



**Office of the State
Public Defender**
Indigent Defense Improvement Division

California Standards for Contract & Panel Defense Systems and Implementation Guide

February 2025

Project Background

Purpose

Almost half of California’s 58 counties utilize panel or contract systems as the primary indigent defense provider for their communities, and nearly all California counties rely on a panel or contract system for conflict representation. Recognizing the need for statewide guidance and standards in such systems, the Office of the State Public Defender undertook an 18-month research and collaboration project that combined national best practices with input and practical insight from panel, contract, and county leaders from across California. The resulting ***California Standards for Contract and Panel Defense Systems*** provide a rubric for the development and management of an appointed counsel system that ensures both accountability and quality representation.

While the Standards provide a high-level summary of key program components, the accompanying ***Guide to Implementation for County Administrators and Panel Leaders*** expands on how to apply these standards in practice. Although this guide focuses on contract and panel systems, substantial empirical evidence demonstrates that institutional public defender offices remain the most cost-effective means of delivering a county’s primary indigent defense services, producing high quality representation and reliable outcomes.¹ However, for counties where an institutional office is infeasible, or for counties addressing the need for conflict counsel beyond their primary or alternate public defense offices, this resource outlines the standards and practices central to a high-quality, managed assigned counsel program.

County Responsibilities

An indigent person’s right to competent appointed counsel in a criminal case is memorialized in both the United States and California Constitutions. (U.S. Const., 6th Amend., Cal. Const., art. I, §15; see also *Tracy v. Municipal Court* (1978) 22 Cal.3d 760, *Mills v. Municipal Court* (1973) 10 Cal.3d 288.) California has delegated the provision of constitutionally mandated indigent defense services to the counties. (Pen. Code §987.2) In 1913, California pioneered the concept of a county-created, institutional public defense office, and the Legislature subsequently codified each county’s right to create its own public defender office in 1921. (Gov. Code §27700). As of 2024, 34 out of the 58 counties in California employ an institutional defender office as the primary source of indigent

¹ Primus, *The Problematic Structure of Indigent Defense Delivery* (2023) 122 Mich. L. Rev. 207, 24; Anderson & Heaton, *How Much Difference Does a Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes* (2012) 122 Yale L.J. 154; Cohen, *Who is Better at Defending Criminals: Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes?* (2014) 25 Criminal Justice Policy Rev. 29; Iyengar, *An Analysis of the Performance of Federal Indigent Defense Counsel* (2007) National Bureau of Econ. Research, Harvard University Working Paper No. 13187; Roach, *Indigent Defense Counsel, Attorney Quality, and Defendant Outcomes*, (2014) 16 American Law and Econ. 577.

criminal defense representation. The remaining counties have implemented variations of contracted or panel indigent defense systems.

When a county elects to fulfill its obligation to provide indigent defense services through an “assigned private counsel system,” either because no public defender office was established or in individual cases where the public defender cannot represent the individual charged, counties must provide counsel through the scheme articulated in Penal Code section 987.2.²

Importantly, in this code section the Legislature makes clear that any county relying on an assigned private counsel system must ensure fair assignment of cases and standards to effectuate effective representation. Section 987.2, subdivision (c) encourages all those involved in an assigned private counsel system to:

- (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 . . .
- (4) Seek to educate those panel members through an approved training program. (§ 987.2, subds. (c)(1)–(c)(4).)

Even if a county elects to utilize an assigned private counsel system instead of a public defense office, the obligation remains to ensure competent representation is provided to all individuals facing criminal charges, regardless of financial status. The Legislature was explicit that its intent in enacting section 987.2 was 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.” (§ 987.2, subd. (f).) Counties have the important obligation of ensuring that the representation for all indigent defendants in their jurisdiction is comparable to the representation provided by an institutional public defender office. This guide is designed to allow counties to meet these constitutional and statutory duties if utilizing a private assigned counsel system.

² All further statutory references are to the Penal Code unless otherwise stated.

California Standards for Contract and Panel Defense Systems

Standard 1: Independence

Defense system administration must be independent and free from political or judicial influence.

- The attorney administrator hires or contracts with attorneys³, assigns cases and sets program policies independently.
- All funding determinations for ancillary defense resources, such as experts and investigators, are approved by the attorney administrator rather than the court.

Standard 2: Leadership and Structure

Strong, effective leadership via an attorney administrator is essential to provide guidance and accountability.

- The defense program is run by an attorney administrator with extensive criminal defense and leadership experience.
- The attorney administrator develops attorney standards and implements systems for case assignments, attorney training and accountability.
- The leader gives a voice to panel attorneys and their clients by participating in justice stakeholder meetings to weigh in on community needs.

Standard 3: Tiered Attorney Classification and Case Assignment Based on Experience

Attorneys entrusted with protecting the constitutional rights of appointed clients must demonstrate their qualifications, and cases must be assigned based on attorneys' experience level.

- Inclusion in the panel/contract program is by application, with attorneys vetted by the attorney administrator, in cooperation with other defense leadership or advisory committee.
- Attorneys are classified based on their documented level of experience, and case assignments are made based on the training and experience level required in a given case.
- Attorney compensation is tiered and reflects case complexity.

³ Throughout the Standards, reference to “attorneys” means attorneys providing direct legal services to indigent clients as panel members or contractors under the county system.

Standard 4: Client-Centered Representation Model

Program policies and procedures reflect and enforce standards to support prepared and zealous advocacy.

- Panel procedures contemplate and enforce evidence-based practices, including continuous representation, early and consistent client contact, and holistic defense.
- Case assignment systems ensure attorneys hold a sustainable and appropriate caseload of appointed matters.

Standard 5: Oversight and Guidance

There must be oversight, regular assessment, and support of attorneys to ensure high-quality representation.

- Program design and funding must allocate sufficient resources for the attorney administrator to meaningfully and regularly evaluate attorney qualifications and performance.
- Attorneys' supports and tools are woven into program design to ensure all appointed counsel have the resources necessary to effectively advocate for their clients.

Standard 6: Training and Attorney Development

Attorneys must receive regular criminal and delinquency-specific training, in addition to mentorship opportunities for growth.

- The panel/contract system sets meaningful guidelines for ongoing attorney training in the field of criminal/juvenile defense.
- The program provides or makes accessible relevant trainings on new laws and specialty areas to panel attorneys. For less experienced attorneys, attorneys new to criminal defense, and attorneys transitioning from misdemeanors to felonies, a formal mentorship program is offered/required.

Standard 7: Data Collection

The defense system must prioritize data collection as a means of evaluating attorney workloads and performance.

- Data on attorney workload and efforts is gathered and evaluated to enforce accountability and empower leadership to identify weaknesses, strengths, and program needs.
- Utilization of a case management system facilitates real-time collection of caseloads, attorney effort, and case outcome data critical to meaningful oversight of the panel. Such systems can also streamline case assignment and billing.

Standard 8: Funding and Access to Defense Resources

The defense system must provide their attorneys with the funding, tools, and resources necessary to render effective representation on par with institutional defender offices.

- The program ensures all attorneys have access to and use of research tools, experts, investigators, and other defense supports critical to current defense practice.
- To ensure parity between panel/contract representation and that provided by institutional public defense offices, the program provides attorneys access to or consultations with immigration attorneys, appellate support, and in complex cases, co-counsel.

Standard 9: Adequate Compensation Structure

Attorneys must receive competitive compensation commensurate with their skill and experience, the complexity of cases handled, and in parity with comparable attorney rates.

- The program does not engage in flat fee arrangements and instead compensates attorneys for actual work performed in order to incentivize meaningful advocacy.
- Billing and payment systems are overseen by the attorney administrator and include attorney reimbursement for expenses directly incurred on appointed cases.

Standard 10: Transparency and Client Access

The defense system emphasizes the importance of client access and communication through all available means.

- The program prioritizes attorney-client communication and provides the tools necessary for attorneys to engage in such communication with clients both in and out of custody.
- Community transparency and accountability is emphasized through a user-friendly, public-facing website that explains the work of the program, facilitates client-attorney contact, and provides a straightforward process for receiving and addressing complaints against attorneys.

Guide to Implementation for County Administrators and Panel Leaders

Standard 1: Independence

Free From Political and Judicial Influence

An indigent defense program should be designed to guarantee the integrity of the relationship between lawyer and client. Whether it is a single attorney or panel of independent contractors, the system must function independently from the local county government and the judiciary. A foundational principle of the indigent defense function is the notion that public defenders are free from political influence and subject to judicial authority and review *only* in the same manner and to the same extent as retained counsel and the prosecuting agency.⁴

Independence means program leadership has exclusive authority to select attorneys for participation in the program and to develop criteria for assignment of cases without interference from the courts or county administration. Attorneys must be able to provide vigorous representation without fear that such efforts subject them to removal from the panel by judges or other system actors.

Funding for Experts and Investigation

In addition to and separate from funds allocated to compensate panel attorneys, the defense program should have an independent budget for payment of ancillary defense costs on appointed cases such as expert witnesses, paralegals, social workers, and investigators. Systems that require attorneys to contract with and directly pay investigators, paralegals, or other support staff out of their own fees create a financial conflict of interest that disincentivizes effective case preparation. Instead, the system should maintain a separate allocation of funds dedicated to defense team supports. Attorneys then request such services directly from the attorney administrator rather than the bench officer hearing the case. Such a system not only allows for more efficient and appropriate defense preparation, but also ensures an independent defense function. When expert and investigation requests must go through the judge overseeing the matter, attorneys are placed in the untenable position of revealing defense strategies and work product in order to justify necessary investigation, social work, or other expert services necessary to representing their client. Instead, an attorney administrator can most appropriately vet and address requests for defense supports.

⁴ American Bar Association Ten Principles of a Public Defense Delivery System, (2023) [found here](#). (hereafter ABA).

Indigent Defense Board

In addition to an attorney administrator, counties should consider following ABA guidance and implementing a nonpartisan Indigent Defense Board or committee to provide further independence and support for its defender program.⁵ Such a committee should be comprised of experienced and respected criminal defense practitioners without financial conflicts of interest, as well as others knowledgeable in the criminal legal system, such as academics and community members with relevant lived experience.⁶

An independent board with appointment responsibility for the attorney administrator ensures even greater independence from judicial or political pressure, creating assurance that panel attorneys can provide ardent representation without fear of retribution. An Indigent Defense Board also critically inflects defense program administration with diverse perspectives which can be invaluable in building out and maintaining a county's indigent defense plan. Finally, the Board can function as an intermediate entity that is accountable to both the attorneys on the panel and other justice system stakeholders, providing transparency as well as maintaining program independence.

Standard 2: Leadership and Structure

Leadership

Effective program leadership is crucial to a system's success in providing competent legal representation to the community. The exact composition of program leadership, including how many directing or coordinating attorneys are needed, should vary based on the size of the panel/system.⁷ Whatever the specific program structure, strong leadership ensures program functionality, emphasizes attorney accountability, and facilitates coordination between other legal system stakeholders and appointed counsel.

The leadership team should be responsible for monitoring the quality of attorney performance, applying attorney and caseload standards, designation of attorney classifications/case assignments based on qualifications, and recruitment of new attorney membership. The expectations, standards, and rules enforced by program leadership should be laid out in a comprehensive program policies and procedures manual distributed to all panel attorneys.

Leadership also addresses client complaints, attorney concerns, and systemic challenges that arise in appointed practice. As discussed in other sections of this guide, leadership's work in maintaining quality representation, assigning cases, and monitoring appointed

⁵ Where feasible, contiguous counties with smaller groups of independent contractors may consider partnering to support a local oversight committee. Likewise, counties can join together to hire one attorney administrator, modeling after similar programs in Child Support Services. See, e.g. regional bi-county department for DCSS Santa Cruz and San Benito, [found here](#).

⁶ ABA Ten Principles of a Public Defense Delivery System, (2023) Principle 1, [found here](#).

⁷ A useful datapoint for comparison would be the management/supervisor ratios employed by similarly sized institutional defender offices.

caseloads should be facilitated via a case management system and informed by the data collected therein.

The attorney administrator should be forward thinking, staying abreast of developments in criminal law as well as changes in local prosecutorial and court policies in order to proactively implement relevant program changes. Rather than relying on a discipline or complaint system to reactively address attorney competence issues, program leadership should undertake proactive measures to ensure ongoing attorney training and support, promoting quality day-to-day courtroom representation and better client outcomes. Lastly, leadership must not only ensure sufficient attorney membership to address appointment needs but also engage in ongoing recruitment and cultivation of new panel attorneys while fostering community to enhance panel stability.

Experienced Attorney Administrator

Panel/contract defender programs should employ an attorney administrator who is an experienced criminal defense attorney. The director serves not only an administrative function, providing centralized oversight for the program in day-to-day operations, but also a representative role in meetings with the County CEO, Board of Supervisors, and the Courts. As the panel's representative at stakeholder and criminal legal system partner meetings, the attorney administrator must give voice to community and client needs. Compensation must reflect their work not just as the administrator of the indigent defense program, but also the critical work of setting, supporting, and enforcing practice and representation standards and cultivating institutional values across panel attorneys. The administrator must also have time and resources to prioritize attorney recruitment and development efforts to ensure the long-term viability of the panel. Finally, the attorney administrator should represent the panel in all budget meetings, seeking additional defense funding when needed.

Standard 3: Tiered Attorney Classification and Case Assignment Based on Experience

Applications, Vetting, and Periodic Requirements to Reapply

All participating attorneys should be required to submit a written application to participate in the program which details the applicant's actual trial and courtroom experience. Applications should be reviewed, and candidates should be interviewed by the attorney administrator and/or advisory committee prior to being offered a contract or placed on a panel. The application should provide the candidate with an opportunity to demonstrate a commitment to indigent defense and the knowledge, experience, and skills necessary to competently represent potential clients. A transparent review and vetting process should be implemented for attorneys wishing to handle more complex or serious cases or to take on specialized post-conviction or juvenile matters.

Once included on the panel, all attorneys should be required to update the information provided in their initial application periodically (depending on the length of the contract or preference of the attorney administrator) and be periodically and regularly assessed for

continued commitment and qualification for the program. In addition to regularly scheduled updates regarding additional training, trial, and other relevant experience, attorneys should be required to timely disclose any significant discipline or findings relevant to their competence as counsel.⁸

Tiered System Based on Experience and Qualifications

A panel system should be structured in a manner that promotes the highest quality representation and best client outcomes by matching the needs and demands of a given client/case with the skill and experience level of the assigned attorney. This can be accomplished by organizing contracted/panel attorneys based on their qualifications and documented experience, and then assigning cases based on their relative complexity. A tiered system ensures that clients facing the most serious cases are assigned attorneys with the requisite experience, and such a system further incentivizes participating attorneys to prioritize their own continuing education and accumulate litigation experience. A program may also consider incentives for attorneys who pursue criminal law specialization, who present at trainings and conferences, and who act as mentors for newer attorneys.

Attorney Qualifications

The program's rules and criteria governing attorney qualifications should be in writing and included in its written policies and procedures, as well as available to any panel applicants and the public. Whether an attorney is qualified to take cases within a specific tier should be determined by the attorney administrator, along with defense leadership or an advisory committee, based on the attorney's documented criminal/juvenile law experience. The attorney classification scheme should require progressively more substantive, serious trial work in order to handle more serious cases and should also provide a procedural mechanism for review of an attorney's classification as needed or upon attorney request to move to a higher "tier." The qualification guidelines should account for all case types covered by the program's contract, starting with misdemeanors through capital cases, as well as specialized criteria for resentencing/post-conviction, juvenile delinquency, dependency, and CARE Court cases, if applicable.

Case Types

Cases should be divided into categories that reflect the relative seriousness of the underlying offense and hourly pay should increase with case complexity. How a program categorizes cases should be clear in a program's policies and procedures manual. While the delineated categories provide guidance, the policies should afford the attorney administrator discretion to depart from the guidelines where it is in the best interests of the client and where such departure aligns with the goals of cultivating competent attorneys.

⁸ This would include any formal discipline by the state bar, any finding of ineffective assistance of counsel by any court, any granted Marsden motion or other removal as appointed counsel by a bench office, and/or any criminal investigation or charges in which the attorney is implicated. The attorney administrator would then evaluate the specific facts of the reported incident to determine what action, if any, should be taken.

Case Assignments

The mechanics of counsel appointment will vary based on established workflows in each county. However, the decision to assign a specific case to an individual attorney for appointment by the court should be made by the attorney administrator, or within specific, articulated parameters, matching attorney competence with the seriousness and complexity of a case. In addition, the program's case assignment system must also consider the number of cases assigned to each individual attorney over a specific time period to ensure appropriate caseloads. Attorneys should be permitted to refuse appointment, without penalty, when ethically overloaded.

Standard 4: Client-Centered Representation Model

Early Representation

Best practices require that the accused should be provided counsel as early as possible. If there is an ethical conflict with appointed counsel, that conflict should be declared immediately so new counsel may be assigned. California law requires arrested individuals receive a detention hearing within 48 court hours of their arrest.⁹ Moreover, providing opportunities for attorneys and clients to meet before their first court appearance decreases the rate of pre-trial detention and attendant costs to the county.¹⁰ As such, any indigent defense program's staffing, court coverage, and case assignment model should coordinate with other criminal court stakeholders to ensure all indigent defendants are assigned and have the opportunity to meet with counsel prior to their first court appearance.

Clients must be promptly contacted and interviewed by a defense team member as soon as possible, and ideally shortly after arrest. Time is of the essence for the defense to preserve evidence and litigate a client's custodial status. A first meeting with a client should include addressing the client's custodial status, identifying important potential collateral consequences such as immigration, the preservation of transitory evidence, and advisal of statutory and constitutional rights.

Continuous Representation

Attorney appointments under the program should presume and support vertical representation: that is, the assigned attorney represents the client from initial interview

⁹ §825; *County of Riverside v. McLaughlin* (1991) 500 US 44, 56.

¹⁰ Attorneys who meet with clients prior to arraignment are better prepared for the detention hearing, and suitable arrestees are more likely to be released prior to trial thereby lowering pre-trial detention rates and jail costs. Evidence shows reductions in pre-trial detention are consistent with lower rates of re-booking and failures to appear. See, Judicial Council of California Report to the Judicial Council, Item No.: 23-007, (July 21, 2023); see also, *Releasing People Pretrial Doesn't Harm Public Safety*, Prison Policy Initiative (2023) [found here](#). Furthermore, appropriate pre-trial release decreases societal costs associated with the cascade of consequences that flow from an arrest, including loss of employment, displacement of children and other dependents, and loss of housing.

through the end of the trial court’s jurisdiction. Where consistent vertical representation is not feasible, the attorney at intake should provide complete representation, including seeking release for clients in custody, commence necessary investigation, and filing of any timely motions, until the case is transferred to permanently assigned counsel.

Continuity of representation throughout the client’s case, including post-conviction appearances such as probation progress reports and probation violation hearings, helps ensure necessary information is retained, the attorney-client relationship is preserved, and outcomes are maximized. In the event of a client with multiple pending matters, the original appointed attorney of record should be the presumptive attorney for any subsequent appointments, so long as the case complexity aligns with that attorney’s qualifications. Any determination to assign a different attorney should be at the discretion of the attorney administrator and driven by the client’s best interests.

Panel Standards for Effective Representation

While the panel may not direct an attorney’s work on an individual case, the attorney administrator should develop and disseminate representation standards based on evidence-based practices for holistic, client-centered advocacy.¹¹

These standards should be included in the program’s policies and procedures and be incorporated as a material term of each individual attorney’s contract to participate in the panel. Such standards should include expectations regarding timely engagement in all appropriate representation-related activities on any appointed case (e.g. client interview, obtaining discovery, investigation, research, motions and trials etc.).

Enforcement of Caseload Standards

Caseloads must allow attorneys the time and effort necessary to ensure quality representation for each appointed client. An attorney burdened with an excessive caseload invariably compromises the quality of their legal work in violation of a client’s right to effective and competent counsel, the individual attorney’s ethical responsibilities under California’s Rules of Professional Conduct,¹² and the model ethical rules.¹³ Systems that fail to monitor caseloads and maintain ethical workloads for their attorneys violate the ABA’s 10 principles of a public defense delivery system,¹⁴ the California State Bar Guidelines on Indigent Defense Delivery Systems¹⁵ and expose their county to liability

¹¹ State Bar of California Guidelines on Indigent Defense Delivery Systems, (2006) [found here](#).

¹² State Bar of California Standing Committee on Prof. Resp. and Conduct, formal opn. No. 97-0007 (2004).

¹³ ABA Model Rules Prof. Conduct, rule 1.1 [requiring competent representation, defined as the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation”]; see also ABA Model Rule Prof. Conduct, rule 1.3 [requiring attorneys to act with “diligence and promptness in representing a client.”]

¹⁴ ABA Ten Principles of a Public Defense Delivery System, (2023) Principle 3, [found here](#).

¹⁵ State Bar of California Guidelines on Indigent Defense Services Delivery Systems, (2006), p. 25.

when clients are harmed.¹⁶ Given the dangers of excessive caseloads - constitutional violations, unjustified longer sentences, potential wrongful convictions - and the liability arising therefrom, panel/contract programs must monitor and take steps to limit appointed caseloads of participating attorneys.

In order to achieve manageable, ethical workloads, panel/contract systems must employ some mechanism for tracking attorney caseloads, whether through a case management system or other tool. Attorneys should be required to regularly report their full caseload numbers to program administration, including appointed and non-appointed cases outside of their contract with the program.

Programs can use existing workload resources, such as the 2023 RAND Corporation's National Public Defense Workload Study (NPDWS) and OSPD's guide to applying the NPDWS in California¹⁷, to generate county-specific standards for appropriate attorney workloads and then implement case assignment controls around those standards. Additionally, a panel/contract program's policies and procedures should grant attorneys an option to refuse new case assignment based on caseload concerns without penalty. In no event should an attorney face financial or other disincentives for refusing to accept appointment on a case when the attorney is either at capacity or does not have the level of skill and experience required.

Client Communication

The program must prioritize client communication through its structure, representation model, and resources provided to panel attorneys. Attorney standards should include expectations that attorneys be available to their appointed clients outside of court appearances, regularly communicate with clients about their case and case developments (including visiting clients in custody), and a requirement that attorneys have a working telephone number that accepts jail/prison calls and a functional voicemail available for confidential client use. Voicemail and email messages from clients should be responded to promptly. It is not sufficient for attorneys to only meet with their clients at the courthouse before and during court. Clients must be able to have confidential conversations with their attorney about case strategy, evidence, witnesses, and collateral consequences without the pressure of the judge and prosecutor being nearby and the case being called imminently. Defense counsel should be compensated for time spent on such client communication.

Additionally, the program should contract with interpreters available to assist attorneys in meeting with their appointed clients either in custody or outside of court. This critical interpretation resource should include attorney access to a language line interpreter to assist with confidential client calls.

¹⁶ For example, *Phillips v. State of California*, (Superior Ct. Fresno County, July 14, 2015, No. 15-CE CG 02201.), ACLU summary [found here](#).

¹⁷ OSPD's Understanding the National Public Defense Workload Study: A Practical Guide to Mapping Common California Offenses, (2023) can be [found here](#).

Standard 5: Oversight and Guidance

Oversight and Assessment

National and state standards for indigent defense¹⁸, including the ABA Ten Principles of an Indigent Defense System¹⁹ and the California State Bar’s Guidelines on Indigent Services Delivery Systems,²⁰ require meaningful oversight of contractors/panel attorneys as a key element of any contracted system. Therefore, any contracted/panel program for indigent defense delivery must build in procedures to monitor the quality of representation provided by attorneys to safeguard clients’ constitutional right to effective counsel.

Critical to this oversight function is ongoing assessment of attorney work and performance. Assessments should include in-court observations and file review, documenting both high performance as well as deficiencies and complaints. Assessments should be the basis for determinations of attorney classification vis-a-vis case-level assignments, as well informing decisions on contract renewal or termination.

Advice and Guidance

Beyond monitoring of attorney performance, program leadership should also take reasonable steps to ensure attorneys are providing high quality criminal defense representation through access to training, support, and guidance. The attorney administrator, as experienced defense counsel, can serve as a resource to attorneys regarding legal developments, trial strategy, and other key aspects of representation. Because panel attorneys are independent contractors, program leadership does not direct attorney work or strategy on a given case; however, a crucial function of program leadership is to ensure access to advice and support as needed.

Clear, Written Attorney Expectations

The contract/panel program should have clear, written policies governing expectations for casework, professional conduct, billing, and legal performance. Simultaneously, the program policies should address how the attorney administrator will address any departures from practice expectations or program policy, including the consequences of such departures. This policy language can be incorporated by reference within the panel

¹⁸ National Legal Aid and Defender Association Standards for the Administration of Assigned Counsel Systems: Black Letter, [found here](#); National Legal Aid and Defender Association, Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services, [found here](#).

For illustrative purposes, we are including standards from other jurisdictions in the United States. See, for example: New York: “ILS Standards for Establishing and Administering Assigned Counsel Programs: Black Letter Standards” July 1, 2019 [found here](#); Michigan: Michigan Indigent Defense Commission “Minimum Standards for Indigent Criminal Defense Services” Standard 7(c), Summer 2017 [found here](#); Oregon: Oregon Office of Public Defense Services “Best Practices for Oregon Public Defense Providers” Revised March 16, 2010, [found here](#).

¹⁹ ABA Ten Principles of a Public Defense Delivery System, (2023) Principles 2, 3, 4, and 7, [found here](#).

²⁰ The State Bar of California Guidelines on Indigent Defense Services Delivery Systems, (2006), p. 43.

attorneys' contracts and should generally track the standards within this document. Topics for the policy manual may include:

- Attorney scheduling, assignment of cases, performance expectations, periodic performance reviews and metrics for accountability
- Workload / caseload guidelines and reporting requirements
- Hourly rates of compensation by case type
- Reimbursement mechanisms
- Guidelines for attorney advancement from misdemeanors to felonies
- Training and professional development requirements
- Guidelines and requirements for mentors
- Data entry expectations
- Disciplinary mechanisms and procedures for addressing client and/or court complaints
- Requirements for effective representation, including such expectations as:
 - Meeting with one's client prior to the court appearance when possible, or shortly after court at the latest
 - Advising clients of all statutory and constitutional rights, immigration and collateral consequences and maximum exposure
 - Obtaining all discovery, thorough factual investigation, researching legal issues, litigating motions, securing experts, exploring sentencing alternatives
 - Preparing for trial, advising client of appellate rights and filing notices of appeal
 - Maintaining client confidences
 - Maintaining proper files for record keeping

Standard 6: Training and Attorney Development

Training

Criminal defense practice is a complex, constantly evolving area of law. To meet professional standards around competence, attorneys must be engaged in ongoing training and continuing legal education.²¹ Intrinsic to a program's responsibility to ensure competent representation is an ongoing training requirement. Programs should: 1.) Require panel attorneys to participate in a designated number of annual hours of criminal defense-specific training above and beyond the State Bar's minimum continuing legal education requirements; 2.) Provide (or provide access to) additional required training relevant to defense practice in the program's jurisdiction or other areas deemed critical by program leadership (e.g. mandatory training on changes to criminal legal statutes); and 3.) Enforce these training requirements by requiring verification of trainings attended at program application, renewal, or other key intervals.

²¹ See Rule 1.1 of the Cal. Rules of Professional Conduct; Rule 1.1 of the ABA Model Rules of Professional Conduct.

Requirements for Criminal Defense Specific Training

While California requires attorneys to complete certain minimum continuing legal education (CLE) requirements, the requirements are not subject matter specific. Attorneys could fulfill the hours required by the State Bar in any subject area that may have nothing to do with criminal defense. It is therefore incumbent on defender programs to articulate mandated criminal defense training requirements for participating attorneys with clarity. Best practice is to require 15 to 25 hours per year of criminal defense specific training. Consideration should also be given to criminal defense-adjacent subjects such as immigration. At a minimum, the director of the program and/or the advisory committee should set out clear, written, training and experience requirements for attorneys to qualify for the assignment of different case types, including juvenile delinquency, which legally requires 8-12 annual hours of specific training.²²

Directed Trainings on Specific Topics

In addition to the general requirement of criminal-specific CLE, program leadership should also identify specific training/content areas particularly relevant to defense practice in their county or especially timely based on legal developments and then make trainings/resources on these topics available to panel attorneys.²³ Programs should also consider a formalized training program for onboarding new attorneys, as well as allocating funds to reimburse attorneys for travel to/participation in live trainings.

Technology

Beyond specific legal topics, programs should consider mandated technology trainings to account for the digital transmission and review of evidence, electronic filing, and court communication.²⁴ Given the nature of modern legal practice and its reliance on technology, attorneys should be competent in MSWord, Outlook, Adobe and web based legal research platforms such as Westlaw or LexisNexis. Proficiency in any program selected case management system, and any relevant web-based client communication system (such as a virtual visitation platform used by the local jail) should be required.

²² See California Rules of Court, Rule 5.664, [training requirements for children’s counsel in delinquency proceedings].

²³ OSPD’s Indigent Defense Improvement Division provides extensive, on-going defense trainings available for free to indigent defenders across the state, including live streamed and online trainings. To learn more about OSPD’s training resources and possible assistance in developing trainings for your county, visit [the IDID Training Team page](#).

²⁴ Relevant technological competency has been incorporated into Rule 1.1, Comment 1 of the Cal. Rules of Prof. Conduct.

Training Leader

Programs should designate an administrator or member of the panel to oversee training requirements, aggregate and share access to online trainings, and plan live training events. Smaller counties can collaborate with nearby counties and appoint a multi-county training leader. In addition to ongoing training requirements for program membership, the program should also provide optional but encouraged training in highlighted areas for attorneys seeking to elevate their eligibility for more serious and complex cases.

Mentoring

Mentoring programs can be an economic and effective means for appointed counsel systems to provide their attorneys training and professional support, as well as to develop attorney competence to take on increasingly complex cases. Mentorship programs, however, should not rely on volunteers and instead compensate mentors for their time (i.e. at the same hourly rate provided for client representation). A mentorship program should set out clear expectations as to the goals and outcomes of the mentorship.²⁵

Standard 7: Data Collection

Data Collection

Data collection is critical for two reasons. First, counties must understand the scale of indigent defense needs to properly scale program structure and staffing, as well as the roster of contracted attorneys. Gathering data on the aggregate number of cases, case types, and attorney workloads will inform the scope of the planned program, the current limitations of the system, and any need for increased resources.

Second, collecting and regularly reviewing data on the caseload and performance of individual panel/contracted attorneys is crucial to ensuring the system delivers effective representation. Data capturing attorney effort – such as motions filed, trials conducted, experts appointed – in addition to case outcomes and client satisfaction, can reveal patterns, identify strengths and weaknesses in performance, and empower the attorney administrator to make intelligent and informed decisions on panel policy and composition. Programmatic and individual attorney data is critical to a basic understanding of attorney performance and adherence to the panel’s practice standards, in addition to whether the program is effectively serving the needs of the county’s citizens.²⁶

²⁵ Mentorship should be a confidential space that is separate from attorney evaluations so that newer attorneys can feel free to ask questions and solicit advice without fear of judgment or reprimand.

²⁶ Data collection in indigent defense systems is widely recognized as standard practice. ABA Ten Principles of a Public Defense Delivery System, (2023) Principle 4, [found here](#).

Case Management System (CMS)

A starting point for assessing the quality of services rendered by contracted attorneys is a basic understanding of the frequency and types of services performed under the contract. While this can be accomplished in many ways, the most efficient is the use of a case management system (CMS). A CMS allows the attorney administrator, and thus the county, to understand basic information about their indigent defense program, such as the number of cases handled by the system, or by an individual attorney, over a specific time period. A CMS can further provide metrics and capture more qualitative data imperative for quality control and attorney assessment. A simple CMS can provide reports that illustrate attorney activity and case outcomes –data critical to determine the quality of representation provided by a panel attorney or to deciding whether to renew contracts. Case management systems can also include functionalities that present additional efficiencies to contract/panel program administration, such as invoicing or billing features that allow contracted attorneys to streamline their reporting and billing processes.

Timing and Data Points

How and when data is collected is a critical decision. Regardless of the data tracking system used (e.g. an electronic CMS or individual forms), data should be gathered in real time at critical case milestones, such as arraignment, trial/disposition, and sentencing. Allowing attorneys to only report case data at the end of case or on a quarterly basis inherently reduces accuracy and deprives the attorney administrator the oversight benefits of contemporaneous attorney performance information.

Typical data points collected in a system would include individual demographic information about the client, charges and enhancements, activity on behalf of the client such as investigation, expert appointment, and immigration consults, as well as case outcomes. Ideally, a program's data collection system should be able to import data already collected by the court to avoid redundancy and limit the data entry burden on attorneys.

In order to incentivize the important task of data entry, panel attorneys must be compensated for time spent complying with data entry requirements (i.e. data entry can be a line item in an attorney's bill for work on an individual case). Additionally, or alternatively, requiring completed data entry before attorney bills are processed can also motivate attorney compliance with data reporting requirements.

Confidentiality

With the appropriate policies and rules in place, case information can be aggregated and viewed by attorney administrators in a manner that protects client confidentiality and is otherwise consistent with all ethical and professional requirements for attorneys. If a CMS is provided to contracted attorneys by the county, with the appropriate permissions and internal ethical screens, the CMS can be customized to segregate the limited information accessible to attorneys participating in the program from the more robust, case-specific

data accessible to program administrators. Such a system preserves client confidentiality while allowing the attorney administrator access to critical programmatic information.²⁷

Standard 8: Funding and Access to Defense Resources

All indigent defense systems should be properly funded and resourced, and contract/panel systems are no different. Contracted attorneys should have access to defense team supports necessary to effectively and zealously represent their clients.²⁸ The contract/panel program should provide contracted attorneys resources on par with what institutional defenders provide, and payment for these services should be independent of attorney hourly compensation. Attorneys must not be required to pay for critical resources such as investigators or experts from their hourly rates, and funding for experts and investigators should be separately allocated so as not to create financial disincentives for attorneys to refrain from investigating or hiring experts. As explained in Standard 1, funds for hiring experts or any contracted defense supports should be approved by the attorney administrator, rather than the judge overseeing the case, to maintain client confidentiality and independence.

Investigators, Social Workers, and Paralegals

Investigators are integral to constitutionally effective defense. Without a defense investigator, attorneys cannot independently explore the circumstances of alleged events, interview witnesses, or properly prepare a defense. Systems should have staffed or contracted investigators readily available to investigate cases.²⁹

Just as investigators are essential to defense preparation, social workers have become integral to contemporary defense and juvenile practice. Uniquely trained to provide attorneys with necessary insight into a client's needs and to assist with connecting clients to services, social workers allow defenders to address the root causes of crime and craft effective and cost saving case resolutions. Access to such specialists must be readily available to attorneys seeking to identify housing, treatment, and other resources that can present effective sentencing alternatives for long term public safety.

For more complex cases, paralegal support is critical to reviewing voluminous discovery, research and preliminary motions drafting, and client relations. This support allows

²⁷ If the attorney administrator carries a caseload, it must be limited and discrete to avoid creating an ethical conflict in reviewing the work of attorneys in the panel system. This can be achieved by taking cases that are distinct from the rest, or a certain subclass of cases that does not crossover with the other attorneys' cases.

²⁸ See National Association for Public Defense Policy Statement on Public Defense Staffing (May 2020), [found here](#).

²⁹ Standards set forth by the National Association of Public Defenders state that systems should provide one investigator for every three lawyers, one paralegal for every four lawyers, one administrative assistant for every four lawyers and one social worker for every three lawyers. National Association for Public Defense "NAPD Policy Statement on Public Defense Staffing" May 2020, [found here](#).

If investigators are "on staff", ethical walls and conflict checks need to be instituted.

attorneys to work more efficiently and in a more cost-effective manner, by focusing on the higher-level legal work as other aspects of case preparation are handled by the paralegal.³⁰

Requiring attorneys to apply to the court for any of these pivotal supports is inefficient, can result in loss of critical case preparation time,³¹ and presents issues of judicial interference with the defense as discussed in Standard 1. Instead, contract/panel systems should maintain and administer a separate defense resources fund to which attorneys apply for appointment of necessary supports on individual cases. The program can also maintain lists of vetted investigators, social workers, and paralegals as a guide for attorneys seeking assistance on their appointed cases. Such a system ensures independence of the defense function, timely assemblage of a defense team, and simultaneously provides critical data points to the attorney administrator regarding attorney efforts on cases.

Experts

Separate and apart from legal support, in many cases experts are necessary to competently represent an individual charged with a crime.³² Experts are constitutionally mandated where specialized knowledge is required to address complex scientific, medical or technical aspects of a case.³³ The cost of experts should not be borne by the indigent client or the appointed attorney. Some jurisdictions have found it to be an ethical violation to accept appointment to represent an indigent client if it obligates the firm or attorney to bear the cost of providing investigators or expert witnesses as such a system provides a financial disincentive to proper case preparation.³⁴

Instead, the funding of defense experts should be an independent defense function, free from interference from the courts or county administration.³⁵ The contract/panel program's separate allocated budget for defense resources should include sufficient funds for attorneys to apply for and compensate specialized expert support on cases. Attorneys should apply to the attorney administrator for such expert funds, at once ensuring an independent defense function while also providing useful data to program leadership regarding the extent and effectiveness of individual attorney case preparation.

Writ Support

In California, an individual has an unqualified right to challenge certain types of decisions made before the end of trial court proceedings through a "writ" to the Court of Appeal. An

³⁰ Backus & Marcus, *The Right to Counsel in Criminal Cases, A National Crisis* (2006) 57 Hastings L. J. 1031, 1101.

³¹ Delay in obtaining a defense investigator means essential exculpatory evidence such as video surveillance and alibi witnesses can disappear while an attorney waits on funding or appointment approval from the court.

³² State Bar of California Indigent Defense Guidelines (2006), p 38.; National Legal Aid and Defender Association Standards for the Administration of Assigned Counsel Systems (1989).

³³ *Ake v. Oklahoma* (1985) 470 U.S. 68.

³⁴ See for example Rule 1.8 of the Wash. Rules of Professional Conduct.

³⁵ ABA Ten Principles of a Public Defense Delivery System, (2023) Principle 1, [found here](#).

individual can file a writ if they believe the court erred when deciding issues such as a denial of their speedy trial rights, illegal searches, the denial of a request for the appointment of an expert, or discovery violations.³⁶ The California Supreme Court has stated very clearly that the writ process, or seeking review of a trial court's decision is a "critical stage of the criminal proceeding," requiring competent counsel.³⁷

Simultaneously, appellate practice in California is a highly specialized area of the law with writs requiring even more specialization to achieve competence. To address this specialized need, some institutional defender offices have an in-house appellate team to assist trial attorneys with writ support.

In order to not just provide parity with public defense offices but also ensure constitutionally effective representation for all indigent defendants, contract/panel programs should have competent appellate counsel available on staff or on contract to assist trial-level attorneys with pre-trial writs and to provide general appellate support. An alternative solution is a subpanel of contracted attorneys vetted for appellate experience to take writs when needed as co-counsel to the trial attorney.

Standard 9: Adequate Compensation Structure

Recognizing the budgetary demands on limited county revenue streams, county executive offices have a constitutional and statutory obligation to allocate sufficient funds to ensure effective representation for all individuals charged with a crime. Counties must award contracts for public defense services based on qualifications and experience, never on cost alone. Attorneys providing direct indigent defense representation should be paid a competitive rate for actual work performed in order to encourage and support meaningful, prepared, and competent advocacy.

Competitive, Hourly Compensation

National standards indicate that hourly compensation for contracted/panel attorneys is the better practice. Attorneys participating in the program should be paid by the hour at rates that ensure the program is delivering the highest quality legal services possible.

Compensation should be tiered by case complexity to reflect the training and experience necessary to competently defend more serious or specialized matters. The rates should be competitive, taking into account: 1.) the prevailing hourly rates for other independent contractors providing legal services for the county; 2.) the prevailing hourly rates charged by private defense practitioners in the county; 3.) the equivalent hourly rate (taking benefits into account) for salaried district attorneys in the jurisdiction; and 4.) the seriousness and complexity of the assigned case.

³⁶ In California, the ability to seek a review by petition for writ of mandate or prohibition has evolved in a piecemeal fashion over time. Some examples of explicit, statutory authorization include: review of grant or denial of motion to suppress evidence, review of grant or denial of defendant's motion for DNA testing, or review of denial of motion to dismiss under § 995.

³⁷ *Gardner v. Appellate Division of Superior Court of San Bernadino County* (2019) 6 Cal.5th 998.

The rates should be set with input from the attorney administrator (and any program advisory committee) and should be reviewed on an annual basis to ensure rates remain competitive, with regular adjustments for inflation or the cost of living.

No Flat Fees

Flat rate fees for legal services either for a single case or for a specific contractual period should not be used.³⁸ Indeed, studies have demonstrated that attorneys working for a flat fee prematurely dispense with cases, prior to performing necessary investigation or research.³⁹ This troubling practice was observed in counties in California still utilizing a flat fee payment model and documented by the California Commission on the Fair Administration of Justice and the U.S. Department of Justice.⁴⁰

Multiple state courts have found that the perverse economic incentive created by flat fee contracts can be evidence of a financial conflict of interest or produce an inference of inadequate representation.⁴¹ Idaho, Nevada, South Dakota, and Washington have all banned the use of low-bid, flat fee contracts.⁴² Flat fee or fixed compensation models can cause attorneys to prioritize what is most efficient or cost effective over the client's expressed or best interests, in violation of professional and ethical rules. As opposed to an hourly rate scheme where attorneys are directly compensated for the hours worked - thereby incentivizing rigorous case preparation, flat fees penalize the hard-working attorney by reducing their effective hourly rate the more time the attorney invests in a case.

Reimbursement for Defense-Related Expenses

Attorneys should not be expected to pay out of pocket for case-specific expenses incurred in fulfilling their obligations to appointed clients. Requiring attorneys to simply shoulder these costs disincentivizes incurring such expenses and can have a significant detrimental impact on defense preparation. For example, an attorney who is not reimbursed for mileage or travel time to visit in custody clients will naturally minimize the number of visits they make to the county jail 30 miles away, disincentivizing the basic requirement of frequent client communication. Instead, attorneys should be reimbursed or compensated sufficiently to cover the reasonable expenses incurred in their specific efforts on behalf of

³⁸ Flat fee arrangements include both contracts with a stagnant, per case fee regardless of efforts performed (e.g. \$600 per misdemeanor) and contracts that pay a set monthly or yearly fee regardless of the number of cases handled (e.g.\$10,000 a month per contract attorney).

³⁹ Roach, *Explaining the Outcome Gap Between Different Types of Indigent Defense Counsel: Adverse Selection and Moral Hazard Effects* (Apr. 2011), [found here](#); Agan, Freedman and Owens, *Counsel Quality and Client Match Effects in Indigent Defense* (2016), [found here](#).

⁴⁰ California Commission on the Fair Administration of Justice, *California Commission on the Fair Administration of Justice Final Report* (2008), Northern California Innocence Project Publications. Book 1; U.S. Department of Justice, *Contracting for Indigent Defense Services, A Special Report*, (2000).

⁴¹ See, *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (Ariz. 1984), *State v. A.N.J.*, 168 Wn. 2d 91, 168 Wash. 2d 91, 225 P.3d 956 (Wash. 2010); *Simmons v. State Pub. Defender*, 791 N.W.2d 69 (Iowa 2010).

⁴² Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 Mich. L. Rev. 207, 223.

appointed clients. Such reimbursable costs should include mileage, courthouse parking, research tools, postage, and other direct costs expended in defense preparation on a specific appointed case.

Billing and Compensation Overseen by Attorney Administrator

As emphasized throughout this guide, protection of an independent defense function is foundational, and such independence cannot be achieved if judges indirectly control defense efforts by controlling attorney compensation.⁴³ Instead, review and approval of attorney bills should be exclusively handled by the program under the attorney administrator's supervision. The attorney administrator should have the authority to review each attorney's claims or bills and approve, adjust, or deny the claim. The program should not institute any arbitrary "caps" or established limits on the number of hours billed on a case. Rather, each case should be considered individually, taking into account the seriousness of the allegations, the complexity of the facts, and individual needs of the client. Not only does such a system preserve independence, attorney administrator oversight of billing also presents a valuable source of information on attorney efforts that can inform program determinations on attorney performance and contract renewals.

Standard 10: Transparency and Client Access

Program Website: Community Access

The program should develop a public website or a page on the county's website providing program and attorney information to the community. An accessible, public-facing interface fosters transparency, public accountability, and community engagement, while also providing a direct resource to clients and their loved ones. The website should also include a simple process for contacting program leadership with feedback, including any attorney concerns.

Program Website: Recruitment and Attorney Tools

A well-designed and easy to use public website is also key to program visibility in the legal community. To effectively recruit experienced and high performing attorneys, the program website should convey how the program functions and how to apply.

For participating attorneys, counties should consider hosting a site restricted to members that provides links to resources, a calendar with attorney rotations, and members-only forums. An attorney page is an inexpensive and effective means of enhancing program-attorney communication and adds accountability for information sharing.

⁴³ Where courts have the ability to interfere with attorney compensation, it erodes programmatic and attorney independence, potentially chilling zealous and creative advocacy. ABA Standards for Criminal Justice: Providing Defense Services, (3rd edition, 1992) standard 5-1.3 (a), p. 16.

Conclusion

The guidance in this document reflects national best practices for panel and contract systems. As your county seeks to create or build upon a contract or panel indigent defense program, please do not hesitate to contact the Office of the State Public Defender's Indigent Defense Improvement Division (IDID) at capacitybuilding@ospd.ca.gov. IDID is available to provide free technical assistance and support in implementing the standards and strategies laid out in this guide.

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