OFFICE OF THE PUBLIC DEFENDER

Equal Justice for All?

2021-2022 Napa County Civil Grand Jury
May 31, 2022

TABLE OF CONTENTS

	PAGE
SUMMARY	**3**
BACKGROUND	**3**
METHODOLOGY	**3**
DISCUSSION	**4**
FACTS	**6**
FINDINGS	**7**
RECOMMENDATIONS	**8**
REQUEST FOR RESPONSES	**8**

SUMMARY

The 2021-2022 Grand Jury learned that some misdemeanor defendants, those unfamiliar with the legal system, or suffering from mental disability, and particularly those with no or limited English, are at risk for poor outcomes, sometimes as serious as deportation, when their cases are settled without legal representation.[1] For those accused of crimes, whether felonies or misdemeanors, the court process can be confusing; this is particularly true for those with limited or no English skills. Legal representation can help to alleviate this problem. After an investigation which included interviews, review of data, and observation of arraignments, the Grand Jury recommends that to address this potential disparity and possible violation of the California Constitution, Napa County consider adding resources to the Napa County Public Defender so that all misdemeanor defendants have access to legal advice during their arraignments.

BACKGROUND

This investigation focused on the adequacy of representation of indigent misdemeanor defendants who were legally entitled to representation by the Napa County Public Defender in accordance with the Constitutions of the United States and California as well as California Penal Code Section 19.6,[2] Nonetheless, when no Public Defender is available in the courtroom, misdemeanor defendants may fail to request representation, preferring a rapid disposition of their matters, sometimes not understanding the legal impact such a decision.

METHODOLOGY

The Grand Jury's investigation included interviews of past and current staff in the Napa County Public Defender's Office and focused especially on attorneys who represent misdemeanor defendants in court. An attorney in the Napa County District Attorney's Office and an immigration consultant to the Public Defender's Office were also interviewed. In addition, the panel requested, received, and evaluated statistical data from the Napa County Public Defender; it also reviewed and compared online historical budget information for the Napa County Public Defender and the Napa County District Attorney; California and U. S. appellate court decisions addressing the legal rights of misdemeanor defendants; and legal cases against other counties in California involving public defender services. Grand Jurors also personally observed several court arraignments, using the court's public access video conferencing system.

---

1 In California, a misdemeanor is described as any offense where the maximum sentence is no longer than one year in a county jail.

2 The California Constitution, Article 1, § 15—Declaration of Rights, provides: "The defendant in a criminal case has the right to a speedy public trial, to compel attendance of witnesses in the defendants' behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant."

DISCUSSION

A. General

All indigent defendants in California charged with a misdemeanor or felony offense are entitled to the services of a public defender if they so request; after such a request, attorneys are subsequently appointed by the court. In the case of felony defendants, most are initially held in custody after arrest and an attorney from the Office of the Public Defender is appointed routinely by the court at the time of their arraignment.[3] In most situations, the Public Defender will have been informed about the person in custody and, prior to the arraignment, will have had the opportunity to meet with the defendant in jail,[4] determine eligibility for the Public Defender's services, and determine whether the eligible defendant wants representation by the Public Defender.

Misdemeanor defendants face a different situation because most are not initially confined to jail. Instead, upon arrest, misdemeanor defendants are typically given a citation and Notice to Appear in court on a specific date, and then immediately released.[5] Thus, unless the defendant initiates contact,[6] Public Defender attorneys do not have the opportunity to meet with such defendants because they are not in custody prior to their initial arraignment in court. The Grand Jury has learned that most defendants do not understand their right to seek counsel and so do not seek contact with the Public Defender prior to arraignment. The first encounter between a Public Defender and a misdemeanor defendant not in custody thus usually could not occur, if it does at all, other than in the courtroom at the time of the arraignment.

B. Arraignments

Arraignments are scheduled by the court. Felony and misdemeanor arraignments are held separately, each type normally on the same days and times each week. However, each week some felony and misdemeanor arraignments are held outside the days and times of these fixed schedules. A District Attorney is required to be present at all arraignments to present the charges and interact with a defendant's attorney, if there is one. The Public Defender generally has lawyers who are available to appear at arraignments which are held at the usual fixed times, but not always available outside the fixed times. This results from the fact that Public Defender attorneys have many other duties to perform as part of their responsibilities, including, for example, preparing for and attending trials of their clients, obtaining evidence to assist them in representing defendants, interviewing clients, potential clients, and witnesses, preparing legal documents to file in court, and appearing at court hearings in matters involving their clients.

---

[3] The arraignment is the formal court proceeding at which the charges against the defendant are set forth by the court, and the defendant may enter a plea to the charges (e.g., not guilty), agree to an offer from the District Attorney to resolve the case (a "proffer"), or ask for a delay in responding to the charges.

[4] From early 2020 to date, visits to imprisoned defendants by the Public Defender have been restricted due to the prevalence of Covid-19.

[5] This process is the same as a traffic citation, for example.

[6] If a misdemeanor defendant is incarcerated, the Public Defender may be able to meet or interview the defendant in the same way as would be done with a felony defendant.

At arraignments, several matters are addressed by the judge presiding at the hearing. Importantly, the judge reads the charges against the defendant and asks if the defendant understands them. Nonetheless, the interactions between the judge and the defendant, if not represented by an attorney who speaks for the defendant, are limited and do not include providing legal advice. The judge determines whether the defendant appears to be mentally competent and has a basic understanding of English. If the defendant does not seem to have a grasp of English, the judge will have a Spanish-language interpreter translate for the defendant. The translators, however, are prohibited from rendering legal advice to the defendant; their sole role is to convert spoken and written English into Spanish.[7]

C. Right to Counsel

The judge will ask the defendant if he or she is represented by counsel. If the response is negative, which is quite typical, the judge asks the defendant if they want an attorney and tells the defendant if they cannot afford counsel, the court will appoint one without charge. If the defendant requests an attorney and qualifies for the services of a public defender, one will be appointed for the defendant. Until appointed by the court, a public defender cannot legally represent a defendant.

D. The Charges

After initial questions, the judge next reads defendants the charges against them, and asks if the defendant understands them. In addition, the defendant is informed of the right to see the evidence the District Attorney will use to prosecute the charges and the right to bring witnesses to court to testify on his or her behalf.

E. The Plea

In misdemeanor cases, the District Attorney presents the court with written charges and a proposed resolution, called a proffer. The proffer contains the proposed sanction(s) the defendant would face, if the defendant agrees to plead guilty to the charges. The proposed penalty can include monetary fines, time in the County Jail, and periods of probation. By accepting the proffer, the defendant agrees to the penalties as proposed.

The judge presents the proffer to the defendant once the defendant has been informed of their legal rights. If the defendant is represented by an attorney, the attorney can attempt to negotiate a modification of the proposed disposition of the case, although the District Attorney is not obligated to agree to do so. If the defendant does not have counsel, such a dialogue is unlikely to occur, since the defendant usually is not conversant with the process and the possibility and parameters of such negotiations. In addition, if the proffer would not require the defendant to serve time in jail, even if a defendant would be subject to a period of probation, defendants are often highly motivated to plead guilty without seeking advice from counsel, to avoid disruption in their daily lives and employment.

[7] Non-English-speaking defendants in Napa County are primarily Spanish-speaking individuals, and an English-Spanish translator is present in court to serve them, if needed. If a defendant speaks a language other than English or Spanish, the court will delay the proceedings to arrange for a translator for that language.

Notably, some non-citizen defendants are not lawfully present in the United States, perhaps because of an illegal entry or overstaying a visa. Depending upon the crimes for which they are accused, if they plead or are found guilty, these defendants may face additional adverse consequences of which they are not aware, such as deportation, refusal of reentry into the U. S. if they leave, and increased penalties for future offenses. It is noted that there is a written advisement of potential immigration consequences included on the standard unrepresented misdemeanor plea form the defendant usually is provided when pleading guilty at arraignment. The plea form is translated for non-English speakers, and states: "CITIZENSHIP - If you are not a United States citizen, a plea of Guilty or No Contest could result in your deportation, exclusion from admission to this country, or denial of naturalization. You should consult an attorney prior to making any decisions and upon request, the Court will continue your case for that purpose." The degree to which a defendant is capable of understanding the admonition and the listed consequences, and thus would initiate a request for counsel, however, is far from certain. Many interviewees believe that the likelihood that the defendant will understand the potential consequences of a guilty plea is significantly greater when the defendant is represented by counsel.

F. Staffing

The Public Defender's Office reports that it has sufficient legal staff to be present in the courtroom where regularly scheduled weekly misdemeanor arraignments are held. Nonetheless, in addition to the regularly held arraignments, there are arraignments at other times during the week, when the Public Defender's authorized legal staff may not be able to be present due to other responsibilities.

The Public Defender and key personnel on the staff uniformly told the Grand Jury that the addition of one staff attorney would enable the Office to provide attorneys at almost all misdemeanor 'not-in-custody' arraignments. The presence of a Public Defender increases the likelihood that a defendant will ask for counsel. The judge will always appoint a public defender to represent a defendant who qualifies for and requests representation. The designation of a public defender to represent the defendant offers the opportunity to consult with counsel before entering a plea. Where there are potential additional adverse consequences to a defendant for a plea of guilty, the defending attorney can advise the defendant of the risks, so that the defendant can make an informed decision about which plea he or she may wish to enter – guilty or not guilty.

FACTS

During its investigation, the Grand Jury established the following facts.

1. Public Defender services are available only to indigent defendants who request representation. Services are typically provided by a Deputy Public Defender, although the Public Defender can represent defendants as well.

2. If the defendant qualifies for such services and requests them, by law the Court must appoint a Public Defender to serve as the defendant's attorney in order that representation can begin.

3. Qualifying felony defendants are generally provided Public Defender services automatically.

4. Misdemeanor defendants who have not been imprisoned ("not in custody") for the offense charged generally do not have contact with a Public Defender, if at all, until after they are arraigned in court.

5. Misdemeanor defendants are more likely to request Public Defender services if there is a Public Defender in the courtroom at the time of their arraignment.

6. The Public Defender presently does not have the resources to staff an attorney in courtrooms for all misdemeanor arraignments.

7. Some misdemeanor defendants do not request the Public Defender's services, due to: (a) a desire to enter a guilty plea to charges when no jail time is proposed by the District Attorney and their release is immediate; and (b) a lack of understanding of the nature of the charges against them and the potential adverse consequences of a guilty plea.

8. The lack of understanding can result from the following factors: (a) language issues – despite translators being used in the courtroom; (b) mental issues – despite the presiding judge screening for such issues; and (c) complex legal issues that only an attorney can explain to the defendant.

9. For non-citizen misdemeanor defendants there may be additional immigration consequences to a guilty plea or conviction, such as immediate or future deportation on further conviction.

10. Where there are potential immigration consequences, the Public Defender's office has available the advice of a consulting immigration law expert, which can help the defendant avoid unintended adverse consequences associated with a guilty plea.

FINDINGS

F1. A guilty plea can have serious consequences for any misdemeanor defendant, including an increase in potential penalties on future charges.

F2. A guilty plea by a non-citizen misdemeanor defendant can have additional serious consequences, including immediate deportation on the charges, or deportation on future charges.

F3. There are likely cases where unrepresented misdemeanor defendants pleaded guilty without full comprehension of the potential consequences on their immigration status or future penalty increases.

F4. Where a Public Defender is appointed, the potential for a defendant to make a fully informed response to a proffer, i.e., a proposed resolution, is much greater.

F5. Avoiding the unintended consequences described above would be enhanced if there was a Public Defender in the courtroom at every arraignment.

F6. Funding of an additional attorney in the Office of the Public Defender would enable the office to provide a Public Defender at virtually all misdemeanor arraignments.

F7. Given present resources and staffing, the Public Defender's office provides consistently high-quality representation to defendants in the cases in which it is appointed.

RECOMMENDATION

R1. This Grand Jury recommends that the Board of Supervisors consider funding the Office of the Public Defender to support an additional attorney with the priority of attending misdemeanor arraignments not otherwise covered, and handling other work as needed.

REQUEST FOR RESPONSES

The following responses are required pursuant to Penal Code sections 933 and 933.05:

- The Napa County Board of Supervisors

  F1, F2, F3, F4, F5, F6 and F7

  R1

- The Public Defender

  F1, F2, F3, F4, F5, F6 and F7

  R1

- The District Attorney:

  F1, F2, F3, F4, F5, F6 and F7

  R1