

PERFORMANCE REPORT  
OFFICE OF THE PUBLIC DEFENDER  
Submitted June 30, 2021  
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 supervision violations
5. State parole violations
6. Misdemeanor probation violations
7. Juvenile delinquency (misdemeanor and felony)
8. Juvenile cases for which the DA seeks transfer to adult court
9. Juveniles in post-disposition placement facilities
10. Youthful Offender Parole Hearings (YOPH)
11. Sexually violent predator petitions
12. Civil commitments due to insanity (NGI)
13. Civil commitment – conservatorships (LPS)
14. Civil commitment – Incompetent to Stand Trial (IST)
15. Assisted Outpatient Treatment (AOT)
16. Habeas corpus petitions for life inmates denied parole
17. Representation for inmates seeking DNA testing
18. Clean slate expungement motions (felony and misdemeanor)
19. Specialty courts
20. Petitions for Involuntary Medication
21. Post-Conviction Unit

### **III. DEPARTMENT ACCOMPLISHMENTS**

#### **A. Felony and Misdemeanor Units**

Our felony and misdemeanor unit attorneys have continued to provide excellent representation to their clients despite the difficult conditions presented by the COVID-19 pandemic. When the jails closed to visiting, and work was done remotely, our department worked with the CCSO to set up confidential google voice numbers for our attorneys so that our clients could have direct access to their attorneys while many of the attorneys were working from home. Despite the court closure and slowdown, we continued to represent our clients by conducting jury trial and other critical hearings. Our attorneys brought 20 felony and 49 misdemeanor cases to trial during this time.

In addition to trying cases, our attorneys continued to litigate motions amid COVID-19 ensuring that our clients' constitutional rights were upheld. We litigated important legal issues of access to the courts during the pandemic, including the legality of the court closures and speedy trial delays, and we have had several successful decisions from appellate courts on these newly presented legal issues.

#### **B. Juvenile Unit**

The juvenile unit continues to expand its holistic approach to the representation of our young clients. In addition to defending cases in court, we provide education advocacy, post-disposition advocacy, and around-the-clock phone access to an attorney for detained children. This year we collaborated with the probation department to form a Youth Early Intervention Partnership which will provide a social worker and an attorney advocate dedicated exclusively to our young clients.

#### **C. Mental Health Unit**

Our office continues to provide excellent services to our mentally ill clients. In calendar year 2020, we referred a total of 53 clients for mental health diversion under the new system funded through AB1810. Our mental health unit, with the support of the mental health Social Worker, put together a comprehensive packet of information and treatment plan for each of these individuals. Of those, 12 are now actively engaged in mental health diversion; 24 referrals are still pending; and 17 referrals were denied or had their cases resolved through other means. In addition, the unit provided robust representation to persons in LPS proceedings, conducting 28 trials for these clients.

#### **D. Client Services and Social Work Unit**

We expanded our Client Services unit of Social Workers and Client Services specialists this year from (2) FTE to (6) FTE. This included bringing onboard a Social Worker to work with the Mental Health Diversion (AB 1810) clients, two AB109-funded Social Workers, and one Client Services specialist through the HIP grant. This additional staff has dramatically increased our capacity to serve our client population, to find alternative sentencing options, and to connect

clients with the community-based resources including housing, mental health resources, and substance use disorder treatment. Our social work unit continues to support our clients in a multitude of ways. Last year the unit supported over 311 clients, received 103 referrals for service and completed 82 assessments for client needs. In addition, we transported over 125 clients to residential treatment or other shelter options.

#### **E. Early Representation Program**

Our Early Representation Program (EarlyRep) provides pre-arraignment representation to those cited for misdemeanors and works in partnership with law enforcement agencies countywide. In the past year, EarlyRep expanded its formal law enforcement partnerships to include several additional police agencies. We are now working with 8 law enforcement agencies across the county to provide early legal representation and connection to resources to those arrested or cited for misdemeanors. We have continued to reduce the rate of failures to appear in court and to provide pre-arraignment legal services to indigent individuals on misdemeanor cases.

In response to COVID-19, our EarlyRep staff worked to contact every individual who had a pending misdemeanor case prior to their arraignment court date anywhere in the county, to conduct client intakes by phone, and to appear for individuals in misdemeanor arraignment court where they qualified for our services. Since the start of COVID-19, our team has appeared for thousands of individuals at misdemeanor arraignment court, in place of those individuals physically having to come to court. We have helped ensure the safety of our clients and have reduced the number of individuals who must physically appear in court. Several judges have informed us that they were very pleased with the efforts of our EarlyRep program to increase safety for all in the arraignment courts and to avoid unnecessary bench warrants.

#### **F. Holistic Intervention Program (JAG grant)**

On October 10, 2019, the Board of State and Community Corrections awarded Contra Costa County a three-year JAG grant in the amount of \$3,136,875 to create the Holistic Intervention Partnership (HIP). The Contra Costa Public Defender's Office was the lead agency for this grant. The HIP project is based on an innovative holistic defense model. HIP is designed to improve coordination and early delivery of critical legal, housing, and behavioral health services after an arrest/citation and before charges are filed, in turn reducing system burden and improving criminal justice outcomes in misdemeanor cases. On June 1, 2020, the HIP program started accepting clients and has served 114 participants to date, 46% of the 250-participant goal. HIP participants have been receiving services such as intensive case management, housing, transportation to court, civil legal services, and community reentry navigation linking them to other critical services.

#### **G. Stand Together Contra Costa**

Our innovative immigration legal due process and public education program worked in overdrive during 2020 to respond to COVID-19. We successfully advocated for the release of medically high-risk clients from immigration custody and we were able to provide accurate

public education to immigrant families regarding COVID-19 financial aid programs for undocumented residents as well as education regarding COVID-19 county health guidelines and the impact of various recovery programs on the "public charge" rules barring lawful permanent residency. We also continued Census 2020 outreach in conjunction with our CBO partners. We continued to provide full-scope no-cost legal representation in over 120 cases for Contra Costa immigrant families in removal proceedings. We secured \$352,573 in supplemental philanthropic funding to support these critical services.

#### **H. Clean Slate Unit**

Our Clean Slate unit continued to handle a huge volume of post-conviction work and handled thousands of motions to reduce felonies to misdemeanors under Proposition 47, expungements, and arrest sealings. The unit filed over 3000 petitions for record clearing. Also, Due to a change in the caselaw recognizing ability to pay as a factor for the imposition of fines and fees, our Clean Slate attorney litigated the deletion of previously imposed fines and fees from cases where our clients lacked the ability to pay and was able to achieve a deletion of approximately \$129,000 in unpaid fines and fees for our indigent clients.

#### **I. Post-Conviction Unit**

In 2020, our department formed a Post-Conviction Unit which handles cases of resentencing for those serving lengthy prison sentences. This includes resentencing and early release under AB 2942, Youthful Offender Parole Hearings, felony murder resentencing, and immigration plea withdrawals. The attorneys in this unit are now representing approximately 500 individuals. We had several individuals resentenced and released or paroled early as a result of the efforts of our Post-Conviction Unit

#### **J. Penal Code Section 1170(d) resentencing**

As the result of new legislation, CDCR is now referring certain sentenced clients back to court for discretionary resentencing in the furtherance of justice. Each case is unique and requires extensive attorney time as well as the support of our social work unit to develop social histories and mitigation information for each referred client. To date we have handled 20 such cases in the main office. Of those, 17 are still involved in ongoing litigation and 3 persons were resentenced and released.

#### **K. Assisting Incarcerated Persons with Voting**

Our department collaborated with the Elections Division, the Office of Reentry and Justice, and the CCSO to provide expanded voter access and education to those incarcerated in our county jails. We mailed a packet including a registration form and voting eligibility and registration guide to over 1000 individuals in custody. We also worked with community-based organizations to provide non-partisan voting resources and to ensure they were made available in our jails.

## **L. Jail Visit Safety Measures**

Our office has been working closely with the Sheriff's Office to develop comprehensive updated safety protocols for attorney visits with clients who are in custody in county jail. This effort was interrupted by the onset of the COVID-19 pandemic. However, we are now turning once again to this critical project and are in the process of finalizing new safety measures and protocols along with training for all employees who meet with clients in a custodial setting.

## **M. Addressing Issues of Diversity, Equity and Inclusion**

In the wake of the heightened awareness of the continuing impact of structural and systemic racism brought about by the murder of George Floyd, our office has instituted new policies and procedures to improve our understanding and awareness of these issues both within our office and in the greater criminal legal system. The Committee on Racial Justice and Diversity has worked in collaboration with the Department Head to design and institute new practices to recruit, hire and retain persons of color and LGBTQ persons. We have also instituted mandatory, ongoing anti-racism and anti-bias management training to ensure awareness of these issues in our everyday supervision of employees.

# **IV. DEPARTMENT CHALLENGES**

## **A. Managing Caseloads**

Our office continues to face the challenge of insufficient attorney and investigator staff to handle all cases referred to our office for representation. We will continue to represent the greatest number of clients possible.

## **B. Launch of New Case Management System**

Over the past year, the Department has engaged with the County's Law and Justice Information Systems Department to finalize the contract for our long-awaited case management system (CMS). This process has involved determining system requirements, mapping out the Department's workflow, and identifying data from a diverse range of sources that needs to be transferred into the new system. So far, the Department has devoted one management level attorney and one senior clerical staff member to work on this project though additional resources will be needed going forward. The implementation of the CMS will consolidate over a dozen distinct case information tracking systems into one centralized platform and lead both to greater efficiency as well as more data driven approaches to the Department's work and policy proposals. The Department anticipates the new system will be in place by the end July 2021.

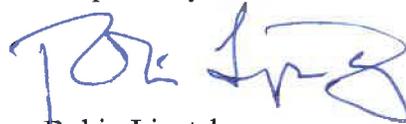
V. PERFORMANCE INDICATORS

| <i>Type of Case</i>         | Number of Cases Referred<br>Calendar Year 2020 |
|-----------------------------|--|
| Misdemeanors                | 5136*  |
| Felonies                    | 3527**   |
| Juvenile                    | 412  |
| LPS                         | 255  |
| Revocations                 | 2869   |
| Clean slate                 | 3147   |
| Miscellaneous               | 101  |
| <i>Total cases referred</i> | <i>15,447</i>                                  |

\*Of these, 1151 (22.4%) were referred out to the Criminal Conflicts Panel for representation due to excessive caseloads in the Public Defender's Office.

\*\*Of these, 478 (13.5%) were referred out to the Criminal Conflicts Panel for representation due to excessive caseloads in the Public Defender's Office.

Respectfully submitted,



Robin Lipetzky  
Public Defender