



## Legislation Text

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**File #:** 20-0871, **Version:** 1

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HEARING - Public Defender recommending the Board:

- 1) Repeal Resolution 203-2009;
- 2) Adopt and authorize the Chair to sign Resolution **152-2020** which establishes a new Public Defender Fee Schedule, and Eligibility and Screening Guidelines, for conservatees and proposed conservatees who are appointed to be represented by the Public Defender pursuant to Probate Code Sections 1470, 1471, and 1472; and
- 3) Authorize the Public Defender to reduce, waive, or defer fees if ordered by the Court.

**FUNDING:** General Fund.

### **DISCUSSION / BACKGROUND**

History:

In 2006, Penal Code Section 987.5 established a Public Defender Registration Fee of \$25.00 to offset local costs of indigent defense, requiring that each county's Board of Supervisors adopt a resolution authorizing this fee. No initial Board resolution from El Dorado County could be located from that time; however, old billing documents demonstrate that the Public Defender's Office previously received the Registration Fee from at least some clients.

On September 15, 2009, Child Support Services, Revenue Recovery Division, recommended the "adoption of Resolution establishing a registration fee in the amount of twenty-five dollars (\$25.00) for every defendant who requests representation by court appointed counsel in order to offset the costs of administering the indigent defense collection system" (Legistar #09-1137). Per the background in the agenda transmittal, this was a pilot program for Revenue Recovery to determine if defendants could pay some or all attorney's fees. The Board of Supervisors approved Resolution 203-2009, but the data from this "pilot program" is unknown and unobtainable.

On September 18<sup>th</sup>, 2020, Governor Newsom signed AB 1869, repealing Penal Code Section 987.5 effective July 1, 2021. Therefore, it is requested that the Board repeal Resolution 203-2009 as it will no longer be in compliance with State law.

Background:

The legal services provided by the El Dorado County Public Defender are mandated by the Sixth Amendment to the Federal Constitution and Article I, Section 15 of the California Constitution. In *Gideon v. Wainwright* (1963) 372 U.S. 335, the United States Supreme Court stated that an indigent criminal defendant is entitled to legal representation at public expense.

Pursuant to Government Code §§ 22700 and 22706, the Public Defender is the statutory county officer whose primary function it is to provide such legal representation. According to long-established case law, "[i]n determining whether to provide the services of his office, the public defender exercises an original power vested in him by statute, not superior to but coequal with the

power of the court to determine whether a person is entitled to be represented by the public defender.” *In Re Brindle* (1979) 91 Cal.App.3d 660, at 679.

Discussion:

The Public Defender is appointed by order of the El Dorado County Superior Court after a judge’s determination that Public Defender legal services are necessary to protect the interests of a person facing a conservatorship proceeding. Those interests include protection against physical harm, fraud, and/or deprivation of liberty. The persons before the Court who need Public Defender legal services include the developmentally delayed, the elderly who lack the mental or physical ability to hire private counsel, and the severely mentally ill. When the Superior Court appoints the Public Defender as legal counsel for these persons, the Public Defender must accept the appointment.

Government Code Section 54985 allows for a county board of supervisors to adopt fees “...in the amount reasonably necessary to recover the cost of providing any product or service...” The Public Defender studied 18 different California counties, ranging from Riverside County to Shasta County, to benchmark possible standards. In evaluating the fee schedules of other counties, the Public Defender was mindful of pertinent issues such as county size and status (e.g., urban vs. rural).

The Public Defender’s proposal involves an hourly rate for conservatorships which takes into consideration the department’s operational costs (personnel salary and benefits, indirect and overhead, supervision, and equipment costs). The rate is an average of the calculated rates for Deputy Public Defender I - III. The proposed hourly rate for FY 20/21 is \$159.00 per hour, which will be evaluated and updated annually. This rate is far below the average private counsel rate of \$300-\$400 per hour.

Upon being appointed as counsel for a conservatee or proposed conservatee, or as soon as is practicable, the Public Defender’s Office will evaluate the client’s financial situation to determine if the client has the ability to pay attorney’s fees; e.g., a conservatee who owns a home or who has significant assets. Any request for fees will be brought by petition to the Superior Court. A request for fees is conditioned upon the probate court judge’s final determination, pursuant to the Probate Code sections discussed above, providing the parties with court oversight.

In accordance with Government Code 54986 (a), a notice has been posted in two (2) local periodicals to notify any interested parties of this hearing. There are no interested parties currently on file with the Clerk of the Board to be notified in advance of the approval of new or increased fees.

**ALTERNATIVES**

The Board could choose to deny approval of the proposed Resolution which would result in no cost recovery for providing legal services by the Public Defender’s Office.

**PRIOR BOARD ACTION**

Resolution 203-2009 Legistar 09-1137

**OTHER DEPARTMENT / AGENCY INVOLVEMENT**

N/A

**CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

**FINANCIAL IMPACT**

Currently, the FY 20/21 Public Defender Adopted budget projects \$45,000 in revenue for these fees. This projection included a proposed \$50 registration fee for adult defendants in criminal cases however, subsequent to that projection, Governor Newsom signed AB 1869 repealing Penal Code Section 987.5 as discussed above. The projected revenue for these fees is now \$40,000 for FY 20/21.

**CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) Clerk of the Board to obtain signature of Chair on the adopted Resolution; and
- 2) Return one certified copy of the adopted Resolution to the Procurement and Contracts department.

**STRATEGIC PLAN COMPONENT**

Good Governance

**CONTACT**

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