



Legislation Text

File #: 23-159, Version: 1

Memorandum

Date: February 14, 2023

To: The Honorable Lake County Board of Supervisors

From: Susan Parker, County Administrative Officer

Subject: Overview and Discussion of the Organizational Analysis of Indigent Services Report Entitled "The Right to Counsel in Lake County, California"

Executive Summary:

After a competitive request for proposals, your Board approved an Agreement with the Sixth Amendment Center (6AC) to conduct an operational analysis of indigent defense services on August 31, 2021. Beginning in September 2021, 6AC observed approximately 170 court proceedings, involving indigent representation attorneys in the Lake County Superior Court in all critical stages of an adult trial level criminal case. In addition, 6AC also interviewed stakeholders in the judiciary, indigent defense, prosecution, and law enforcement.

After receiving a draft copy of the report, staff reviewed the draft and met with 6AC over several months to clarify the methodology, data and recommendations of the report. These meetings resulted in additional court observations in November 2022. The report was published on the 6AC website on February 1, 2023.

Briefly, the findings include:

1. The State of California delegates to the Lake County Board of Supervisors and judges of the Lake County Superior Court most of the state's constitutional obligation to provide effective assistance of counsel to indigent people at the trial court level in Lake County in all the types of cases for which the state guarantees the right to counsel. Meanwhile, the State of California has not established any means to ensure that Lake County provides to every indigent defendant an attorney who has the time, training, and resources to provide effective presentation at every critical state of a criminal or juvenile delinquency case.
2. Lake County Contracts with an informal partnership of private attorneys, known as Lake Indigent Defense ("LID"), to administer and provide the right to counsel for which the State of California is responsible under the U.S. Constitution. Although the contract provides a means by which the county can oversee the partnership's administration and provision of the right to counsel, Lake County does not do so. The county does not know, on an on-going basis, whether the right to counsel is being provided effectively, to how many and in how many cases

of what types, by whom, and how much the provision of the effective right to counsel should cost.

3. As required by Lake County's contract with the LID partner attorneys, the LID partner attorneys subcontract with private attorneys, including themselves, to represent indigent defendants in the types of trial-level cases for which the State of California is responsible for providing the right to counsel under the U.S. Constitution. Although the subcontracts provide means by which the LID partner attorneys can oversee the provision of the right to counsel by all of the subcontractor attorneys do not know, on an on-going basis, whether the right to counsel is being provided effectively, to how many people and in how many cases of what types, by whom, and how much the provision of the effective right to counsel should cost.

4. Lake County's contract with the LID partner attorneys pays them a flat annual fee to administer the trial-level indigent defense system and to provide all right to counsel services for which the State of California is responsible under the U.S. Constitution, without regard to how much or how little time is necessary to provide effective assistance of counsel in all appointed cases. The LID partner attorneys' subcontractors with individual attorneys (including themselves) pay each of them a flat monthly fee to represent all people to who they are appointed by the superior court, without regard to how much of how little is necessary to provide effective assistance of counsel in all appointed cases. These flat-fee compensation methods result in a system-wide conflict of interest between each and every indigent person's interest in their constitutionally guaranteed right to effective representation and the personal financial interest of the attorney appointed to represent them, leading to the constructive denial of the right to counsel to some indigent people in Lake County.

The report also included the following recommendations:

1. Lake County policymakers should advocate for the State of California to form a legislative and/or gubernatorial committee to study and made recommendations about how best to fulfill the state's Sixth and Fourteenth Amendment responsibilities to ensure that each indigent defendant who faces the possible loss of liberty in a criminal or juvenile delinquency case receives effective assistance of counsel.
2. The Lake Board of Supervisors should establish a non-partisan independent commission to oversee all aspects of indigent representation services and should fund the operations of the commission and the implementation of the methods and standards it adopts.
3. The Lake County Board of Supervisors should immediately establish an office of indigent representation services to carry out the day-to-day duties of the commission, headed by an executive director attorney selected by the commission. As quickly as possible, Lake County should provide adequate permanent staff to fulfill the commission's duties to ensure effective assistance of counsel to each indigent defendant.

In conclusion, the evaluation cites a lack of accountability and oversight in Lake County's provision of public defender services and funding. In addition to reviewing and discussing the draft report and meeting with 6AC during the past 6 months or so, both Administration and County Counsel have been exploring the next steps that would best fit the County of Lake both structurally and financially to provide effective public defender services.

If not budgeted, fill in the blanks below only:

Estimated Cost: _____ Amount Budgeted: _____ Additional Requested: _____ Future Annual Cost: _____

Purchasing Considerations (check all that apply):

☐ Not applicable

- ☐ Fully Article X. <https://library.municode.com/ca/lake_county/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTXPU_S2-38EXCOBI>- and/or Consultant Selection Policy <http://lcnet.co.lake.ca.us/Assets/Intranet/Policy/Policies+26+Procedures+Manual/Ch4_2021v2.pdf>-Compliant (*describe process undertaken in "Executive Summary"*)
- ☐ Section 2-38 <https://library.municode.com/ca/lake_county/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTXPU_S2-38EXCOBI> Exemption from Competitive Bidding (*rationale in "Executive Summary," attach documentation, as needed*)
- ☐ For Technology Purchases: Vetted and Supported by the Technology Governance Committee <<http://lcnet.co.lake.ca.us/Assets/Intranet/Intranet+Forms/Information+Technology/AdvPlan.pdf>> ("Yes," if checked)
- ☐ Other (*Please describe in Executive Summary*)

Consistency with Vision 2028 <<http://www.lakecountyca.gov/Government/Directory/Administration/Visioning/Vision2028.htm>>

(check all that apply):

☐ Not applicable

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Well-being of Residents | <input checked="" type="checkbox"/> Public Safety | <input type="checkbox"/> Disaster Prevention, Preparedness, Recovery |
| <input type="checkbox"/> Economic Development | <input type="checkbox"/> Infrastructure | <input type="checkbox"/> County Workforce |
| <input type="checkbox"/> Community Collaboration | <input type="checkbox"/> Business Process Efficiency | <input type="checkbox"/> Clear Lake |

Recommended Action: Direct staff to develop and implement a plan to improve public defender services.