

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

392



FROM: Executive Office

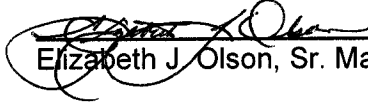
SUBMITTAL DATE:
September 22, 2009

SUBJECT: Recovery of Indigent Defense Costs

RECOMMENDED MOTION: That the Board of Supervisors receive and file this report on the recovery of costs for indigent defense.

BACKGROUND: On June 30, 2009 (3.20) the District Attorney made several recommendations to improve the collection of indigent defense costs from those for whom counsel was provided at taxpayer expense. The Board directed the Executive Office to review those recommendations and report back to the Board in 90 days. The Superior Court reports that in eleven months of FY08/09 \$273,903 in fees was collected from indigent defendants. Section 1023.1d of the Penal Code defines the amount and manner of distribution of court ordered payments. The priority for distribution of funds collected is: 1) Restitution ordered to, or on behalf of, the victim pursuant to subdivision (f) of Section 1202.4; 2) The state surcharge ordered pursuant to Section 1465.7; 3) Any fines, penalty assessments and restitution fines ordered pursuant to subdivision (b) Section 1202.4. Payment of each of these items shall be made on a proportional basis to the total amount levied for all of these items; 4) Any other reimbursable costs. Payment to the court for defense

Continued


Elizabeth J. Olson, Sr. Management Analyst

FINANCIAL DATA	Current F.Y. Total Cost:	\$N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$N/A	For Fiscal Year:	2009/2010

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: 
Gary M/Christmas

County Executive Office Signature

- Policy
- Consent
- Policy
- Consent

Dep't Recomm.:
Per Exec. Ofc.:

Departmental Concurrence

Background continued:

counsel falls under priority four. Furthermore, this section of the penal code states that the board of supervisors shall apply these priorities of disbursement to orders or parts of orders in cases where defendants have been ordered to pay a local fee such as a booking fee, probation fee, etc.

Presiding Judge Thomas Cahraman has pointed out that Section 987 of the Penal Code states that the court appoints counsel if the defendant appears for arraignment without counsel and indicates he/she is unable to employ counsel. The code section reads "In order to assist the court in determining whether a defendant is able to employ counsel in any case, the court may require a defendant to file a financial statement or other financial information under penalty of perjury with the court, or in its discretion, order a defendant to appear before a county officer designated by the court to make inquiry into the ability of the defendant to employ his/her own counsel." It is the policy of the Riverside County Superior Court for the judicial officers to determine indigency. Court staff indicates that standardization of this process is a goal; approximately 75% of judicial officers utilize 150% of the Federal Poverty level as an initial guideline in addition to whether the defendant is already in custody at arraignment and/or is on public assistance. Judge Cahraman also noted that when an individual is convicted and sent to state prison no collection is possible as there is a statutory presumption that such individual lacks the ability to reimburse attorneys' fees, and the court loses jurisdiction with regard to collection efforts. The judge also stated that there is no need for the county to monitor judicial discretion in the collection of fees; that matter is better handled by the Court of Appeals. Relative to the issue of collections Judge Cahraman stated that he does not believe it to be a material dispute between the court and the county.

It is the court's responsibility to order payment from able defendants however it is not a mandate. The county transferred responsibility for collection of indigent defense service fees from Probation to the Courts in October 1995. The funds collected are reimbursed to the county after the court recovers costs of collection per statute. The funds are then distributed equally between the Public Defender and indigent defense contracts.

The Office of the Public Defender mandates that all attorneys assist the court to ensure that those served are indigent and that they pay court ordered fines and fees. Each of Riverside County's conflict panel contracts includes a clause noting that; "Attorneys shall assist in the recovery of fees and funds pursuant to Penal Code Sections 987.5, 987.8(b), and 987.81."

The court submits monthly collection reports to the county.

During board discussion the matter of Deputy Sheriff overtime for those officers who receive a subpoena to appear in court was raised. The Executive Office is reviewing this issue and will address it during the FY 2010/11 budget hearings.