
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 625 **Hearing Date:** July 13, 2021
Author: Arambula
Version: May 24, 2021
Urgency: No **Fiscal:** Yes
Consultant: KW

Subject: *State Public Defender: indigent defense: study*

HISTORY

Source: Author

Prior Legislation: AB 88 (Committee on Budget) Died on Senate Inactive File 2020
SB 118 (Committee on Budget & Fiscal Review) Ch. 29, Stats. 2020
SB 779 (Anderson) Died Senate Public Safety Committee 2014

Support: ACLU California Action; California Attorneys for Criminal Justice; California Public Defenders Association; Ella Baker Center for Human Rights

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to require the State Public Defender to manage a study to analyze and determine appropriate workloads for public defenders and indigent defense attorneys and submit their findings to the Legislature.

Existing law establishes the State Public Defender, appointed by the Governor and confirmed by the Senate. The State Public Defender shall be a member of the State Bar, shall have been a member of the State Bar during the five years preceding appointment, and shall have had substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time. (Gov. Code, § 15400.)

Existing law states the State Public Defender shall be appointed for a term of four years commencing on January 1, 1976, and shall serve until the appointment and qualification of their successor. Any vacancy shall be filled for the balance of the unexpired term. (Gov. Code, § 15401.)

Existing law states that the State Public Defender may employ deputies and other employees, contract with county public defenders, private attorneys, and nonprofit corporations and establish and operate offices as they may need for the proper performance of their duties. The State Public Defender may provide for participation by those attorneys and organizations in the performance of the State Public Defender duties. The attorneys and organizations shall serve under the supervision and control of the State Public Defender and shall be compensated for their services,

as specified. The State Public Defender may also enter into reciprocal or mutual assistance agreements with the board of supervisors of one or more counties to provide for the exchange of personnel on a temporary basis to perform public defender duties in a county where the public defender has properly refused to represent a party because of a conflict of interest. (Gov. Code, § 15402.)

Existing law provides any report required or requested by law to be submitted by a state or local agency to the Members of either house of the Legislature generally, shall instead be submitted as a printed copy to the Secretary of the Senate, as an electronic copy to the Chief Clerk of the Assembly, and as an electronic or printed copy to the Legislative Counsel. Each report shall include a summary of its contents, not to exceed one page in length. If the report is submitted by a state agency, that agency shall also provide an electronic copy of the summary directly to each member of the appropriate house or houses of the Legislature. (Gov. Code, § 9795.)

This bill requires the State Public Defender, in consultation with the California Public Defenders Association, to conduct a study to assess the workload of public defenders and indigent defense attorneys and submit a report with their findings and recommendations to the Legislature.

This bill requires that report to be submitted on or before January 1, 2024.

COMMENTS

1. Need for This Bill

According to the author:

States, including California, have developed systems for providing attorneys to defendants who are unable to pay for representation in criminal cases. These indigent criminal defense systems provide representation in one, or a combination, of three ways:

- Public defender offices operated by the government;
- Private law firms or attorneys that contract with government to provide representation in a certain number of a cases and/or for a certain compensation over a certain time period, or;
- Individual private attorneys who are willing to take on indigent criminal cases and are appointed by the court to specific cases with compensation ordered by the court. In California, counties are primarily responsible for providing and paying for indigent defense counsel.

In a recent LAO analysis, various statewide and county trends were identified that suggest that indigent defense is generally less resourced than district attorney offices. This jeopardizes our constitutional guarantee of adequate legal representation in criminal cases. AB 625 seeks to identify the minimum standards that should be met in representing indigent defendants in criminal cases.

Both the U.S. and California Constitutions guarantees an individual's right to counsel. However, the absence of strong, well-resourced indigent defense systems offends the U.S. and California Constitutions, leads to deeply unfair results, and contributes to our overburdened jail and prison systems.

2. Public Defender Caseload and COVID-19

In recent weeks (December 2020) The Times has spoken with a dozen public defenders and their union representatives, all of whom say workloads have doubled, and in some cases tripled, as the pandemic severely slows the operations of the nation's largest court system.

A public defender in the downtown courthouse said most felony attorneys have as many as 50 clients, double their normal workload. A misdemeanor attorney who normally has about 100 clients had a caseload of nearly 300 by mid-November, the attorney said.

"None of us can competently represent 300 people. I have lost track of files and clients. Bad things have happened because of that," the misdemeanor attorney said, "I'm just one person. You can't give adequate representation to 300 or more people."

Los Angeles County's courts process more than 100,000 cases a year, and social distancing is nearly impossible in the busy corridors and elevators of courthouses in Downtown L.A., Long Beach and Compton. The courts briefly shut down in March, and jury trials were suspended for months amid fears that hearings could become de facto super-spreader events. By September, there were at least 7,000 criminal cases in L.A. County that needed to be heard "to satisfy defendants' statutory speedy trial rights," according to a general order issued by Presiding Judge Kevin Brazile.¹

3. Argument in Support

According to the California Public Defenders Association:

California's indigent defense system has been historically underfunded. The scope and nature of the problem has yet to be adequately framed and studied. AB 625 would provide a way to get accurate information so that the Legislature can make data driven decisions regarding constitutionally mandated indigent defense.

In September 16, 2020, the Legislative Analyst Office (LAO) responded to a request and provided an overview of the indigent criminal defense system in California. The LAO found that statewide there was a difference of almost \$1 billion between prosecution and indigent spending. District attorney offices had almost 6,000 more employees than public defender offices. The staffing ratio disparity between district attorney and public defender offices ranged from 20 percent to 80 percent (in a few counties) of their prosecution counterparts.³

The LAO considered indigent defender caseloads but noted that workload metrics were a more accurate and effective perspective on indigent defense performance. Workload metrics provide more objective and actionable ways of evaluating indigent defense performance as they generally help measure what activities and/or an individual has worked on or completed. Some workload metrics capture specific tasks. Examples include the number of new, active, and/or closed cases or the number of expungement requests filed over a certain period of time. Others focus on actions that indigent providers should generally engage in—such as the number of cases that are investigated or the number of prosecution witnesses

¹ <https://www.latimes.com/california/story/2020-12-13/los-angeles-courts-covid-public-defender-caseloads-doubled-tripled>

interviewed. Still others attempt to provide a sense of the quality of the representation provided to clients—such as the number of motions filed to dismiss a case, the number of cases referred to social workers, and the number of defendants who enter and complete diversion or treatment programs. Workload metrics are generally relatively easy to collect as they frequently involve only tracking events. As such, these metrics are frequently used to manage an indigent defense office or to help justify budget requests. These metrics can be also used for comparisons within offices, across jurisdictions, or over time.”

AB 625 is a starting point in examining “whether there is a problem(s) with the indigent defense system that needs to be addressed and specifically define the problem(s).” Conducting an assessment of indigent workloads, the State Public Defender in conjunction with CPDA and other indigent defense practitioners would provide the basis for determining what the problems are statewide and identifying potential solutions. As the LAO noted this approach”provides a clearer road map of the problem and how to resolve it.”

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