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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair  
2025 - 2026 Regular

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**Bill No:** AB 690                      **Hearing Date:** June 24, 2025  
**Author:** Schultz  
**Version:** May 23, 2025  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** CA

**Subject:** *Criminal procedure: indigent defense compensation.*

### HISTORY

**Source:** Author

**Prior Legislation:** AB 2521 (Waldron), Ch. 153, Stats. of 2024  
AB 1209 (Jones-Sawyer), held in Assembly Appropriations, 2024  
AB 625 (Arambula), Ch. 583, Stats. of 2021

**Support:** Silicon Valley De-bug (Co-Sponsor); ACLU California Action; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Innocence Coalition; California Public Defenders Association; Communities United for Restorative Youth Justice; Courage California; Death Penalty Focus; Drug Policy Alliance; Ella Baker Center for Human Rights; Empowering Women Impacted by Incarceration; Fair Chance Project; Friends Committee on Legislation of California; Initiate Justice; Initiate Justice Action; Justice2jobs Coalition; LA Defensa; Local 148 LA County Public Defenders Union; National Association of Criminal Defense Lawyers; Players Coalition; Reuniting Families Contra Costa; Rubicon Programs; San Francisco Public Defender; Sister Warriors Freedom Coalition; Smart Justice California; Starting Over INC.; Starting Over Strong; The W. Haywood Burns Institute; Uncommon Law; Vera Institute of Justice; Wren Collective

**Opposition:** California State Association of Counties; County of Fresno; Fresno County Board of Supervisors; Rural County Representatives of California; Urban Counties of California

**Assembly Floor Vote:** 64 - 9

### PURPOSE

*The purpose of this bill is to prohibit a county or court from entering into a flat fee or per case compensation contract for indigent defense services beginning January 1, 2027, and to establish new requirements for contracts or other agreements for indigent services.*

*Existing law* states that a defendant in a criminal case has the right to, among other things, the assistance of counsel for their defense and to be personally present with counsel. (Cal. Const. Art. I, § 15; U.S. Const., Amend. VI.)

*Existing law* provides that any case in which a person desires but is unable to employ counsel, and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, in an amount determined by the court, to be paid out of the general fund of the county:

- In a county or city and county in which there is no public defender;
- In a county of the first, second, or third class where there is no contract for criminal defense services between the county and one or more responsible attorneys;
- In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused; and,
- In a county of the first, second, or third class where attorneys contracted by the county are unable to represent the person accused. (Pen. Code, § 987.2, subd. (a).)

*Existing law* allows the sum of compensation to be paid to assigned counsel to be determined by a contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid. Provides that the amount of compensation awarded be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases. (Pen. Code, § 987.2, subd. (b).)

*Existing law* provides that whenever a court-appointed attorney is entitled to reasonable compensation and necessary expenses, the judge of the court shall consider the following factors, no one of which alone shall be controlling:

- Customary fee in the community for similar services rendered by privately retained counsel to a non-indigent client.
- The time and labor required to be spent by the attorney;
- The difficulty of the defense;
- The novelty or uncertainty of the law upon which the decision depended;
- The degree of professional ability, skill, and experience called for and exercised in the performance of the services; and,
- The professional character, qualification, and standing of the attorney. (Pen. Code, §987.3.)

*Existing law* encourages counties that utilize an assigned private counsel system to do all of the following:

- Establish panels that shall be open to members of the State Bar of California;
- Categorize attorneys for panel placement on the basis of experience;
- Refer cases to panel members on a rotational basis within the level of experience of each panel, except as specified; and,

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

*Existing law* provides that in specified counties, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. (Pen. Code, § 987.2, subd. (d).)

*Existing law* provides that in the specified counties, if the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, and if the quality of representation provided by the second public defender is comparable to the quality of representation provided by the public defender, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. (Pen. Code, § 987.2, subd. (e).)

*Existing law* requires counsel be appointed in a misdemeanor case, if a person desires but is unable to employ counsel, and it appears that the appointment is necessary to provide an adequate and effective defense for the defendant. (Pen. Code, § 987.2, subd. (i).)

*Existing law* provides that in capital cases or cases with indigent defendants, counsel may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. (Pen. Code, § 987.9, subd. (a).)

*Existing law* states that in assigning defense counsel in felony cases, whether it is the public defender or private counsel, the court shall only assign counsel who represents, on the record, that they will be ready to proceed with the preliminary hearing or trial within the time periods prescribed for these hearings, except in unusual cases, as specified. (Pen. Code, § 987.05.)

*This bill* requires, as of January 1, 2027, a contract or other agreement between a county or court and a law firm, individual attorney, or other legal entity for the provision or administration of indigent defense services to 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 Office of the State Public Defender's California Standards for Contract and Panel Defense Systems; and,
  - When determining the scope of work and number of cases to be handled, the county or court shall take into consideration, among other factors, the National Public Defense Workload Study by the RAND Corporation published in 2023, or a later workload study identified by the Office of the State Public Defender and agreed upon by the California Public Defenders Association and California Attorneys for Criminal Justice, and, 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;

- 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 other 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. “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;
- Contract amounts shall account for all costs related to the provision of indigent legal services, including, but not limited to, immigration support, paralegals and case support services, 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.

*This bill* provides that counties that contract with a private entity or law firm to manage and provide indigent defense services for that county shall provide these contracts for indigent defense services to the Office of the State Public Defender every two years, beginning on January 1, 2027. If the contract does not provide for an hourly rate, the county shall provide to the Office of the State Public Defender the hourly rate equivalent anticipated under the contract.

*This bill* makes these provisions applicable 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.

## COMMENTS

### 1. Need for This Bill

According to the author:

Today, almost every county in California employs a contract system for providing indigent defense services and the vast majority of those contracts use a flat-fee

compensation model. Flat-fee contracts for legal services have long been condemned by experts and policymakers because they create a financial conflict of interest for the attorneys-the more the attorney works, the lower their hourly rate. The flat-fee compensation scheme disincentivizes work on behalf of the client and is responsible for higher rates of wrongful convictions and inappropriately long jail and prison sentences. Flat fee contracts disproportionately impact communities of color, increase overall costs to the justice system and reduce public safety.

AB 690 will improve Californians' access to justice by prohibiting the use of flat-fee compensation models and by providing standards for indigent defense contracts. It also has the potential to save counties money. Research indicates that flat-fee contractors perform worse than public defenders; those suboptimal outcomes lead to higher rates of incarceration and longer sentences and therefore heightened costs to counties. Eliminating flat-fee contracts will more than offset the modest costs of implementing the bill. Lastly, removing an inherent financial conflict of interest from indigent defense contract systems has a significant equity impact because it helps address systemic disparities in the criminal justice system. Approximately 80% of all defendants in the criminal justice system rely on public defenders and as of 2024, almost 30% of criminal and juvenile delinquency cases are handled by contract systems in California.

## 2. Background

The U.S. and California constitutions provide every criminal defendant a right to legal representation, regardless of their ability to pay for an attorney. (Cal. Const. Art. I, § 15; U.S. Const., Amend. VI.) In California, there is no statewide governance of how indigent defense services are provided. Instead, each county has established its own system for providing attorneys to indigent defendants. (<https://www.ppic.org/blog/californias-leading-role-in-providing-criminal-defense-to-the-poor/> [as of June 10, 2025].) According to a 2023 report by the Office of the State Public Defender (OSPD), 33 counties use a county public defender's office as the primary way to provide indigent defense services, meaning the attorneys representing most indigent defendants are county employees. Twenty-one counties use a contract model, meaning the county has a contract with a law firm or with individual attorneys who are paid by the county to represent criminal defendants. Most counties contract for some level of services, including for "conflict counsel" – attorneys who can represent a defendant when a conflict of interest prevents another attorney from providing representation. (file:///C:/Users/anderscr/Downloads/California-Indigent-Defense-Snapshot-2023\_Accessible.pdf [as of June 10, 2025].) There are currently no statewide standards for contracts for indigent defense services.

This bill establishes uniform requirements for contracts for indigent defense services. The bill requires each county to submit its contracts to OSPD but does not provide OSPD with direct oversight over the contracts. Perhaps most significantly, the bill prohibits a county or court from entering into a flat fee contract for indigent defense services. As summarized in a 2025 report by the Wren Collective, ACLU, ACLU of Northern California, ACLU of Southern California, and UC Berkeley Law Criminal Law and Justice Center

In California, flat-fee contracts for private, for-profit lawyers are typically structured as a lump sum paid monthly or annually to each individual or firm,

no matter how much time they spend on a case, or how many cases they are assigned... These contracts suffer from other significant and predictable problems. They contain virtually no limits on caseloads for individual attorneys, nor do they require systems to monitor attorney workloads. They often fail to provide funding for necessary legal support services such as investigation and social work. There is hardly any independent oversight of attorneys functioning in these systems, and attorneys often receive no supervision from more experienced lawyers, despite handling cases where their clients' lives hang in the balance.

([https://www.wrencollective.org/\\_files/ugd/8fe8f0\\_71aac7e039fd4ee695ec6c8736cd1b72.pdf](https://www.wrencollective.org/_files/ugd/8fe8f0_71aac7e039fd4ee695ec6c8736cd1b72.pdf) [as of June 10, 2025].) The report notes empirical studies have consistently shown that flat-fee contractors perform worse than full-time public defenders. In recent years, other states have moved toward banning flat fee contracts. (*Ibid.*)

By banning flat fee contracts and revising the process and requirements when contracting for or otherwise entering into agreements for indigent defense services, this bill is directed at providing better compensation for these services, and, as a result, better representation for indigent defendants.

### 3. California Standards for Contract and Panel Defense Systems

The OSPD, though not an enforcement agency, is statutorily required to provide training and technical assistance to indigent defense systems. (Govt. Code, § 15420.) “In February 2025, OSPD released California Standards for Contract and Panel Defense Systems, a set of statewide principles developed through an 18-month research and collaboration project beginning with a live event, California Indigent Defense Summit. These guidelines combine national best practices with input from panel, contract, and county leaders across California and are designed to ensure quality representation, strengthen accountability, and help counties align with constitutional and ethical obligations. The implementation guide was concurrently released to provide county administrators and panel leaders with practical advice and best practices from across the country.” (<https://www.ospd.ca.gov/what-we-do/indigent-defense-improvement-division/capacity-building/#:~:text=In%20February%202025%2C%20OSPD%20released%20California%20Standards%20for,with%20a%20live%20event%2C%20California%20Indigent%20Defense%20Summit.> [as of June 10, 2025].)

This bill, commencing with contracts or agreements for indigent defense services entered into after January 1, 2027, revises the process and requires a county or court, when contracting for or entering into an agreement for these services, to include certain elements in the contract or other agreement, including required compliance with the Office of the State Public Defender's California Standards for Contract and Panel Defense Systems.

### 4. Related Legislation

SB 610 (Perez) would revise the definition of “legal aid organization” to specify that it means a nonprofit organization that provides civil legal services for indigent persons without charge. SB 610 is pending referral in the Assembly.

## 5. Argument in Support

According to Silicon Valley De-Bug, a co-sponsor of this bill:

In California, there are about ten counties practice participatory defense. Because of this network, we are able to support families from all over California and learn the intricacies of each county and how vastly different their representation is for indigent defendants. For example, as we were supporting our families in San Mateo County, we learned that the Private Defender contract system uses a flat fee contract model for certain stages of representation, and without state standards. The lack of consistent state standards put our communities at a disadvantage in receiving the same quality of representation that other counties were providing. Similar anecdotes have been shared by families that had their cases in smaller, more rural communities that also used a contract system. In fact, eight of the ten counties with the highest incarceration rates in the state rely on flat fee contracts, including every county in the top five. While the bill title infers the purpose is around compensation of indigent providers, ultimately it is about protecting the rights of all indigent community members.

Currently 24 out of 58 counties in California do not have a public defender office and instead rely on contracted attorneys to provide all public defense representation.<sup>1</sup> In addition, nearly all California counties rely on contracted attorneys when the public defender cannot take the case. California does not currently provide any guidance related to these contracts, leading to wide variation in the quality of legal representation.

Further, many California counties use flat fee compensation models for indigent defense contracts, paying their attorneys a predetermined amount to take an unrestricted number of cases over a set period of time. Since attorneys are paid a flat rate regardless of the amount of time or work allocated to a case, attorneys are encouraged to prioritize efficiency and cost-effectiveness over their client's interests. These compensation models create ethical issues for attorneys and contribute to unjust outcomes for clients with a disproportionate impact on lower income people, people of color, and noncitizens.

Some of the families that we have directly worked with over the years that have had their cases in counties, such as Madera County, have expressed lack of communication and advocacy from their attorneys. One of the families, who was a DACA recipient, informed their defense attorney that they wanted to seek immigration-friendly plea so that his DACA eligibility wouldn't be jeopardized. The attorney told him that there were no lesser charges that they could negotiate with the DA. We're unsure if the defense attorney made the request or not to the DA's office but this family ended up losing their DACA due to the conviction. Another example is of a family who ended up receiving an LWOP sentence due to the lack of preperation [sic] and interest from the defense attorney in Madera

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<sup>1</sup> Office of the State Public Defender, Indigent Defense Improvement Division, California's 58 Public Defense Systems, Californias-58-Public-Defense-Systems-Accessible.pdf.

County. Luckily, thirteen years later under the felony murder reform law, he was able to get relief and return to his community.

Studies show that attorneys working under flat fee contract systems rush to dispense with cases quickly, prior to performing necessary investigation or research.<sup>2</sup> Many states have banned flat-fee compensation models. Some courts, in other jurisdictions, have found that flat-fee contracts create economic conflicts of interest and thus can be presumed to lead to inadequate representation. California still lacks such standards for indigent defense contracts, resulting in a statewide system with disparate outcomes and a lack of transparency or accountability.

AB 690 will improve Californians' access to justice by prohibiting the use of flat fee compensation models and by providing standards for indigent defense contracts.

The bill will:

- Require that proposed and final indigent defense contracts comply with the Office of the State Public Defender's standards for contract/panel systems.
- Require explicit language demonstrating a direct relationship between the contract amount and the number of cases.
- Require that indigent defense contracts are structured to ensure attorneys receive the compensation, resources, and support necessary to provide each individual client the effective representation our Constitution mandates.

## 6. Argument in Opposition

According to the Fresno County Board of Supervisors:

While we acknowledge the importance of ensuring adequate representation for indigent defendants, we believe this bill introduces several problematic provisions that will negatively impact local governments and potentially hinder the provision of effective legal services. The mandate for standardized contract elements through the Office of the State Public Defender, while aiming for consistency, risks implementation complexities due to California's diverse counties, potential bureaucratic expansion, and increased costs. The prohibition of flat-fee and per-case compensation, meant to incentivize thorough representation, may lead to higher overall costs, budgeting difficulties, and potential abuse of hourly billing.

AB 690's requirement for adequate resources and time for attorneys faces challenges in defining and enforcing subjective standards and will likely increase costs. Implementing an hourly rate system raises concerns about setting

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<sup>2</sup> Laurence A. Benner, *The Presumption of Guilt: Systemic Factors that Contribute to Ineffective Assistance of Counsel in California*, 45 Cal. W. L. Rev. 263, at 301–02 (2009). Yamashiro et al., *Kids, Counsel and Costs: An Empirical Study of Indigent Defense Services in the Los Angeles Juvenile Delinquency Courts*, 49 Crim. L. Bull. 1351, 1351–77 (2013). Michael A. Roach, *Indigent Defense Counsel, Attorney Quality, and Defendant Outcomes*, 16 Am. L. & Econ. Rev. 2, 32 (2014) Eve B. Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 Mich. L. Rev. 205, 223 (2023)



appropriate rates, monitoring billing, and addressing regional cost variations. Additionally, increased state oversight may result in bureaucratic growth, approval delays, and increased state funding needs. The state-mandated local program and its associated reimbursement process could lead to disputes over reimbursable costs, strain the state budget, and cause reimbursement delays, creating financial burdens for local governments. We urge you to reconsider AB 690 and work with counties to develop alternative solutions that address the legitimate concerns about indigent defense services without imposing undue financial and administrative burdens

**-- END --**