
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair
2025 - 2026 Regular Session

AB 690 (Schultz) - Criminal procedure: indigent defense compensation

Version: May 23, 2025

Urgency: No

Hearing Date: July 14, 2025

Policy Vote: PUB. S. 4 - 1

Mandate: No

Consultant: Liah Burnley

Bill Summary: AB 690 establishes new requirements for indigent legal defense service agreements.

Fiscal Impact:

- Costs (local funds, General Fund) of an unknown but potentially significant amount to counties affected by the contracting requirements in this bill. Counties with contracts that already comply will likely not incur any costs. However, counties with non-complying contracts may incur potentially significant workload costs to ensure new contracts meet the bill's requirements. General Fund costs will depend on whether each of the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.
- Unknown, potentially minor and absorbable costs to Judicial Council (Trial Court Trust Fund, General Fund) to ensure contracts comply with this bill's requirements. The Judicial Council notes that the courts are responsible for providing indigent defense counsel at the appellate level. While the courts may be involved in the decision at the trial court level of who is provided an indigent defense counsel contract, it is ultimately the counties who enter into the contract and pay for this service. The Judicial Council does not anticipate this bill to impact the appellate contracts as they already meet the requirements of the bill. At the trial court level, some rural courts have noted concerns about the ability to contract with qualified attorneys under these new provisions and flagged general concerns about the references to the RAND study and the Office of the State Public Defender (OSPD) standards being overly broad. While the trial courts' budgets will not be directly impacted by these changes, there may be some operational and workload aspects as courts work with their county partners to approve and enter into these contracts.
- Minor and absorbable costs (General Fund) to the OSPD. OSPD does not anticipate this bill to have a meaningful fiscal impact on its operations. OSPD reports that collecting contracts on a biannual basis can be absorbed by current staff. If an evaluation of the contracts to determine whether flat fees were utilized, that could also be conducted on a biannual basis with current staffing levels. The only anticipated costs would be minor increases to data storage and online publication costs that are unlikely to be realized prior to 2029.

Background: In a unanimous decision, the Supreme Court established that the Fourteenth Amendment creates a right for criminal defendants who cannot pay for their own lawyers to have the state appoint attorneys on their behalf. *Gideon v. Wainwright*

(1963) 372 U.S. 335. *Gideon* holds that the right to counsel is “fundamental and essential to fair trials” in the United States and indigent defendants cannot be assured of a fair trial unless attorneys are provided by the government. The Supreme Court further noted that even an intelligent and educated person would be in danger of conviction due to a lack of skill and knowledge for adequately preparing a defense to establish innocence. Effective defense counsel is necessary to ensure a defendant has a fair trial against government-funded and trained prosecutors—irrespective of their income level.

California is in the midst of a public defense crisis.¹ California is one of four states that does not provide statewide defense funding and oversight, leaving the matter to the counties. Every county in California is responsible for determining how it funds and administers trial-level indigent defense services. Fresno County and the State of California were recently sued on the grounds that public defenders do not receive resources necessary to represent their clients and that the county’s public defense system fails to comply with minimal constitutional and statutory requirements.² To settle the lawsuit, in 2020, the state expanded the scope of the OSPD, which had previously handled death penalty appeals, to include support and training for county-based public defender systems. The Governor committed \$10 million in one-time grants to the effort, and that money has since run out.

The majority of California’s 58 counties rely on institutional public defender’s offices for their primary defense, and will be unaffected by this bill. Other counties use contract systems that already meet the requirements of the bill. 24 counties have opted for flat-fee contracts with for-profit private attorneys or law firms to represent people accused of crimes.³

Flat-fee contracts give private attorneys a predetermined lump sum to handle all or a set proportion of a county’s cases without regard to actual time, complexity, or cost. Frequently, those same attorneys also represent paying clients. This system creates an inherent conflict where lawyers have a financial incentive to spend as little time on each appointed case as possible, freeing up time for private casework that they can bill.

Supporters of this bill note that eliminating flat-fee contracts may improve representation which will offset the costs of this bill. There could be potential cost savings to counties and the state to the extent that there are less appeals, wrongful convictions, and fewer county jail and state prison sentences. Research indicates that flat-fee contracts are associated with suboptimal legal outcomes that lead to higher rates of incarceration and longer sentences and therefore heightened costs to counties. A study in juvenile court in Los Angeles found that public defenders were far more likely than contract attorneys to

¹ CalMatters. *California Is Failing To Provide A Vital Safeguard Against Wrongful Convictions*. (June 5, 2025) [finding that poor people accused of crimes, who account for at least 80% of criminal defendants are routinely convicted in California without anyone investigating the charges against them].

² *Phillips v. State of California*, Complaint available at: <https://www.aclu.org/cases/phillips-v-state-california#legal-documents>

³ According to OSPD, these counties include: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, Glenn, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Modoc, Mono, Placer, Plumas, San Benito, San Luis Obispo, Sierra, Sutter, Tehama, Trinity, Yuba Counties. San Mateo County uses a “managed assigned counsel” system administered by the local bar association.

request pretrial release.⁴ Other studies that reveal higher rates of pretrial detention for contract attorneys.⁵ People represented by contract lawyers are more likely to be convicted for more serious offenses and serve more time in prison than those represented by public defenders.⁶ Counties without institutional public defender's offices have some of the state's highest incarceration rates.⁷ OSPD found that correlating flat-fee contract systems with higher rates of per-capita prison commitments.⁸

Indeed, research demonstrates that flat-fee contracts are connected to worse representation and higher incarceration rates and have been criticized for decades. The State Bar of California called for their abolition 35 years ago.⁹ The California Supreme Court overturned a conviction based on the conflict of interest created by a flat-fee contract between the county of Madera and a public defender.¹⁰ In 2006, the State Bar of California published guidelines that call for the abolition of flat fees for indigent defense.¹¹ The American Bar Association's standards say that flat-fee contracts "have conspicuously failed to provide quality representation" and should not be used.¹² The U.S. Department of Justice warned about contract systems, in particular the use of low-bid, flat-fee contracts in California.¹³

⁴ Warren Institute on Law and Social Policy, *Los Angeles County Juvenile Indigent Defense System*, UC Berkeley School of Law, at 16 (Mar. 2016).

⁵ Gius, Mark, *The Determinants of Pretrial Detention with a public defender or private attorney*, Justice Policy Journal (fall 2018); see also Virginia Criminal Sentencing Commission, *Virginia Pretrial Data Project: Preliminary Findings from Recent Research*, p.16; and, Miriam S. Gohara et al., *The Disparate Impact of an Under-funded, Patchwork Indigent Defense System on Mississippi's African Americans: The Civil Rights Case for Establishing a Statewide, Fully Funded Public Defender System*, 49 How. L.J. 81, n.7, 88-89, 94-95 (2005).

⁶ Michael A. Roach, *Indigent Defense Counsel, Attorney Quality, and Defendant Outcomes*, 16 Am. L. & Econ. Rev. 2, 32 (2014); Thomas H. Cohen, *Who's Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes* (2011). Andrew J. Lee, *Flat Fee Compensation, Lawyer Incentives, and Case Outcomes in Indigent Criminal Defense*, at n.5 (2021).

⁷ OSPD, *California's 58 Public Defense Systems*. Available at: <https://www.ospd.ca.gov/wp-content/uploads/2024/05/Californias-58-Public-Defense-Systems-Accessible.pdf>

⁸ OSPD, *Data and Research: Public Defense Services Design & Funding*. Available at: <https://www.ospd.ca.gov/data-and-research-public-defense-services-design-and-funding/>

⁹ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems*, at 19 (1990).

¹⁰ *People v. Barboza* (1981) 29 Cal. 3d 375.

¹¹ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems*, at 24, 33 (2006).

¹² American Bar Association, *Ten Principles of a Public Defense Delivery System*, at 3, 6 (Aug. 2023) citing *Wilbur v. Mt. Vernon*, No. C11-1100RSL, U.S.D.C. D. Wash., at 15 (Dec. 4, 2013) [district court finding that a flat fee contract "left the defenders compensated at such a paltry level that even a brief meeting at the outset of the representation would likely make the venture unprofitable."].

¹³ Dep't of Justice, Off. of Just. Programs, Bureau of Just. Assistance, *Contracting for Indigent Defense Services: A Special Report*, (Apr. 2000) [pointing to one example where three lawyers were expected to cover more than 5,000 cases in a year [over 11 times the existing national standards for felony cases], by

It is noteworthy that many counties and cities contract with private attorneys and law firms for city attorney and county counsel services—and many of these contacts are paid on an hourly basis for legal services.

Proposed Law:

- Requires a contract, beginning on January 1, 2027, between a county or court and a law firm, individual attorney, or other legal entity for the provision or administration of indigent defense services use the following procedure:
 - A final contract and solicitation or agreement for the contracting of indigent defense services, including a request for proposals, a request for qualifications for indigent defense services contracts, or another policy for the contracting of indigent defense services shall require all of the following:
 - Requirements for compliance with the OSPD's California Standards for Contract and Panel Defense Systems;
 - When determining the scope of work and number of cases to be handled, the county or court shall take into consideration the percentage of the attorney or firm time for work in other cases in addition to work performed pursuant to the indigent defense services contract, and the National Public Defense Workload Study by the RAND Corporation published in 2023, or a later workload study identified by the OSPD and agreed upon by the California Public Defenders Association and the California Attorneys for Criminal Justice;
 - The contract amount and structure shall ensure that attorneys have the resources and time necessary to consult with clients, assess discovery, conduct fact investigations, file motions, and perform any relevant tasks to ensure competent legal representation; and,
 - All contracts shall provide a separate allocation of funds for case-related defense services, including, but not limited to, investigators, social workers, and immigration counsel. These ancillary service funds shall be separate and in addition to funds allocated for attorney compensation, and there shall not be a penalty for contracted attorneys accessing those funds;
 - A county or court shall not enter into flat fee or per case compensation contracts for the administration or provision of indigent defense services. A "flat fee" means a compensation structure that provides a fixed dollar amount for each case, or for an unlimited number of cases, without regard to the actual time and resources required to provide competent and zealous representation in each case;

“spend[ing] as little time as possible’ on each case”.]

- Contract amounts shall account for all costs related to the provision of indigent legal services, including but not limited to immigration support, paralegals, social workers, mitigation specialists, experts, and investigators;
 - The contract shall include a provision that affords the contractor a process to seek a modification of the contract amount if the number of cases handled or the costs of providing a modern criminal defense practice exceed the amount contemplated at the beginning of the contract period; and,
 - A request for proposals shall be disqualified from consideration if it does not meet all of the defined requirements.
- Requires counties that contract with a private entity or law firm to manage and provide indigent defense services for that county to provide these contracts to the OSPD every two years, beginning on January 1, 2027.
 - Provides that the above provisions apply to any memorandum of agreement, contract, contract amendment, or contract extension for the provision or administration of indigent defense services entered into or elected by any county or court in California on or after January 1, 2027.
 - Provides that the above provisions apply to any agreement entered into between a court and attorneys for the purpose of representing indigent defendants.

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