



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
County Manager



**Date:** December 26, 2012

**Board Meeting Date:** January 15, 2013

**Special Notice / Hearing:** None

**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** John L. Maltbie, County Manager

**Subject:** Evaluation of the Private Defender Program

**RECOMMENDATION:**

Accept the Committee's report on the evaluation of the Private Defender Program.

**BACKGROUND:**

During the Preliminary Budget hearing on March 29, 2012; your Board asked the County Manager's office to conduct a performance evaluation of the Private Defender Program pursuant to Section 11 of the contract, which states:

*The County may form a committee to evaluate ongoing performance under the terms of this Agreement, at any time during the period of this agreement, that shall include members of the judiciary, members of the Bar Association who are not actively participating as Private Defender Program attorneys, and may include other interested persons as determine by the County, to make such reports and recommendations as may be appropriate and of assistance to the parties hereto.*

On September 1, 2012; the County Manager's Office appointed a five-member committee to evaluate the Private Defender Program. The Committee members were:

Joshua Bentley, President, San Mateo County Bar Association  
Honorable Robert Foiles, Assistant Presiding Judge, San Mateo Superior Court  
Jim Fox, Retired San Mateo County District Attorney  
Honorable David Pine, San Mateo County Supervisor, District One  
Susan Swope, Vice-Chair, Juvenile Justice Delinquency and Prevention Commission

## **DISCUSSION:**

### **The Private Defender Program Structure**

Since 1968, the County of San Mateo has contracted for indigent defense with the San Mateo County Bar Association (the Association) through the Private Defender Program (the Program). The current contract's term is July 1, 2012 to June 30, 2013 with a not to exceed amount of \$16,860,272.

The Chief Defender manages the Program and is responsible for its day-to-day operations. The Assistant Chief Defender assists in the day-to-day operation of the Program, a Managing Attorney for Juvenile Court Operations is responsible for managing the delinquency and dependency caseload of the Program, and a Chief Investigator manages the investigation division.

The Program has approximately 110 attorneys who are assigned cases based on their ability, training and experience, their availability to appear on the dates set for a particular case, and an assessment of each attorney's current caseload. There are 36 investigators who work on a contract basis with the Program and investigate about 1,200 cases per year.

### **Methodology:**

The Committee relied on the following resources to evaluate the Private Defender Program:

- Interviews with representatives of the following agencies/groups:
  - The San Mateo County Superior Court (2)
  - The District Attorney's Office (1)
  - The Private Defender Program (3)
  - The County Counsel's Office (5)
  - The Probation Department (1)
  - Private Defender Program Panel Attorneys (2)
  - Former Private Defender Program clients (4, all adults)
  - Community advocates (2)
- The Private Defender Program Chief Defender's Annual report for FY 2011-12
- The Private Defender Program Chief Investigator's Annual report for FY 2011-12
- The current contract between the County and the Association
- Two prior evaluations of the Private Defender Program that were conducted in 2001 and 2003
- A review of documentation that was provided by interview participants

The Committee held 13 meetings and heard invited testimony from 20 individuals, representing a wide range of experiences interacting with the Program. Each interview was between 30 to 60 minutes and each participant was provided with a list of questions to review in advance. The Committee also asked follow-up questions of each participant during the interview. The Chief Defender and Chief Investigator returned for a second interview to answer questions that had been raised by other interviews. Input

from recent clients was limited to four adults. No juveniles were interviewed because of privacy concerns.

### **Summary of the Interviews**

The following is a summary of the issues, questions, and concerns that were brought up during the interviews.

**Complaint Investigation Process:** The Program has a felony-qualified lawyer on duty every day (the Officer of the Day (OD)) during regular business hours to address complaints. When a complaint is received, the OD logs the complaint, describes the complaint briefly, and notes any resolution reached. If appropriate, the OD may review Court records and contact the attorney involved to investigate the merit of the complaint.

**Requirements to be a PDP panel attorney:** PDP attorneys must have a license to practice law in California and have their principle office located in San Mateo County. There is an extensive application process that includes a complete background investigation, reference checks of peers on both sides of the criminal justice system, an interview with the Assistant Chief Defender, and finally, on a recommendation by the Assistant Chief Defender, an interview with the Chief Defender. The Panel has not added any new attorneys in the last two years.

**Client Feedback:** The committee asked whether, at the conclusion of a case, is feedback solicited from the client regarding their attorney's performance? As a result of this question, the Program is in the process of developing a survey instrument and process to solicit feedback from clients regarding their attorneys' performance that will be implemented in early 2013.

**Attorney/Client Conferencing:** The Committee asked, based on client feedback, whether it was reasonable that attorneys conferred with their clients only 15 minutes before appearing in court. The Program has a policy requiring attorneys to visit their clients the day before any court appearance. The Program also monitors when attorneys interview their incarcerated clients—a statistic that is noted in its annual report to the County. The Committee interviewed only four former clients, and so did not have a statistically significant sample. (Some of the former clients told the committee that they felt that their attorney was not available to take their calls or that their meetings were short and often rushed.)

**Time Spent with Clients:** On average, the time an attorney spends with a client largely depends on the seriousness of the case and the sophistication of the client. Also, as part of the Program's evaluation standards, an attorney is required to maintain contact with both in and out of custody clients in order to provide competent representation for each court appearance. This could mean that, for a relatively minor case and a highly sophisticated client, an attorney might spend 30 minutes with a client. However, with a very serious case and a not so sophisticated client, an attorney and investigator may spend many hours with the client.

**Issues Around Kendra's Law and Laura's Law:** Why did the County choose not to enact them here? This issue is outside the purview of the Committee's evaluation but is noted as a point that was raised.

**Communication Between PDP Attorneys and Clients:** Is there a need to improve the ability of clients, both adult and juvenile, to talk with their attorneys? The Committee found that Panel attorneys have 24/7 phone and in-person access at the Youth Services Center. They cannot, however, make calls into the Maguire Correctional Center, and the Maple Street Complex. Some PDP attorneys will not accept collect calls from the adult facilities. Inmates' access to a phone in the adult facilities is severely limited.

Some improvements and/or efficiencies can be made with regards to client visits. One such example that the Program gave was to implement teleconferencing for some client visits so that the attorneys or investigators don't have to physically go to the jail, thereby saving time and money.

**PDP Use of Technology:** The Program does not use technology, e.g., Power Point as a presentation tool during trial, as much as the District Attorney's Office. The District Attorney can set policy in his office, which Deputy District Attorneys must follow. Because the PDP attorneys are all independent contractors, they cannot be bound by such requirements. In a follow-up interview with the Chief Defender and Chief Investigator, they indicated that the PDP does make technology (such as Power Point) available to its attorneys. Additionally, the Program has trained the investigative staff on the use of technology to serve as a resource to the attorneys.

**Gaps in Juvenile Representation:** There was concern that there are perceived gaps in representation of juveniles, e.g., name changes and fiduciary responsibility for a minor in the event the minor is named an insurance beneficiary. The Committee found that the Program does handle name changes for minors through adoption and dependency cases in the Juvenile Court. However, any petition filed outside the Juvenile Court relating to a minor is not a part of the current contract.

**Special Immigration Juvenile Status Petitions:** Concern was expressed in some interviews as to whether it is appropriate for a Panel attorney to pursue Special Immigration Juvenile Status (SIJS) petitions for their juvenile delinquency clients. The Committee was told that SIJS petitions are not initiated by the Panel attorneys but are filed with the U.S. Citizenship and Immigration Services by immigration attorneys.

However, in order to file an SIJS petition on behalf of a minor, there must be a factual finding in a juvenile court that has jurisdiction over the minor. Although obtaining this type of finding is not specified in the current agreement or fee schedule, under the current agreement, attorneys have an obligation to provide appropriate and competent legal services on behalf of their clients. Furthermore, in 2004 the Administrative Office of the Courts published a brochure titled "Effective Representation of Children in Juvenile Delinquency Court", which states that "advocating for representation of the client in collateral proceedings if appropriate." It is the Programs position that effective

representation of counsel includes obtaining the necessary findings for a minor and providing them to the immigration attorney, who then files the petition with CIS.

**Section 366.26 Cases:** The Committee asked why cases pursuant to section 366.26 of the Welfare and Institutions Code for the purpose of (1) the termination of parental rights, or, (2) the establishment of legal guardianship of a dependent minor are deemed a separate case when the attorney was previously appointed pursuant to Section 317 of the Welfare and Institutions Code. The Committee was informed that the County requested that 366.26 cases be deemed separate for the purposes of statistical reporting to the Administrative Office of the Courts.

## **Findings**

The Committee finds that the Private Defender Program is a well-managed program and considered a model throughout the country for providing indigent defense.

In the course of the interviews, the Committee learned:

1. The last evaluation of the Program was in 2003.
2. The Program handles approximately 19,000 cases per year
3. There were 98 client complaints filed in FY 2011-12.
4. It has been a remarkably stable program with only seven managers since its creation in 1968.
5. In FY 2011-12, the Program received the Harrison Tweed Award from the American Bar Association for preserving and increasing access to legal services to the poor.
6. Panel attorneys are generally well prepared, committed, and passionate about their work, and advocate vigorously for their clients.
7. The Program's investigative unit conducts approximately 1,200 investigations totaling approximately 33,000 investigative hours annually. Investigators are competent and professional and produce a high quality product. They work collaboratively with the PDP attorneys as well as other criminal justice and governmental agencies.
8. The current case-management system vendor, Justice Works, does not follow information security best practices by maintaining a backup location at least 50 miles away from its data center. Its back-up site is only 12 miles from the data center.

## **Recommendations:**

The Committee recommends that the Private Defender Program:

1. Be evaluated at least every ten years or as requested pursuant to section 11 of the agreement. In any year in which a program evaluation is requested and conducted, the Program should not be required to prepare and submit an annual report to the Board of Supervisors.
2. Make a client survey instrument and process to be implemented in early 2013 available to all clients. Include survey results in the Chief Defender's annual

report beginning in FY 2013-14. This will provide a more complete picture of the Program.

3. Assess the exposure the Program has with the Justice Works case management system back-up site being only 12 miles away from the data center. It may make sense for the Program to arrange to regularly download its data for local storage as a secondary backup to the Justice Works primary backup site in Salt Lake City.
4. Establish a policy that PDP attorneys should accept collect calls from adult facilities when the attorney is available in the office to take the call.

**FISCAL IMPACT:**

There is no fiscal impact by accepting this report.