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## Legal help for poor defendants called inadequate

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Mercury News

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A statewide commission reported Thursday that many California counties have cut their spending for impoverished criminal defendants by providing them lawyers whose representation fails to meet constitutional standards.

Counties are increasingly hiring legal firms that offer cut-rate representation by failing to spend money on investigators or experts that are needed for adequate defense, said the report issued by the California Commission on the Fair Administration of Justice, created to examine ways to guard against wrongful convictions.

"This is like a cancer within the system of providing indigent defense, and it's spreading," said Gerald Uelmen, executive director of the so-called Fair Commission, calling the spread of low-bid, flat-fee private firms "a race to the bottom."

The commission's report focuses on criminal cases, where the U.S. Supreme Court has long held that impoverished defendants are entitled under the Constitution to effective representation of attorneys in the preparation as well as trial phase of the case.

The report concluded that institutional public defender's offices - such as the offices that handle most cases involving Santa Clara County defendants unable to hire lawyers - generally provide competent representation for their clients, and

vigorously advocate for adequate funding for investigators and experts.

### Flat fee

But lawyers who are paid a flat fee for representation, the report said, may be tempted to cut corners on pretrial preparation and avoid going to trial to save time and money.

As a solution, commissioners recommend that the state Legislature establish a body to oversee the way counties provide representation to criminal defendants, and also recommend a law to ensure that funding for experts and investigators is separate from the fee paid to the lawyers in publicly funded cases.

While the commission's report focuses on criminal representation, the problems identified in the report mirror those exposed in the February series of articles on the confidential juvenile dependency system, where Santa Clara County's court has long turned to the lowest bidder for legal services. The Santa Clara Juvenile Defenders firm has represented parents accused of child abuse or neglect since 1996, when the firm won its first contract by offering dependency representation at a far cheaper price than the county had been paying public defenders.

The Mercury News series documented that the firm had no investigator and invested little, if anything, for expert review or testimony in cases. The series quoted lawyers who had worked for the firm, as well as a wide swath of critics, who said the profit motive interfered with an adequate defense for parents, many of whom faced the permanent loss of their children.

Juvenile Defenders and other for-profit firms handle the representation of dependency cases in a number

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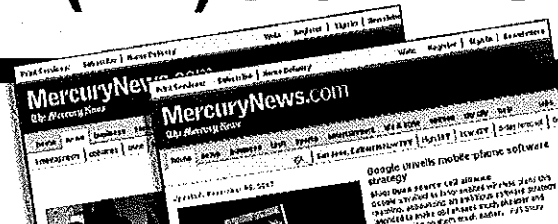
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of counties. A committee of Santa Clara County Superior Court judges is now considering whether to retain Juvenile Defenders after July 1.

## County's change

The local Legal Aid Society, a non-profit county contractor, has long administered a panel of attorneys paid to handle criminal cases in those instances when the public defender's offices have a conflict of interest, such as cases of multiple defendants. But the county counsel is currently taking steps to take over such conflict cases itself.

"By this move, our intention is to provide a much better constitutional defense to criminal defendants in this county who are indigent," said County Counsel Ann Ravel. "We will be abolishing all of those contracts for flat-fee work and instead we are going to be paying people essentially for the work they do. We are going to encourage that investigations be done early in the case to give the lawyer an understanding about what the ramifications are of the charges."

The 2006 Mercury News series "Tainted Trials, Stolen Justice" concluded that the trials of many criminal defendants have been marred by instances of prosecutorial, defense or judicial error, and that there is an increased chance of a wrongful conviction when those problems occur together.

The Fair Administration of Justice Commission report cited research by California Western School of Law Professor Larry Benner, who found that inadequate investigation is a recurring problem in cases in which convictions were overturned because of poor representation.

The commission cited in particular law firm Richard A. Ciummo & Associates, which the report described as using the "Wal-Mart business model" for

providing representation to impoverished defendants. The firm, highlighted in a Mercury News article last year, began in Madera County and currently has contracts with seven other counties by offering to cut costs below competitors' bids.

"It's hard for county officials to resist that kind of come-on," commission director Uelmen said. "You need to have some bottom line."

But former attorneys of the firm have complained in court documents of poor training and inadequate preparation.

A local newspaper reported in Amador County that criminal attorneys with Ciummo's firm failed to show up in court, leaving defendants in jail longer than necessary. In a board of supervisors' debate about the private firm's poor performance, Amador County Supervisor Louis Boitano was quoted as saying: "It didn't take long to figure out who was on the gravy train and milking the system."

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