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A. GENERAL INFORMATION

1. Date

2020-09-24

2. Department

Office of the State Public Defender

3. Organizational Placement (Division/Branch/Office Name)

Executive Management

4. CEA Position Title

Deputy Director, Indigent Defense Improvement Division

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

The requested position is for a Deputy Director to carry out the Office of the State Public Defender's (OSPD) mission of improving indigent defense. The Deputy Director has authority over the new Indigent Defense Improvement Division (IDID) in the OSPD. An indigent defendant is one too poor to afford to hire a lawyer. Under state law, indigent defendants are entitled to appointed counsel. In 2020, the OSPD was given a new statutory mission to improve indigent defense by offering training and specialized assistance to attorneys representing indigent defendants and by developing other initiatives to improve indigent defense. Under the general direction of the State Public Defender (SPD), the Deputy Director has authority over the newly created IDID and provides vision, leadership and policy direction for the development and implementation of the division programs.

6. Reports to: (Class Title/Level)

State Public Defender/Department Director

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain):

The Deputy Director for the IDID will report directly to the SPD, who is the executive director for the OSPD. The Deputy Director will have frequent contact with the SPD. The Deputy Director serves as an expert program and policy advisor to the SPD on all matters related to the IDID.

8. Organizational Level (Select one)

- 1st
- 2nd
- 3rd
- 4th
- 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The CEA (Deputy Director, Indigent Defense Improvement Division) will lead OSPD's efforts to ensure that all indigent defendants in California receive their constitutional right to competent and effective counsel. Because life and liberty can be taken away by the State when an individual is charged with a crime, the California and the United States Constitutions both guarantee that those accused are provided with an attorney with the responsibility of providing a competent and effective defense. Just like all citizens, indigent defendants have the right to counsel. Up until this year, the responsibility to provide counsel to the indigent was entirely delegated to California's 58 counties, with the State providing no direct support to attorneys representing such individuals.

However, in 2020 the State recognized that the counties have not been able to provide competent and effective counsel to all indigent defendants. There have been instances where defendants do not have counsel at all; the attorney is not trained and the defendant spends time in prison when he or she should not; the defendant loses employment because of something the attorney did not understand; an attorney waives a defendant's rights by failing to appeal. Considering these and other examples, in 2020, the State assumed some responsibility for guaranteeing that the constitutional rights of the indigent are not violated.

OSPD has been tasked by the State to improve indigent defense by providing training and technical assistance to attorneys representing the indigent and by engaging in other efforts to improve the overall quality of indigent defense. OSPD has created a new division, the Indigent Defense Improvement Division (IDID), to carry out these responsibilities. The CEA will lead the IDID as its Division Director. Under the general direction of the SPD, the Division Director is independently responsible for all IDID policies and procedures. Because OSPD has not previously had responsibility for training trial attorneys or for providing trial attorneys with specialized support services, the Deputy Director for the IDID will be responsible for creating from the onset policies guiding supportive training and technical assistance programs for indigent defense lawyers.

The Deputy Director has a twofold responsibility in creating policies for these programs. There are no current, commonly accepted California appropriate standards for most aspects of indigent defense. The IDID Deputy Director will be responsible for overseeing the creation of California-based best practices for the provision of indigent defense and developing the related policies. As good policy creation is data driven, the IDID must have detailed data about how indigent defense functions. California has never had any central organization of indigent defense data. The IDID Deputy Director will therefore direct the creation of a new multi-county database of information related to how counties provide indigent defense and where they could improve. The data will help the IDID answer numerous questions regarding how California fails the indigent. The database will provide valuable data to demonstrate areas where indigent defense could be improved upon by addressing the following questions: In what parts of the State do attorneys most need help? Do private appointed attorneys or public defenders need the most help? In what areas of the law do attorneys need additional training? In what areas of the practice of law do they need support? Using the standards created and the data gathered, and using best practices for training, the IDID Deputy Director will create OSPD training and technical assistance programs that will assist California in improving indigent defense.

After getting the IDID training and assistance programs up and running, the IDID Deputy Director's main work will be overseeing the functioning of these programs and setting up mechanisms to assure that they are working as designed. The Deputy Director will also be responsible for implementing evaluation procedures to assess the programs that have furthered OSPD's mission of improving indigent defense. With national models as a guide, the IDID Deputy Director must develop performance measures that will evaluate program outcomes using empirical data and enable the SPD to assess how well the programs meet objective standards. The empirical data and performance measures may demonstrate the need for the IDID Deputy Director to adjust existing policy and create new policy.

OSPD is also required to engage in related efforts to improve indigent defense. OSPD is authorized to represent indigent clients in court to accomplish its mission to improve indigent defense. The IDID Deputy Director is responsible for determining policies when litigation is needed to help California fulfill its constitutional responsibility. The IDID Deputy Director has the responsibility of formulating, planning and implementing targeted litigation and the related policies for the purpose of improving indigent defense.

As part of its new mission, OSPD will develop recommendations for Statewide policy, legislation, regulations, and court rules needed to improve indigent defense. The IDID Deputy Director will have the responsibility for developing these recommendations. The Deputy Director will work with the Governor, the Legislature, and members of the Judicial Council to formulate action plans based on OSPD recommendations. The Deputy Director acts for the SPD in meetings with legislators, the Governor's Office, court officials and others in matters relating to the IDID. As part of these responsibilities, the IDID Deputy Director will oversee OSPD's collaboration with the Board of State and Community Corrections (BSCC) for administration of a \$10 million grant to counties for the purpose of improving indigent defense.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The IDID is directly tied to OSPD's mission of assisting the State in meeting its obligation to provide competent and effective counsel to indigent defendants at the criminal trials.

With the August 2020 enactment of Government Code section 15420, subdivision b, the State directs OSPD to provide training and technical assistance to trial level attorneys representing indigent defendants and to engage in related efforts to improve indigent defense. The IDID is a new division of OSPD created in response to this new directive and is critical to its ability to meet this new mission to raise the quality of indigent defense. The training and technical assistance programs of the IDID, led by its Deputy Director (CEA), will raise the quality of indigent defense by providing trainings in specified areas in the law. The types of training will be determined after an assessment of the counties' greatest needs across the state. As examples, the types of training offered may include: consequences of criminal convictions for immigrant defendants, strategies for defending deoxyribonucleic acid (also known as DNA) cases, holistic defense, attacking systemic racism in the criminal justice system, and defending juvenile cases. The IDID will also offer technical assistance. The types of technical assistance will also be determined after evaluation of the data collected from counties. Assistance may include resource sharing (e.g., legal websites, collection of expert materials and legal documents) and attorney or expert consultation on individual cases. These services will be targeted to areas where there are the greatest problems in providing indigent defense. They are thus critical to OSPD's mission to assist the State in better meeting its obligation to provide competent lawyers for the indigent.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

Prior to 2020, OSPD's mission was focused on assisting individuals sentenced to death through legal representation in post-conviction appeals. In 2020, Government Code Section 15420 was amended to expand the mission of OSPD to engage in efforts for the improvement of public defense. Specifically, OSPD is now charged with providing training and technical assistance to attorneys charged with the responsibility to represent indigent defendants at trial. OSPD's authorization to represent clients has expanded to include representation in furtherance of the State Public Defender's primary responsibilities. The budget for 2020 was increased to include funding the office's new mission including 18 new staff positions to do the work required by the new mission.

The IDID was created this year to carry out the mission of improving indigent defense. The new CEA position, the Deputy Director for the IDID, will provide executive leadership for that division. The IDID will encompass three areas: (1) a new unit devoted to planning, providing and evaluating county oriented training, (2) a new unit devoted to planning, providing and evaluating specialized technical services to county defenders and (3) coordination of related efforts (including information gathering, litigation and legislation programs) for the purpose of improving indigent defense. The CEA will create policies for the programs in all three of these areas as detailed in 26 below. With the new mission of developing plans for improving statewide defense in the future, the new CEA is also required to advise the Legislature, the Judiciary and the Governor's Office on initiatives to improve indigent defense. The Deputy Director must also coordinate the new programs at OSPD with existing programs.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The areas where the new CEA will be the principle policy maker include training, specialized services, assisting with BSCC grants, information gathering and litigation strategy. The State has the obligation to provide the necessary resources for the delivery of public defender services to indigent defendants. California has entrusted these responsibilities largely to the counties; however, the State bears the responsibility for providing defense services. The IDID policies and procedures implementing additional training and specialized services (and related efforts to improve defense) will enable counties to better provide adequate representation to low-income litigants, assure that California meets its constitutional obligation to provide defense services, and better serve the State by reducing costs associated with excessive and unjust incarcerations. Examples of the impact of the policies for each of the areas follow:

TRAINING-The new CEA will set OSPD policy and priorities regarding: (a) what areas of law trainings will be offered (e.g., juvenile law, law related to racial equity, holistic defense, writs and appeals, forensics, immigration); (b) what locations in the State the trainings will be offered; (c) how those trainings will be offered (e.g., in person conducted by OSPD staff, webinar trainings designed by OSPD staff, services offered in conjunction with existing stakeholder organizations, services contracted with outside organizations); (d) how those trainings will be evaluated to assess whether they are contributing to the overall improvement of indigent defense. Examples of how the training services have an identifiable impact include:

- Using the services of the IDID Training Unit, the attorney for a defendant who was liable for deportation if they plead to certain crimes, would be trained in the negative immigration consequences of a plea, and would negotiate a more favorable plea for the client without deportation consequences.
- Using training and information from the IDID, a public defense organization is able to train its staff in how to use the services of a social worker, enabling a homeless client to access social services to take advantage of housing and welfare benefits – ultimately reducing the time the person spends in jail and prison.

SPECIALIZED SERVICES-The new CEA will set OSPD policy and priorities regarding (a) what kinds of specialized support and specialized services will be provided (e.g., electronic resources, creation of an indigent defense library of resources, consultation services); (b) how these services should be provided (e.g., brief banks, individual case consults; attorney of the day program; group consults; practice guides). Examples of how the specialized services have an identifiable impact include:

- Using the services of the IDID Support Unit, the attorney for a juvenile in delinquency proceedings would have consulted with an OSPD staff attorney and learned the proper procedure for preserving prejudicial errors at a commitment hearing, which would be brought to the attention of a court of appeal – ultimately reducing or eliminating prison time for the juvenile.

Using an IDID manual, an attorney will bring a motion for post-conviction relief for immediate release, based on a new statute altering the statutory basis for conviction.

BSCC GRANTS- As noted in 23, the BSCC has been allocated \$10 million dollars to support indigent defense, funds which are to be administered in consultation with OSPD. The CEA will be responsible for assisting BSCC in designing the allocation formulas for these grants, as well as advising on how the grants should be evaluated. Examples of the impact of the BSCC grants includes:

- A public defender system uses the BSCC money to create a case management system, which organizes case data so that management can use its attorney resources more effectively to improve outcomes for its clients.
- A public defender uses the BSCC funds to staff a new attorney position to provide services in new areas where it had not previously been able, shortening prison time for its clients.

INFORMATION GATHERING- also noted in 23, OSPD is charged with engaging in additional efforts for the improvement of indigent defense. Information gathering is a critical part of determining future policy and programs for the purpose of improving defense. The CEA will be independently responsible for determining policies and priorities regarding what information should be gathered, how it should be gathered and organized, as well as planning how information should be communicated to the SPD and other stakeholders. Examples of impacts for this program include:

- Using information developed by the Division, the judiciary and executive branch develop a series of best practices in specialized areas of law, which are the basis for funding recommendations for the provision of county services.
- Using information on how to best write contracts for indigent defense services, a county board of supervisors adopts a new contract for defenders that guarantees cases have appropriate investigation resources.

LITIGATION STRATEGY- The CEA will also set policy and direction for any targeted litigation OSPD engages for the purpose of improving indigent defense. Examples of impacts for this program include:

- Using IDID guidance, attorneys develop a unified litigation strategy for reducing systemic racial discrimination in the criminal justice system.
- OSPD represents an individual in a case and challenges the way in which juvenile cases are funded by the county, leading to a new county system for providing counsel for juveniles that has new minimum training requirements for attorneys representing juveniles.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The proposed CEA (Deputy Director, Indigent Defense Improvement Division) will have the sole responsibility for developing the policies related to the new IDID. There are two primary groups of the public impacted by the policies developed with the requested CEA position. First, are the hundreds of attorneys (public defenders and private appointed counsel) and other legal support personnel (e.g., case workers, paralegals, social workers) who defend people who are indigent. The IDID will provide services to improve this group's ability to serve their clients. The second group is the hundreds of thousands of individuals arrested each year who are entitled to appointed counsel, as well as family and other citizens of these communities. In 2019 there were almost 300,000 felony arrests, and about 750,000 misdemeanor arrests. Over 80 percent of these individuals are too poor to afford a lawyer and are assigned a public defender or a private attorney paid for at public expense. The policies developed by the CEA in this position will help assure that these individuals are represented consistent with California's obligation to provide effective and competent counsel. Others indirectly impacted by these policies include the family members of the arrested and the non-profit organizations (e.g., the California Public Defenders Association, the California Attorneys for Criminal Justice, the Immigration Legal Resource Center, the American Civil Liberties Union, the Pacific Center for Juvenile Defense, and the Ella Baker Center) involved in advocating for additional resources and improved policies associated with indigent defense.

As noted above in 26, the taxpayers of California are the ultimate beneficiaries of the policies by the reduction of costs to the State associated with unjust incarcerations. Every year that an inmate is unjustly incarcerated costs approximately \$82,000 of State resources that could have been used for other important State needs. Finally, the IDID will develop suggested steps for improving public defense that will require legislation and regulations. As such, the Legislature and the Governor and the Judicial Council will also be impacted by IDID policy.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

The CEA will work with the SPD on the development and implementation of policies related to improving indigent defense programs. Because this is a new initiative for the State and a new mission for OSPD most of the policies will be new. The policies will guide the IDID's provision of training and specialized assistance programs and frame the other efforts OSPD makes to improve indigent defense. The CEA is critical in ensuring that the State can improve defense for the poor and provide all indigent Californians their constitutional right to an effective and competent defense, as they are entitled.