full expense for multiple death penalty prosecutions
  - Other County Budgeted Costs Include
    - Investigation $142,000
    - Professional Services $100,000
    - Medical $150,000
    - Drug & Alcohol Testing $ 39,000
      - Total $431,000

Cost of Indigent Defense

- Placer County Model – Continued:
  - #2 Contract - First Tier Conflicts
    - 9 Attorneys
    - Approx. 1200 Cases
    - Base Contract of $1,364,953 (Fixed – Gets paid even if no cases come in)
    - Contract includes investigation for non-murder cases
    - Does not include experts, testing, transcription or investigation for murder trials
    - Death Penalty cases are outside of contract

Cost of Indigent Defense

- Placer County Model – Continued:
  - #3 Contract – Second Tier Conflicts
    - 4 Attorneys
    - Approx. 100 Cases
    - Base Contract of $342,487
    - Contract includes investigation
    - Contract does not include experts, testing and other ancillary costs
    - Death Penalty cases are outside of contract

Cost of Indigent Defense

- Placer County Model – Continued:
  - Total for Placer County
    - 42 Attorneys
    - 9306 Cases
    - Contracts Total $6,041,090
    - Ancillary Costs Total $ 431,000
      - Total $6,472,090
    - Death Penalty cases are outside of contract

Cost of Indigent Defense

- Cost in El Dorado County
  - 22 Attorneys (14 Public Defender + 10 Contract)
- 2008 Actuals
  - Approximately 7000 Cases Combines
  - Conflict Panel Total $1,321,450
  - Public Defender Total $3,068,000
    - **Total** **$4,389,450**
  - Ancillary Costs Total $ 617,588 (Included above)
  - 2 Death Penalty cases currently in Public Defenders Office
  - 1 Death Penalty done by outside counsel

Cost of Indigent Defense

- Comparator Counties
  - # of Court Locations
  - Population factored by
    - Size
    - Neighboring

County	# of Court Locations	Population
El Dorado - PD Office El Dorado - Conflict	5	179,722
Amador - Contracted	1	37,943
Humboldt	2	132,821
Imperial	4	176,158
Kings - Contract	3	154,434
Shasta - PD Office Shasta - Conflict	1	182,236
Placer	6	333,401
Yolo- PD Office Yolo - Conflict	2	199,066
Napa - PD Office Napa - Conflict	2	136,704
Butte	3	220,407

- Population Source CSAC Website updated January 2008
- Court Location Source 2008 California Courts Directory

Cost of Indigent Defense

County	Type	FY 2007-08 Approp.	FY 2007-08 Revenue	FY 2007-08 Net Budget	Public Defender / Indigent Defense # PD Attorney's	# PD Investigators	Total PD Staffing	# Cases	Cases per Attny	Cost per Case
El Dorado - PD Office	PD Office	2,953,686	303,119	2,650,567	14	2	22	6248	446	424
El Dorado - Conflict	Contracted	956,499	0	956,499	10					
		3,910,185	303,119	3,607,066	24					
Amador - Contracted	Contracted	655,224	2,849	652,375	4			1450	363	450
Humboldt	PD Office	1,566,270	405,874	1,160,396	9	2	17			
Imperial		2,065,538	723,807	1,341,731	14	3	23			
Kings - Contract	Contract	1,987,568	4,876	1,982,692						
Shasta - PD Office	PD Office	2,896,123	92,984	2,803,139	14	4	25	3597	257	779
Shasta - Conflict	Contract	2,174,558	75,125	2,099,433						
		5,070,681	168,109	4,902,572						
Placer	Contract			6,472,090	42			9306	222	695
Yolo- PD Office	PD Office	4,526,136	245,895	4,280,241	25	4	35	5,600	224	764
Yolo - Conflict	Contract	1,996,611	235,869	1,760,742						
		6,522,747	481,764	6,040,983						
Napa - PD Office	PD Office	3,161,638	1,077,005	2,084,633	14	3	23			
Napa - Conflict	Contract	1,083,939	0	1,083,939						
		4,245,577	1,077,005	3,168,572	14			3597	257	881
Butte	Contract	2,338,792	0	2,338,792	16	Contract				

Cost of Indigent Defense

- Comparison based on per capita

County	Population	Type	FY 2007-08 Approp.	Per Capita
El Dorado - PD Office	179,722	PD Office	2,953,686	
El Dorado - Conflict		Contracted	956,499	
			3,910,185	21.76
Amador - Contracted	37,943	Contracted	655,224	17.27
Humboldt	132,821	PD Office	1,566,270	11.79
Imperial	176,158		2,065,538	11.73
Kings - Contract	154,434	Contract	1,987,568	12.87
Shasta - PD Office	182,236	PD Office	2,896,123	
Shasta - Conflict		Contract	2,174,558	
			5,070,681	27.82
Placer	333,401	Contract		0.00
Yolo- PD Office	199,066	PD Office	4,526,136	
Yolo - Conflict		Contract	1,996,611	
			6,522,747	32.77
Napa - PD Office	136,704	PD Office	3,161,638	
Napa - Conflict		Contract	1,083,939	
			4,245,577	31.06
Butte	220,407	Contract	2,338,792	10.61

Other Information to be Considered

- Independent Study of Neighboring Counties Prepared by District Attorney's Office
  - Per Capita analysis of Prosecution to Defense using neighboring Counties
- January 2007 Study by Santa Clara County evaluating cost of Indigent Defense & Ability to Pay

Action Today

- Board give direction to implement CAO Recommendation to:
  - Reduce Conflict Panel Compensation by 10%
  - Reduce number of Conflict Panel Attorneys
  - Continue Pilot Program for Ability to Pay

Contracting Out

- Best way to determine cost of contracting out is to issue an RFP for services
- Need to secure other counties RFPs and outline a scope of service

Further Evaluation

- Continue to evaluate data regarding the cost of Indigent Defense using caseload as the primary factor
- Better understand revenue shown in other counties Indigent Defense budgets
- Evaluate the nexus between District Attorney and Indigent Defense (PD & Conflict) using caseload to filings as another indicator of cost
- Work with Judges to determine if other opportunities exist for cost savings and efficiency between the County and Courts

Final Report with recommendations at September Budget Hearings

- Provide estimate on costs of other models
- Provide cost comparison on per case and filings
- Include information on possible issuance of RFP
- Report on RR pilot project

Indigent Defense

- Discussion and Questions