



## CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT NO. 1610

### "Contra Costa County Office of the Public Defender: Who Is Entitled to Legal Representation?"

#### BOARD OF SUPERVISORS' RESPONSE

**FINDINGS** – California Penal Code Section 933.5(a) requires a response to the designated findings of the Grand Jury.

**1. The Office of the Public Defender is dedicated and committed to providing the best legal defense possible to those defendants who qualify for its services.**

*Response: Agree.*

**2. Persons applying for the services of the Public Defender do not sign the financial screening questionnaire under penalty of perjury.**

*Response: Agree.*

**3. The Public Defender does not verify the financial information provided by individuals applying for its services.**

*Response: Agree.*

**4. The Public Defender refers some potential clients to the Criminal Conflicts Panel because the Public Defender is operating at capacity.**

*Response: Partially Disagree. Although it is true that the Office does, at times, refer clients to the Criminal Conflicts Panel during spikes in certain caseload types, clients are more often referred due to a conflict of interest in representation by the Public Defender or the Alternate Defender's Office.*

**5. Without verifying financial eligibility it is impossible to ascertain an individual has fraudulently obtained representation from the Office of the Public Defender.**

*Response: Disagree. Penal Code § 987.8(b) provides that at the conclusion of a case in which the county provided legal assistance, the court may make a determination of the present ability of the defendant to pay all or a portion of the cost of the representation. For this proceeding the court may, at its discretion, order the defendant to appear before a county officer, designated by the court, to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided. In this county, the Probation Department is the county agency tasked with the responsibility of determining financial ability to pay assessed attorney's fees ordered by the Court pursuant to this section. A defendant which is assessed fees is ordered to report to the Probation Department for financial screening. The forms used by the Probation Department are signed under penalty of perjury.*

**6. Section (c) of California Penal Code section 987 contemplates that a defendant may be prosecuted for perjury based upon false material contained in the financial statement.**

*Response:* Partially Disagree. Penal Code § 987(c) sets forth confidentiality protections for the financial information that the court, in its discretion, may require a defendant to file under penalty of perjury. The section notes that the financial form is admissible in the court if the defendant is charged with perjury based on the contents of the form. The financial form referred to in this statute is one that may be ordered by the court to determine whether a defendant is able to employ counsel; it is not the form used for financial screening by the Public Defender when a case has already been referred for representation by the court.

**RECOMMENDATIONS** - California Penal Code Section 933.05(b) requires a response to the designated recommendations of the Grand Jury.

**1. The Public Defender should require the potential client referred by the court to attest under penalty of perjury to the accuracy of the information provided to the Public Defender.**

*Response:* The recommendation will not be implemented because it is not warranted. The current system employed by the Public Defender is working well. If a question arises during the course of the representation as to whether the defendant is in fact able to pay for the services of the county-funded attorney, there are clear statutory procedures set forth in Penal Code § 987.8 to address this situation. In addition, if a defendant referred for public defender representation were required to sign the form under penalty of perjury, the screening would have to be undertaken by a different county agency so as to avoid any conflict of interest that could arise in a potential prosecution for perjury. This would cause delays in court proceedings and require a significant increase in staffing costs.

**2. To verify the information provided on the financial eligibility questionnaire form. The Public Defender should develop guidelines concerning when documentation of financial circumstances is required and the type of such documentation, such as prior year tax return, employment pay stubs or advices, utilization of credit services, etc.**

*Response:* The recommendation will not be implemented because it is not warranted. As discussed in the responses to Finding No. 5 and Recommendation No. 1 above, there is already a procedure in place for assessing the ability of a defendant to pay some of all of the assessed attorney's fees, as determined by the Court, at the conclusion of a case.