

PERFORMANCE REPORT
OFFICE OF THE PUBLIC DEFENDER
Submitted April 2, 2019
By Robin Lipetzky, Public Defender

I. DEPARTMENT MANDATE

The Office of the Public Defender is mandated to provide competent legal representation for indigent persons charged with crimes in Contra Costa County. This mandate is governed by the Sixth Amendment of the United States Constitution and California Government Code Section 27706. In addition to the primary mandate to represent persons charged with criminal offenses, the Department is appointed to represent persons in an array of other circumstances in which their liberty is at stake.

The Contra Costa County Office of the Public Defender is dedicated to ensuring justice for indigent persons accused of crimes in Contra Costa County. Our overriding goal is to serve the best interests of our clients in everything that we do. We dedicate all available resources to our clients' cases, thereby ensuring that they receive excellent, individualized representation.

II. MAJOR PROGRAM DESCRIPTIONS

The categories of cases for which the Department provides representation are as follow:

1. Adult criminal – felonies
2. Adult criminal – misdemeanors
3. Death penalty cases
4. Felony probation violations
5. Felony violations of Post Release Community Supervision
6. State parole violations
7. Misdemeanor probation violations
8. Juvenile delinquency (misdemeanor and felony)
9. Juvenile cases for which the DA seeks transfer to adult court
10. Juveniles in post-disposition placement facilities
11. Youthful Offender Parole Hearings (YOPH)
12. Sexually violent predators
13. Civil commitments due to insanity (NGI)
14. Civil commitment – conservatorships (LPS)
15. Civil commitment – Incompetent to Stand Trial (IST)
16. Assisted Outpatient Treatment (AOT)
17. Habeas corpus petitions for life inmates denied parole
18. Representation for inmates seeking DNA testing
19. Clean slate expungement motions (felony and misdemeanor)
20. Specialty courts such as Behavioral Health court, DV court and drug court

III. DEPARTMENT ACCOMPLISHMENTS

A. Launched Stand Together Contra Costa

On March 1, 2019, Stand Together Contra Costa celebrated our one-year launch anniversary. During this fiscal year, we have continued our partnerships with Catholic Charities of the East Bay, Monument Impact, Jewish Family and Community Services, Faith in Action – East Bay, Bay Area Community Resources (formerly “OCO”), and the International Institute of the Bay Area. Our rapid response hotline, community education, and due process services have all been in continuous operation since launch. We are on pace to meet or exceed our project deliverables during FY 19/20. We have hosted 64 events throughout Contra Costa County during this fiscal year, spread throughout our three community hubs (East County, Central County, and West County). Events include workshops, presentations, and trainings, and usually include free legal consultations. In addition to the 64 events that we have hosted, we have presented or tabled at 55 additional events put on by schools or other partnering organizations throughout the county. Our legal services staff have completed 594 legal consultations and are on pace to significantly exceed our deliverables target. In addition to these consultations, our legal team has provided direct representation to immigrants in 62 cases so far during this fiscal year.

In addition to being on pace to exceed our project deliverables this year, STCC was able to work closely with county and local CBOs to address several challenges. For example, STCC played an instrumental role in the transition process resulting from the termination of the ICE contract at West County Detention Facility. Once the ending of the ICE contract was announced, the Sheriff’s Office and the Office of the Public Defender coordinated closely to facilitate increased access to legal due process screenings for detainees and their families before they were transferred to other facilities throughout the country. In addition, the responsiveness and trust that the county has built with immigrant families by virtue of Stand Together Contra Costa was leveraged when the county was faced with the proposed changes to the federal “public charge” definition. STCC was able quickly to partner with Contra Costa Health Services, EHSD, and the Community Clinic Consortium to engage in a rapidly mobilized public education campaign targeted toward immigrant families in Contra Costa. Finally, in the coming months we anticipate that we will begin to add census education as an integral part of our events and workshops.

B. Continued Work on Youthful Offender Parole Hearings

Due to recent changes in the law, the Public Defender’s Office now provides specialized representation to individuals serving prison terms who are eligible for early parole under Youth Offender Parole (YOP) statutes. The YOP team currently consists of a senior full-time attorney and mitigation investigator, with assistance when available from legal assistants and seasonal in-house social work interns. These cases are highly complex and often require the use of outside forensic experts as part of the defense team. As the

clients are housed in facilities throughout the state, communicating with the clients is a time-intensive endeavor.

The team's work involves visiting the clients, collecting records, speaking to family and other contacts, developing mitigation, preparing reports for the court and the Department of Corrections, and litigating the cases in court. During the 2018-19 fiscal year, the team contacted all 385 inmates committed from Contra Costa County eligible for youth offender parole and is currently representing 223 of those inmates.

C. DOJ Smart Defense Grant: Failure to Appear Reduction Program

This year we entered our third and final year of the DOJ Smart Defense Grant which funded the initial pilot of our misdemeanor early representation program. This grant funds an attorney and a Legal Assistant to provide West County clients cited with misdemeanor offenses with immediate representation – before their cases are heard in court – to provide help with court appearances. In collaboration with the Richmond Police Department and the Office of the District Attorney, we have successfully cut in half the misdemeanor failure to appear rate in the Richmond Courthouse.

We are particularly honored that this Program was selected to receive the California Public Defenders Association Program of the Year award which will be presented at the annual convention next month.

D. Managed new, expanded bail hearings required by the *Humphrey* decision

In 2018, the First District Court of Appeal issued a decision in the case of *In re Humphrey*. The ruling fundamentally altered the way courts approach bail determinations in criminal cases. Based on the due process and equal protection clauses of the state and federal constitutions, the *Humphrey* case ruled that judges must make an individualized determination of a defendant's ability to pay cash bail rather than rely on bail schedules and inquire into whether "less restrictive alternatives to detention" could adequately protect the public. The *Humphrey* Court recognized that the right to pre-trial release on affordable bail rose to the level of a "fundamental constitutional right."

To uphold and protect the constitutional rights of our clients, the *Humphrey* decision required the Department to conduct new and expanded bail hearings for clients who are detained in custody on a pre-trial basis. Accordingly, the Department has staffed two full-time attorneys in a newly created bail unit. The bail unit also draws on the resources of the Department's legal assistants and social worker to assist in effectively representing clients.

Over the course of 2018, the bail unit filed motions contesting the pre-trial detention of over 575 clients. The unit conducted bail hearings for over 450 of those clients. For cases that proceeded to hearing, the bail unit's success rate exceeded 55%. In other words, more than half of the clients on whose behalf we litigated bail issues were able to

secure pre-trial release or were able to take advantage of early, beneficial resolutions to their cases.

While the legal landscape surrounding bail is ever-changing (the California Supreme Court is in the process of reviewing the scope of the *Humphrey* decision and S.B. 10 will be decided by the electorate in 2020), there is no question that courts will need to continue to make detention and bail decisions on an individualized basis. This, in turn, requires the Department to effectively represent clients in bail hearings and provide adequate staffing and resources to our bail unit.

E. Ongoing Collaboration with Criminal Justice Stakeholders to Improve Systemwide Outcomes

As the department head, I have continued with ongoing efforts to collaborate with other justice system partners to affect systemwide improvements and outcomes. Over the past year, these efforts have included:

- Active participation on the Racial Justice Taskforce, with continued involvement on the Racial Justice Oversight Body
- Served as a member of the Contra Costa County team that attended the Center for Juvenile Justice Reform Certificate Program to Reduce Ethnic and Racial Disparities in the Juvenile Justice System at Georgetown University
- Participation in the design and proposal for our County's Mental Health Diversion funding request (AB 1810)
- Participation in the design and proposal for funding through the Byrne Justice Assistance Grant
- Participation in the design and proposal for our County's application for a Proposition 47 grant

IV. DEPARTMENT CHALLENGES

A. Mental Health Diversion

The advent of mental health diversion (AB 1810) has imposed a new obligation for our approach to mental health cases. This new legislation has opened the door to mental health diversion for a broad range of misdemeanor and felony clients whose offenses are connected to their mental illness. While a welcome and positive change in the law, this new approach requires additional attorney staffing and resources that we currently lack. We hope to have some assistance in place once our county has submitted a plan to the State for the dedicated funding allotted through the Department of State Hospitals. For now, we have had to assign a front-line felony attorney to this assignment, which in addition to other challenges, has resulted in the need to consider felony overloads.

B. Homicide Resentencing Cases

Effective January 1, 2019, a new law was passed that changed the law of homicide for certain categories of cases (AB 1437). The law provided a mechanism for the recall and resentencing of persons currently serving sentences for convictions that would not now be allowable under the new law. We currently have over 30 of these cases pending, each of which requires extensive litigation, investigation and eventually court hearings. As with the mental health diversion cases, we have had to reassign a felony attorney to this caseload, further depleting the staff available to handle routine felony cases.

C. Continued Burden of Death Penalty Cases

We continue to face a high number of active capital cases. Currently, we have five active cases. Each capital case requires roughly .25 of a senior felony attorney's time. These cases continue to be a drain on county resources and on our department's ability to staff other case assignments.

D. Misdemeanor caseloads

We continue to face very high misdemeanor caseloads. While the DA's office has floated proposals for increasing diversion opportunities, we have yet to see an impact of any changes in our caseloads.

E. Mental Health Caseloads and Litigation

Issues with delays in transportation of clients to the Department of State Hospitals continues to be a serious problem in our County. Because of these delays, our office is in continuous and ongoing litigation with the DSH, which in turn detracts from our ability to represent individual clients. While I anticipate some relief if we secure DSH funding to divert more felony mental health clients, for now we are struggling to keep up.

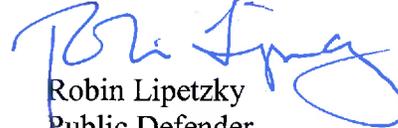
V. PERFORMANCE INDICATORS

<i>Type of Case</i>	Number of Cases Referred Calendar Year 2018
Misdemeanors	6980*
Felonies	3765**
Juvenile	528
LPS	318
Revocations	4787
Clean slate	2320
Miscellaneous	178
<i>Total cases referred</i>	<i>18,876</i>

*Of these, 2074 (30%) were referred out to the Criminal Conflicts Panel for representation due to excessive caseloads in the Public Defender's Office.

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Respectfully submitted,



Robin Lipetzky
Public Defender