Chapter Two

Administration of Justice

Section 1: GENERAL PRINCIPLES

This chapter is intended to provide a policy framework to direct needed and inevitable change in our justice system without compromising our commitment to both public protection and the preservation of individual rights. CSAC supports improving the efficiency and effectiveness of the California justice systems without compromising the quality of justice.

A. The Role of Counties

The unit of local government that is responsible for the administration of the justice system must be close enough to the people to allow direct contact, but large enough to achieve economies of scale. While acknowledging that the state has a constitutional responsibility to enact laws and set standards, California counties are uniquely suited to continue to have major responsibilities in the administration of justice. However, the state must recognize differences arising from variations in population, geography, industry, and other demographics and permit responses to statewide problems to be tailored to the needs of individual counties.

We believe that delegation of the responsibility to provide a justice system is meaningless without provision of adequate sources of funding.

Section 2: LEGISLATIVE AND EXECUTIVE MATTERS

A. Board of Supervisors Responsibilities

It is recognized that the state, and not the counties, is responsible for trial court operations costs and any growth in those costs in the future. Nevertheless, counties continue to be responsible for justice-related services, such as, but not limited to, probation, prosecutorial and defense services, as well as the provision of local juvenile and adult detention facilities. Therefore, county board of supervisors should have budget control over all executive and administrative elements of local justice programs for which we continue to have primary responsibility.

B. Law Enforcement Services

While continuing to provide the full range of police services, county sheriffs should move in the direction of providing less costly specialized services, which can most effectively be managed on a countywide basis. Cities should provide for patrol and emergency services within their limits or spheres of influence. However, where deemed mutually beneficial to counties and cities, it may be appropriate to establish contractual arrangements whereby a county would provide law enforcement services within incorporated areas. Counties should maintain maximum flexibility in their ability to contract with municipalities to provide public safety services.

C. District Attorney Services

The independent, locally-elected nature of the district attorney must be protected. This office must have the capability and authority to review suspected violations of law and bring its conclusions to the proper court.

D. Victim Indemnification

Government should be responsive to the needs of victims. Victim indemnification should be a state responsibility, and the state should adopt a program to facilitate receipt of available funds by victims, wherever possible, from the perpetrators of the crime who have a present or future ability to pay, through means that may include, but are not limited to, long-term liens of property and/or long-term payment schedules.

E. Witness Assistance

Witnesses should be encouraged to become more involved in the justice system by reporting crime, cooperating with law enforcement, and participating in the judicial process. A cooperative anonymous witness program funded jointly by local government and the state should be encouraged, where appropriate, in local areas.

F. Grand Juries

Every grand jury should continue to have the authority to report on the needs of county offices, but no such office should be investigated more than once in any two-year period, unless unusual circumstances exist. Grand juries should be authorized to investigate all local government agencies, not just counties. Local government agencies should have input into grand jury reports on non-criminal matters prior to public release. County officials should have the ability to call the grand jury foreman and his or her representative before the board of supervisors, for the purpose of gaining clarification on any matter contained in a final grand jury report. Counties and courts should work together to ensure that grand jurors are properly trained and that the jury is provided with an adequate facility within the resources of the county and the court.

G. Public Defense Services

Adequate legal representation must be provided for indigent persons as required by constitutional, statutory, and case law. Such representation includes both criminal and mental health conservatorship proceedings. The mechanism for meeting this responsibility should be left to the discretion of individual counties.

Counsel should be appointed for indigent juveniles involved in serious offenses and child dependency procedures. The court-appointed or -selected attorney in these procedures should be trained specifically to work with juveniles.

Adult defendants and parents of represented juveniles who have a present and/or future ability to pay part of the costs of defense should continue to be required to do so as determined by the court. The establishment of procedures to place the responsibility for the cost of juvenile defense rightfully upon the parents should be encouraged. The state should increase its participation in sharing the costs of public defense services.

H. Coroner Services

The independent and investigative function of the coroner must be assured. State policy should encourage the application of competent pathological techniques in the determination of the cause of death.

The decision as to whether this responsibility should be fulfilled by an independent coroner, sheriff-coroner combination, or a medical examiner must be left to the individual boards of supervisors. In rural counties, the use of contract medical examiners shall be encouraged on a case-by-case basis where local coroner judgment is likely to be challenged in court. A list of expert and highly qualified medical examiners, where available, should be circulated to local sheriff-coroners.

I. Pre-Sentence Detention

1. Adults

a. Facility Standards

The state's responsibility to adopt reasonable, humane, and constitutional standards for local detention facilities must be acknowledged.

Recognizing that adequate standards are dynamic and subject to constant review, local governments must be assured of an opportunity to participate in the development and modification of standards.

It must be recognized that the cost of upgrading detention facilities presents a nearly insurmountable financial burden to most counties. Consequently, enforcement of minimum standards must depend upon state financial assistance, and local costs can be further mitigated by shared architectural plans and design.

b. Pre-sentence Release

Counties' discretion to utilize the least restrictive alternatives to pre-sentence incarceration that are acceptable, in light of legal requirements and counties' responsibility to protect the public, should be unfettered.

c. Bail

We support a bail system that would validate the release of pre-sentence persons. We also believe that public protection should be a criterion considered when setting bail.

Any continuing county responsibility in the administration or operation of the bail system must include a mechanism to finance the costs of such a system.

2. Juveniles

a. General

We view the juvenile justice system as being caught between changing societal attitudes calling for harsher treatment of serious offenders and its traditional orientation toward assistance and rehabilitation. Therefore, we believe a thorough review of state juvenile laws is necessary. Any changes to the juvenile justice system should fully involve and draw upon the experience of county officials and personnel responsible for the administration of the present system. CSAC must be involved in state-level discussions and decision-making processes regarding changes to the juvenile justice system that will have a local impact. There must also be recognition that changes do not take place overnight and that an incremental approach to change may be most appropriate.

Counties must be given the opportunity to analyze the impact, assess the feasibility, and determine the acceptability of any juvenile justice proposal that would realign services from the state to the local level. As with any realignment, responsibility and authority must be connected, and sufficient resources — with a built-in growth factor adjustment — must be provided. Any shift in juvenile detention or incarceration from large state-run facilities to local facilities — if determined to be appropriate — must be pre-planned and funded by the state. However, counties believe that a class of juvenile offenders exists that is best treated by the state. These juvenile offenders are primarily those offenders whose behavioral problems, treatment needs, or criminogenic profile are so severe as to outstrip the local ability to properly treat.

We support a juvenile justice system that is adapted to local circumstances and increased state and federal funding support for local programs that are effective.

b. Facility Standards

The state's responsibility to adopt reasonable, humane, and constitutional standards for juvenile detention facilities is recognized. The adoption of any standards should include an opportunity for local government to participate. The state must recognize that local government requires financial assistance in order to effectively implement state standards, particularly in light of the need for separating less serious offenders from more serious offenders.

c. Treatment and Rehabilitation

As with adult defendants, counties should have broad discretion in developing programs for juveniles.

To reduce overcrowding of juvenile institutions and to improve the chances for treatment and rehabilitation of more serious offenders, it is necessary that lesser offenders be diverted from the formal juvenile justice system to their families and appropriate community-based programs. Each juvenile should receive individual consideration and, where feasible, a risk assessment.

Counties should pursue efficiency measures that enable better use of resources and should pursue additional funding from federal, state, and private sources to establish appropriate programs at the county level.

Prevention and diversion programs should be developed by each county or regionally to meet the local needs and circumstances, which vary greatly among urban, suburban, and rural areas of the state. Programs should be monitored and evaluated on an ongoing basis to ensure their ability to protect public safety and to ensure compliance with applicable state and federal regulations. Nevertheless, counties believe that the state must continue to offer a commitment option for those juvenile offenders with the most serious criminogenic profile and most severe treatment needs.

d. Bail

Unless transferred to adult court, juveniles should not be entitled to bail. Release on their own recognizance should be held pending the outcome of the proceedings.

e. Separation of Offenders

We support the separation of juveniles into classes of sophistication. Separation should be based upon case-by-case determinations, taking into account age, maturity, need for

secure custody among other factors, since separation by age or offense alone can place very unsophisticated offenders among the more mature, sophisticated offenders.

In view of the high cost of constructing separate juvenile hall facilities, emphasis should be placed on establishment of facilities and programs that facilitate separation.

f. Removal of Serious Offenders to Adult Court

To the greatest extent possible, determinations regarding the fitness of serious offenders should be made by the juvenile court on a case-by-case basis.

g. Jury Trial for Serious Offenders

Except when transferred to adult court, juveniles should not be afforded the right to a jury trial — even when charged with a serious offense.

J. General Principles For Local Corrections

1. Purpose

We believe that swift and certain arrest, conviction, and punishment is a major deterrent to crime. Pragmatic experience justifies the continuation of rehabilitative programs for those convicted persons whom a court determines must be incarcerated and/or placed on probation.

2. Definition

Local corrections include maximum, medium and minimum security incarceration, work furlough programs, home detention, county parole, probation, and community-based programs for convicted persons.

3. Equal Treatment

Conditions, treatment and correctional opportunities that are equal for all detainees, regardless of gender, are strongly supported. State policy must allow recognition of the individual's right to privacy and the differing programmatic needs of individuals.

4. Community-Based Corrections

The most cost-effective method of rehabilitating convicted persons is the least restrictive alternative that is close to the individual's community and should be encouraged where possible.

State policy must recognize that correctional programs must always be balanced against the need for public protection and that community-based corrections programs are only successful to the extent that they are sufficiently funded.

5. Relationship to Human Services Systems

State policy toward corrections should reflect a holistic philosophy, which recognizes that most persons entering the correctional system should be provided welfare, medical, mental health, vocational and educational services. Efforts to rehabilitate persons entering the correctional system should involve these other services, based on the needs — and, when possible, a risk assessment — of the individual.

6. Relationship to Mental Health System: Mentally Ill Diversion Programs

Adequate mental health services can reduce criminal justice costs and utilization. Appropriate diagnosis and treatment services, as well as increased use of diversion programs, will result in

positive outcomes for offenders with a mental illness. Ultimately, appropriate mental health services will benefit the public safety system. Counties continue to work across disciplines to achieve good outcomes for persons with mental illness and/or co-occurring substance abuse issues.

7. Inmate Medical Services

CSAC supports efforts at the federal level to permit local governments to access third-party payments for health care provided in detention facilities, including medical services provided for those who are accused, but not yet convicted. CSAC also supports efforts to ensure continuity of benefits for those detained in county detention facilities – adult and juvenile – and for swift reenrollment in the appropriate benefits program upon a detainee's release.

8. Private Programs

Private correctional programs should be encouraged for those categories of offenders that can most effectively be rehabilitated in this manner.

K. Adult Correctional Institutions

Counties should continue to administer adult correctional institutions for those whose conviction(s) require and/or results in local incarceration.

The state and counties should establish a collaborative planning process to review the relationship of local and state corrections programs.

Counties should continue to have flexibility to build and operate facilities that meet local needs. Specific methods of administering facilities and programs should not be mandated by statute.

L. Adult Probation

Counties should continue to provide adult probation services as a cost-effective alternative to post-sentence incarceration and to provide services—as determined appropriate—to persons released from local correctional facilities. Counties should be given flexibility to allocate resources at the local level according to the specific needs of their probation population and consideration should be granted to programs that allow such discretion. State programs that provide fiscal incentives to counties for keeping convicted offenders out of state institutions should be discouraged unless such programs – on balance – result in system improvements. State funding should be based upon a state-county partnership effort that seeks to protect the public and to address the needs of individuals who come into contact with the justice system. Such a partnership would acknowledge that final decisions on commitments to state institutions are made by the courts, a separate branch of government, and are beyond the control of counties. Some integration of county probation and state parole services should be considered. Utilization of electronic monitoring for probationers and parolees should be considered where cost-effective and appropriate for local needs.

M. General Principles for Juvenile Corrections

We believe that efforts to curtail the criminal behavior of young people are of the highest priority need within the correctional area. The long-term costs resulting from young offenders who continue their criminal activities justifies extraordinary efforts to rehabilitate them.

Efforts should be made to force parents to assume greater responsibility for the actions of their children, including fines and sanctions, if necessary. Counties should be given flexibility to allocate resources at the local level according to the specific needs of their probation population and consideration should be granted to programs that allow such discretion. State programs that provide fiscal incentives to counties for keeping convicted offenders out of state institutions should be discouraged unless such programs – on

balance – result in system improvements. Any program should recognize that final decisions on commitments to state institutions are made by the courts, a separate branch of government, and are beyond the control of counties.

N. Juvenile Correctional Institutions

Counties should continue to administer juvenile correctional institutions and programs for the majority of youths requiring institutionalization. Retention of youths at the local level benefits the state by reducing demands on programs and institutions operated by the California Division of Juvenile Justice.

While counties believe that a state-operated rehabilitation and detention system is a necessary component of the continuum of services for juvenile offenders, CSAC opposes efforts that would require any additional county subsidy of that system. The state should provide subvention for these activities at a reasonable level, with provisions for escalation so that actual expenses will be met.

O. Juvenile Probation

Counties should continue to provide juvenile probation services as a cost-effective alternative to post-adjudication and to provide juvenile probation services to individual youths and their families after the youth's release from a local correctional facility.

Truants, run-a-ways, and youths who are beyond the control of their parents should continue to be removed from the justice system except in unusual circumstances. These youths should be the responsibility of their parents and the community, not the government. Imposing fines and/or sanctions on parents to prompt their participation in their children's lives and involvement in the process should remain an option.

P. Gang Violence Prevention

Counties recognize the devastating societal impacts of gang violence – not only on the victims of gang-related crimes, but also on the lives of gang members and their families. Counties are committed to working with allied agencies, municipalities, and community-based organizations to address gang violence and to promote healthy and safe communities. These efforts require the support of federal and state governments and should employ regional strategies and partnerships, where appropriate.

Q. Human Services System Referral of Juveniles

State policy toward juvenile corrections must be built on the realization that a juvenile offender may be more appropriately served in the human services system. Considering the high suicide potential of youths held in detention facilities and, acknowledging the fact that juvenile offenses are more often impulse activities than are adult offenses, juvenile cases and placement decisions should be reviewed more closely under this light.

R. Federal Criminal Justice Assistance

The federal government should continue to provide funding for projects that improve the operation and efficiency of the justice system and that improve the quality of justice. Such programs should provide for maximum local discretion in designing programs that are consistent with local needs and objectives.

Section 3: JUDICIAL BRANCH MATTERS

A. Trial Court Management

The recognized need for greater uniformity and efficiency in the trial courts must be balanced against the need for a court system that is responsive and adaptable to unique local circumstances. Any statewide administrative structure must provide a mechanism for consideration of local needs.

B. Trial Court Structure

We support a unified consolidated trial court system of general jurisdiction that maintains the accessibility provided by existing trial courts. The state shall continue to accept financial responsibility for any increased costs resulting from a unified system.

C. Trial Court Financing

Sole responsibility for the costs of trial court operations should reside with the state, not the counties. Nevertheless, counties continue to bear the fiscal responsibility for several local judicial services that are driven by state policy decision over which counties have little or no control. We strongly believe that it is appropriate for the state to assume greater fiscal responsibility for other justice services related to trial courts, including collaborative courts. Further, we urge that the definition of court operations financed by the state should include the district attorney, the public defender, court appointed counsel, and probation.

D. Trial Court Facilities

The court facility transfers process that concluded in 2009 places responsibility for trial court facility maintenance, construction, planning, design, rehabilitation, replacement, leasing, and acquisition squarely with the state judicial branch. Counties remain committed to working in partnership with the courts to fulfill the terms of the transfer agreements and to address transitional issues as they arise.

E. Court Services

Although court operation services are the responsibility of the state, certain county services provided by probation and sheriff departments are directly supportive of the trial courts. Bail and own recognizance investigations, as well as pre-sentence reports, should be provided by probation, sheriff, and other county departments to avoid duplication of functions, but their costs should be recognized as part of the cost of operating trial courts.

F. Jurors and Juries

Counties should be encouraged to support programs that maximize use of potential jurors and minimize unproductive waiting time. These programs can save money, while encouraging citizens to serve as jurors. These efforts must consider local needs and circumstances. To further promote efficiency, counties support the use of fewer than twelve person juries in civil cases.

G. Collaborative Courts

Counties support collaborative courts that address the needs and unique circumstances of specified populations such as the mentally ill, those with substance use disorders, and veterans. Given that the provision of county services is vital to the success of collaborative courts, these initiatives must be developed locally and entered into collaboratively with the joint commitment of the court and county. This decision making process must include advance identification of county resources – including, but not limited to, mental health treatment and alcohol and drug treatment programs and services, prosecution and defense, and probations services – available to support the collaborative court in achieving its objectives.

H. Court and County Collection Efforts

Improving the collection of court-ordered debt is a shared commitment of counties and courts. An appropriately aggressive and successful collection effort yields important benefits for both courts and counties. Counties support local determination of both the governance and operational structure of the court-ordered debt collection program and remain committed to jointly pursuing with the courts strategies and options to maximize recovery of court-ordered debt.

Section 4: FAMILY VIOLENCE

CSAC remains committed to raising awareness of the toll of family violence on families and communities by supporting efforts that target family violence prevention, intervention and treatment. Specific strategies for early intervention and success should be developed through cooperation between state and local governments, as well as community, and private organizations addressing family violence issues.

Section 5: GOVERNMENT LIABILITY

The current government liability system is out of balance. It functions almost exclusively as a source of compensation for injured parties. Other objectives of this system, such as the deterrence of wrongful conduct and protection of governmental decision-making, have been largely ignored. Moreover, as a compensatory system of ever-increasing proportions, it is unplanned, unpredictable and fiscally unsound – both for the legitimate claimant and for the taxpayers who fund public agencies.

Among the principal causes of these problems is the philosophy – expressed in statutes and decisions narrowing governmental immunities under the Tort Claims Act – that private loss should be shifted to society where possible on the basis of shared risk, irrespective of fault or responsibility in the traditional tort law sense.

The expansion of government liability over recent years has had the salutary effect of forcing public agencies to evaluate their activities in terms of risk and to adopt risk management practices. However, liability consciousness is eroding the independent judgment of public decision-makers. In many instances, mandated services are being performed at lower levels and non-mandated services are being reduced or eliminated altogether. Increasingly, funds and efforts are being diverted from programs serving the public to the insurance and legal judicial systems.

Until recently, there appeared to be no end to expansion of government liability costs. Now, however, the "deep pocket" has been cut off. Insurance is either unavailable or cost prohibitive and tax revenues are severely limited. Moreover, restricted revenue authority not only curtails the ability of public entities to pay, but also increases exposure to liability by reducing funding for maintenance and repair programs. As a result, public entities and ultimately, the Legislature, face difficult fiscal decisions when trying to balance between the provision of governmental service and the continued expansion of government liability.

There is a need for data on the actual cost impacts of government tort liability. As a result of previous CSAC efforts, insurance costs for counties are fairly well documented. However, more information is needed about the cost of settlements and awards and about the very heavy "transactional costs" of administering and defending claims. We also need more information about the programmatic decisions being forced upon public entities: e.g., what activities are being dropped because of high liability? CSAC and its member counties must attempt to fill this information gap.

CSAC should advocate for the establishment of reasonable limits upon government liability and the balancing of compensatory function of the present system with the public interests in efficient, fiscally sound government. This does not imply a return to "sovereign immunity" concepts or a general turning away of injured parties. It simply recognizes, as did the original Tort Claims Act, that: (1) government should not be more liable than private parties, and (2) that in some cases there is reason for government to be less liable than private parties. It must be remembered that government exists to provide essential services to people and most of these services could not be provided otherwise. A private party faced with risks that are inherent in many government services would drop the activity and take up another line of work. Government does not have that option.

In attempting to limit government liability, CSAC's efforts should bring governmental liability into balance with the degree of fault and need for governmental service.

In advocating an "era of limits" in government liability, CSAC should take the view of the taxpayer rather than that of counties per se. At all governmental levels, it is the taxpayer who carries the real burden of government liability and has most at stake in bringing the present system into better balance. In this regard, it should be remembered that the insurance industry is not a shield, real or imagined, between the claimant and the taxpayer.

Attachments

CSAC Corrections Reform Policies and Principles (adopted by the CSAC Board of Directors November 30, 2006; amended on May 22, 2008)

Sex Offender Management: County Principles and Policies (adopted by CSAC Board of Directors on May 22, 2008)