

(AMENDED REPORT)
Follow-Up Report to the
2015-2016 San Joaquin County Civil Grand Jury
Case 1506



San Joaquin County Public Defender Fees

Preface

This report contains the methods the 2016-2017 Grand Jury used to determine if the Board of Supervisors responded to the 2015-2016 Grand Jury Final Report No 1506 “*San Joaquin County Public Defender Fees*.” The 2015-2016 Grand Jury Findings and Recommendations, as well as the Board of Supervisors responses are presented verbatim in this report. The 2016-2017 Grand Jury follow-up results are presented after the agency’s response to each recommendation. A complete copy of the original report and the agency’s response may be found on the San Joaquin County Grand Jury website at: <https://www.sjcourts.org>

Glossary

BOS	Board of Supervisors
County/SJC	San Joaquin County
Court	San Joaquin County Superior Court
Feasibility Study	Assessment of the practicality of a proposed plan or method
Indigent	A person with little or no income
MOU	Memorandum of Understanding describes a bilateral or multilateral agreement between two or more parties

Method of Follow-Up Investigation

The current Grand Jury reviewed the 2015-2016 Grand Jury Report No. 1506 and the Board of Supervisors responses. Jurors reviewed data and documentation provided by the Public Defender's Office, conducted interviews and attended court arraignments.

Findings and Recommendations, Agency Responses and Grand Jury Results

Findings

F1.1 There are no established policies or procedures to assess indigent defendants' ability to reimburse the Public Defender's Office for court appointed counsel.

Agency Response:

"Disagree. There is a policy and procedure to assess fees. In March of 2010, the Department requested, and the Board of Supervisors approved R-10-95, which permitted San Joaquin County courts to assess a registration fee of up to \$50 upon appointment of counsel pursuant to Penal Code section 987.5(a.) The assessed fee was to be paid at the Office of Revenue and Recovery, a division of the Treasurer-Tax Collector. A survey of other counties' procedures and policies also lead our Department to the generation of a flat fee, rather than an hourly rate. In August 2010, a letter was sent to each judge, commissioner and court personnel requesting that the court assess a flat fee of \$125 for a misdemeanor case and \$175 for a felony case to every defendant who had the ability to pay. This amount included the registration fee pursuant to Penal Code section 987.5(d.) The location for payment was modified after it was determined that all fees paid by defendants for public defender services to the Office of Revenue and Recovery were to be applied to all other balances first to other county agencies before being credited to the department of the Public Defender. Other counties have also experienced this issue. For this reason, the court was notified that the location of payment was changed to the Public Defender's Office. This procedure continued for a period of time until the court gradually stopped informing and assessing defendant's registration fee or the flat fee. It is the intention of this Department to immediately resume the procedure by requesting that the court assess and order the indigent defendants to pay the flat fee of \$125 for a misdemeanor and \$175 for a felony to each client. The flat fee of \$50 would be payable at the Public Defender's Office. The money collected would be tracked by the Public Defender's fiscal staff. The Public Defender's Office does not have the personnel to track whether every defendant has paid. The Department will monitor the ongoing assessment of the fee through the Courts."

F1.2 There is no communication and oversight among the Public Defender's Office, the County Administrator's office and the Courts for the collection of the fees assessed to the indigent defendants.

Agency response:

“Disagree. As stated in Response to F1.1 above, the Public Defender’s Office established policies and procedures in 2010 to assess and collect fees from indigent defendants, which had also been communicated to the San Joaquin County Superior Court. The Department intends to resume such procedure by September 1, 2016.

In addition, County Administration reached out to other County departments to determine if a coordinated effort between several departments might make a County Evaluator position more effective. In short, the answer is no, primarily due to the differences in eligibility and the Department’s ability to provide services and payment plans based upon existing legislation.”

F1.3 Financial information required to determine indigence in the County is not being verified.

Agency Response:

“Disagree. Financial information, which includes household income, assets, (real estate, vehicles, money in the bank) and debts, is currently obtained from the majority of defendants in custody, during a Pretrial Services Interview conducted by the Pretrial Services Unit, a branch of the San Joaquin County Probation Department. At that interview, the defendant are told that the information reported will be shared with the court to determine eligibility for pretrial release. A defendant has an incentive to disclose employment and asset information, as those are evidence of stability and support a pretrial release.

Penal Code section 987.8 states that the court can order a defendant to appear before a county officer to make inquiry into the ability to pay all or a portion of legal assistance, impose liens, preside over noticed hearing to determine ability to pay and set amounts to be reimbursed and order the sum reasonable and compatible with the defendant’s financial ability. Penal Code section 987.8(e) outlines the defendant’s rights at a hearing. This process requires additional court appearances.

According to the Assistant Treasurer-Tax Collector, a position comparable to a County Evaluation Officer within San Joaquin County is a Senior Collection Clerk, which has a total cost of \$82,491 per year and the total cost of a Collections Supervisor is \$95,254 per year. It is anticipated that the County would need to hire six Senior Collections Clerks and one Collections Supervisor to staff San Joaquin County three courthouses (Stockton, Lodi and Manteca). In addition, the Office of Revenue and Recovery states that they would charge our Department their hourly rate to track down delinquent payments. It would also be ineffective to vet financial information through these positions. The majority of defendants appointed to the public defender’s office have low to no income, outside of public assistance. It is anticipated that the majority (estimated at over 80%) of defendants would be financially unable to pay more than the flat fee that our Department has previously implemented. In addition, the majority of defendants accused of felony charges that remain in custody have lost any job that they may have had. A flat fee has greater likelihood of being recovered, eliminates the need for county officers and ability to pay hearings and is an equitable cost for indigent defendants.

At the completion of the defendant’s case, the Court will be asked to access the full \$125 or \$175, minus the \$50 registration fee, payable to the Public Defender’s Office.”

Recommendations

R1.1 By September 1, 2016 the Board of Supervisors conduct a feasibility study to determine if the county can support a Chief Financial Evaluation Officer or designee to vet defendants' ability to pay, and track and collect public defender fees.

Agency Response:

"This recommendation was implemented by County staff. As stated above, to vet defendants' ability to pay, track and collect public defender fees would be costly and ineffective due to most indigent client's modest income to no means."

The ability to pay assessment to determine if defendants are able to pay the registration/flat fee can be conducted by the Court, using the Pretrial Services information and any follow up with the defendant in court. Fees can be collected at the Public Defender's Office and tracked by the Defender's fiscal staff."

The 2016-2017 Grand Jury determined no further action required.

R1.2 By December 31, 2016 the Board of Supervisors develop policies and procedures to vet defendants, track and collect fees due the county from the indigent defendants for court appointed counsel.

Agency Response:

"This recommendation will be implemented by September 1, 2016. The department will follow-up with all parties involved with the policies and procedures outlined in F1.1."

See section 2016-2017 Discussion, Findings and Recommendations.

R1.3 By December 31, 2016 the Board of Supervisors implement a policy to vet defendants, track and collect assessed fees from the indigent defendants.

Agency Response:

"This recommendation will be implemented as described in Response F1.1 above. The Department will follow-up with all parties involved with the policies and procedures outlined in F1.1."

See section 2016-2017 Discussion, Findings, and Recommendations.

R1.4 By December 31, 2016 the Board of Supervisors develop a MOU with the court to inform all defendants of the assessable fees.

Agency Response:

"This recommendation will be partially implemented. The Board of Supervisors has approved the \$50 registration fee, and in the past the courts have worked with the County on the process of

assessing the \$125 flat fee for a misdemeanor case and the \$175 for a felony case (with credit given for the \$50 registration fee). The Public Defender's Office intends to re-implement this process by September 1, 2016 and will work with the Presiding Judge in reinstating the assessment procedure to be part of the court hearings going forward."

The 2016-2017 Grand Jury determined no further action is required.

2016-2017 Finding and Recommendation

Finding

F1. The Board of Supervisors response to F1.1 stated that the Public Defender's Office does not have the personnel to track whether every defendant has paid. Defendants have no incentive to pay, and there are no consequences for non-payment.

Recommendation

R1. By December 31, 2017, the Board of Supervisors implement a policy to track and collect all assessed fees for the services of the Public Defender and forward total assessed fees and total collected fees to the County Administrator.

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (penal Code sections 911, 924.1(a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code sections 924.2 and 929).

Response Requirements

California Penal Code sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

The San Joaquin County Board of Supervisors shall respond to all findings and recommendations in this report.

Mail or hand deliver a hard copy of the response to:

Honorable José L. Alva, Presiding Judge
San Joaquin County Superior Court
180 West Weber Avenue, Suite 1306
Stockton, CA 95202

Also, please email the response to Ms. Trisa Martinez, Staff Secretary to the Grand Jury at grandjury@sjcourts.org

