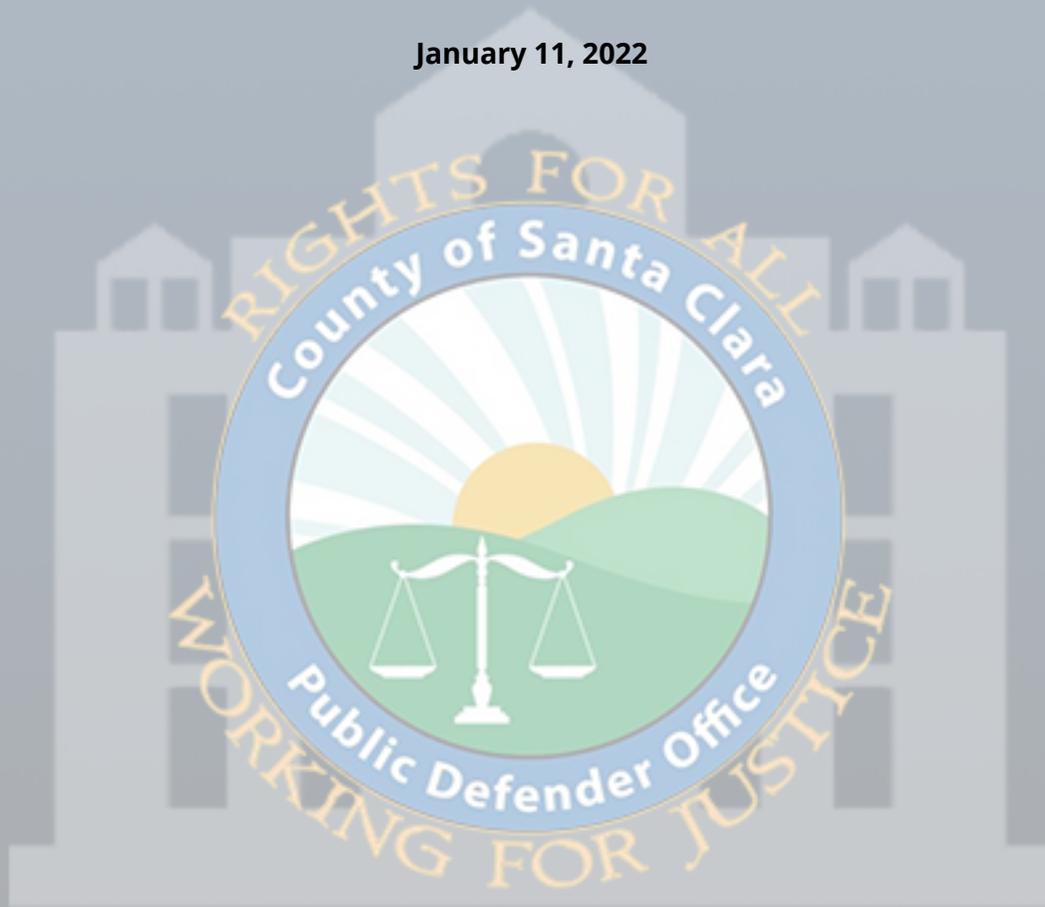


Management Audit of the County of Santa Clara Public Defender Office

Prepared for the Board of Supervisors of the
County of Santa Clara

January 11, 2022



Prepared by the
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January 11, 2022

Supervisor Otto Lee, Chair
Supervisor Cindy Chavez, Vice Chair
Board of Supervisors' Finance and Government Operations Committee
70 West Hedding Street San Jose, CA 95110

Dear Supervisors Lee and Chavez:

We have completed the Management Audit of the Public Defender Office. This audit was added to the Management Audit Division's work plan by the Board of Supervisors of the County of Santa Clara, pursuant to the Board's power of inquiry specified in Article III, Section 302(c) of the Santa Clara County Charter. This audit was conducted in conformity with generally accepted government auditing standards as set forth in the 2018 revision of the "Yellow Book" of the U.S. Government Accountability Office. The purpose of this audit was to examine the Public Defender Office to identify opportunities to increase efficiency, effectiveness, and economy.

The report includes eight findings and 40 recommendations related to tracking staff workload, client financial eligibility and screening for Public Defender Office services, pre-arraignment representation and review services, automated receipt of case management data, connecting high-risk clients with County services, appropriate use and oversight of investigation technology, tracking discovery requests, and increasing the frequency of staff evaluations.

In the attached responses to this audit the Public Defender Office agrees with all 36 of the 36 recommendations directed to their office. Technology Services and Solutions agrees with the one recommendation directed to their department, and the Office of the County Counsel partially agrees with the one recommendation directed to their office. One recommendation concerning allocating additional staff to the Public Defender Office Pre-Arraignment Representation and Review Team is directed to the Board of Supervisors.

Board of Supervisors:

Mike Wasserman
District 1

Cindy Chavez
District 2

Otto Lee
District 3

Susan Ellenberg
District 4

S. Joseph Simitian
District 5

County Executive: Jeffrey V. Smith

If implemented, this report's recommendations would:

- better ensure effective, efficient, defendant representation
- mitigate risk of lawsuits claiming a lack of resources available to meet indigent defense needs
- eliminate the risk of bias regarding whether a client qualifies for services
- help to mitigate incarceration racial and wealth disparities
- help to mitigate social and economic harms of pre-trial detention
- reduce the County's Jail population and lower the rate of recidivism
- produce a potential net County savings depending on the pre-trial release count and the days of incarceration 'cut'
- provide immeasurable positive impacts on defendants' lives and their families
- produce staff time savings of 4,958-13,401 hours annually, or a net benefit of \$121,177-\$691,472 annually
- increase access to County resources that could help clients with mental health conditions
- bring the Department into compliance with local and State guidelines governing investigator resources
- better shield against unauthorized use of investigative tools, thereby protecting extensive personal information in these systems and shielding the County from legal liability
- better ensure compliance with the County's labor agreements
- create an avenue for employees to better understand their strengths and weaknesses.

We would sincerely like to thank the Public Defender Office and its staff for their thoughtful, patient, and professional cooperation and assistance throughout this audit.

Respectfully submitted,



Cheryl Solov
Management Audit Manager

CC: Supervisor Mike Wasserman
Supervisor Susan Ellenberg
Supervisor S. Joseph Simitian
James R. Williams, County Counsel



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Executive Summary

Section 1: Tracking Staff Workload

It is the responsibility of Department management to monitor staff workload and avoid assigning excessively large/complex workloads which may interfere with quality representation and lead to a breach of professional obligations. When surveyed, 38.27% of attorneys reported currently carrying cases from previous team assignments. Attorney caseload reports utilized by supervisors do not include these previous assignments. Not including full caseload information may violate the Government Attorneys Association Memorandum of Understanding with Santa Clara County, which allows attorneys to keep previous assignment cases so long as they are considered when assigning new work. Investigator and paralegal reports are limited by tasks assigned within a date range, rather than including all incomplete tasks which comprise their workload. While some supervisors may keep their own caseload records, JustWare reports, and records prepared by Department supervisors, only reflect new assignments, not active caseload/task load. Not tracking active caseload/task load of staff may leave Department supervisors and management unaware of excessively high workloads, making the Department, and County, open to potential litigation regarding resources available for indigent defense. The Department had been working to eliminate a backlog of unopened cases in April 2019, after not tracking the backlog or its effects on cases. By June 2020 the Department was opening more cases each month than referred. They likely made headway on the backlog and it is now resolved, but the Department was unable to confirm based on how they track case openings. Furthermore, the Department does not track elapsed time from case referral to cases opened in JustWare, the Department's case management system. Of cases referred to the PDO and ADO, 33.07% and 13.54% were opened six or more days after the case referral date respectively.

The Department should have its Management Analyst Team develop workload reports for management and supervisors, showing active tasks and cases for attorneys, investigators, and paralegals. The Department should also use JustWare to track the number of cases opened, and time to open cases, and compare those numbers to incoming referrals. The Department should provide these workload reports to the Board of Supervisors. The Department should annually assess attorney/supervisor and attorney/investigator ratios in each office and report to the Board of Supervisors for supervisor or investigator staffing changes as needed to meet national guidelines. This would better ensure effective, efficient, defendant representation with minimal to no County cost. It would also mitigate risk of lawsuits claiming a lack of resources available to meet indigent defense needs, which can cost anywhere from \$2.7 million to \$4.5 million dollars.

Section 2: Client Eligibility Criteria and Screening for PDO Services

California law and Santa Clara County Code has designated the Public Defender Office, which includes the Alternate Defender (PDO, ADO, "the Department"), with the responsibility to defend any person who is financially unable to employ counsel upon request of the defendant or order of the Superior Court. Consistent with State law, PDO policy is to conduct financial screenings of defendants before services are provided. There is potential for inequality in the client experience because PDO records show that 26% of clients were not financially screened from March 26, 2019, to August 25, 2020. Furthermore, PDO staff have reported inconsistent reasons for

screening clients, and cannot track when screenings were conducted for in-custody clients because the screening forms do not have a date field. This may result in the PDO continuing to represent clients who might not financially qualify for services. The PDO has set an unchanging gross maximum income eligibility standard for services of \$3,000 to \$3,500 per month while the County's living wage ranges from \$3,394 to \$14,524 depending on household size. There is a risk clients could be turned away who could not otherwise secure private counsel without going bankrupt before they meet this income standard.

The PDO should comply more thoroughly with State law requirements to decide in each case whether a defendant is financially able to employ counsel and qualifies for PDO services. The PDO should have paralegals conduct financial screenings during every intake, which will minimally add to paralegal workload because paralegals already meet with clients to conduct intake interviews. The PDO should also add a date field to the financial screening form so that all financial screening forms can be tied to the start or end of a case. This will help ensure financial screenings are done with intake interviews, at the outset of a case, and help eliminate the risk of bias when assuming whether someone qualifies for services. The PDO should develop a new financial eligibility standard which incorporates cost of living in the County and review the standard yearly. This will likely have little effect on the number of PDO cases because the Department is not currently screening all clients nor turning many away for incomes in excess of the maximum threshold.

Section 3: Pre-Arrest Representation and Review Services

"Pretrial" is the time between arrest and when charges are resolved, through dismissal, plea, or trial. In California, most jail inmates are pretrial, and the State legislature and judiciary are pushing to eliminate bail and reduce the incarcerated population. The Public Policy Institute of California has shown: 1) pre-trial detention harms defendants and their families socially/economically; 2) wealth disparities affect pre-arrest representation access; and 3) racial disparities are present in pre-trial releases. In May 2019, the Santa Clara County Board of Supervisors approved the creation of a Pre-Arrest Representation and Review Team (PARR Team or "the Team") to provide pre-arrest legal counsel, representation, and release advocacy to defendants, and increase Public Defender Office (PDO), District Attorney Office, and Pre-Trial Services collaboration. Positive impacts of pre-arrest services are still unavailable to most defendants. The PARR Team consists of one FTE attorney, investigator, paralegal, and social worker. Limited capacity means the Team contacts in-custody defendants booked on a rotating weekday (i.e. 14.28% of in-custody defendants) for pre-arrest counsel. The remaining defendants have no access to pre-arrest counsel. At arraignment their attorneys are unfamiliar with clients' family, work, and community connections, which can be critical as judges assess the risk of release versus detaining defendants for the duration of legal proceedings. Defendants with private counsel receive advocacy for release before arraignment. Release means defendants can keep jobs, care for family, partake in community, etc.

The PDO should review attorney, paralegal, and investigator workloads and either shift one FTE paralegal and investigator and two FTE attorneys to the Team, or, if not feasible, request the BOS to allocate up to one FTE paralegal and investigator and two FTE attorneys to the Team. The Department should also request that the BOS allocate one FTE social worker to the Team. The PDO should monitor the ongoing J-PAL and

California Policy Lab evaluations of the PARR Team and report the results to the BOS. Upon receiving workload updates from the PDO, and a request for additional Team staff, the BOS should allocate additional staff to the Team as requested to increase pre-trial representation and advocacy. Expanding access to PARR services would help to mitigate incarceration racial disparities, wealth disparities, and social and economic harms of pre-trial detention, while aligning with the State legislative and judicial context. It will also reduce the County's Jail population. Pre-trial release for an average 250 defendants a month, would yield an annual cost avoidance of \$26,670 for each day 'early' defendants were released. The cost of new proposed Team positions would be \$174,886 to \$896,950 annually, depending on if the PDO can shift positions from current teams. Increasing the Team capacity might result in net zero-cost, or even net County savings depending on the pre-trial release count and the days of incarceration 'cut'. Annually releasing only 10% of defendants booked, and reducing incarceration by 30 days or more, would yield cost avoidance of at least \$1,146,863 a year (\$249,913 greater than the high-end cost estimate of expanding the Team (\$896,950 a year). Positive impacts on defendants' lives and their families would be significant.

Section 4: Automated Receipt of Case Management Data

When a case is referred to the Public Defender Office, which includes the Alternate Defender Office, (PDO, ADO, "the Department") by the Santa Clara County Superior Court, a legal clerk must open a case in the Department's case management system (JustWare). This two-part process involves 1) completing a tab with the client's personal and demographic attributes and 2) creating a case record with a docket number (the official case identification number assigned by the court), charges, and other case information. Certain JustWare fields pertaining to court dates and events auto-populate through a data feed from the County's automated criminal justice information control system (CJIC). Once the electronic case file has been created, assigned attorneys and other staff can add documents, tasks, and reminders, as well as assign investigators and other team members. Although a portion of case fields auto-populate through CJIC, the majority of client and case attributes, such as arrest and filing dates, sentencing outcomes, and custody and bail status, must be entered manually into JustWare by the Department's legal clerks and other staff, despite this information also being held in CJIC. To compare, Stanislaus and Ventura counties have case management systems that auto-populate with at least a subset of this data from their countywide criminal justice systems. PDO management estimated that it takes approximately 15–30 minutes to create a new case file with this manual entry process, while 8 of 17 surveyed legal clerks from the Department (47.06%) reported this process taking 30–60 minutes. These estimates translate to 8,444–16,888 staff hours spent opening the 25,718 cases referred during Fiscal Year 2019–20, or approximately 5–10 full-time equivalent (FTE) staff in the PDO (which has 24 legal clerks total), plus roughly 0.5 FTE in the ADO (which has two legal clerks total). The additional time spent on manual entry may contribute to a case-opening backlog, which negatively affected case work, according to reports from PDO and ADO staff.

The Department should work with the County's Technology Services and Solutions Department (TSS), Superior Court information technology (IT) staff, and the District Attorney's Office—which has management control over CJIC—to propose a data feed that auto-populates client and case information fields within JustWare. To note, the County's Public Safety & Justice Systems Program has proposed a project to decommission CJIC, and JustWare's parent company has introduced a new product that may potentially replace JustWare in the future. As such, PDO, Court IT, and TSS

should monitor the compatibility of any newly proposed systems and ensure that this degree of interfacing is maintained with any replacements. The Department should request a new Application Developer position to build its technical capacity for these efforts. The new IT position will cost approximately \$221,000 annually. The Department estimated that automating the completion of case and client fields would cut down creation of new case files to 5–15 minutes. This represents a time savings of 4,958–13,401 hours annually, or approximately 3–8 FTEs (\$342,177–\$912,472 in annual avoided personnel costs based on the auditor’s estimated average compensation of \$114,00 for each legal clerk), for a net benefit of \$121,177–\$691,472 annually.

Section 5: Connecting High-Risk Clients with Services

Santa Clara County, with help from State 2011 Public Safety Realignment funding, is dedicated to reducing recidivism by providing resources and rehabilitation services for people who enter the criminal justice system with mental health conditions. To address this County goal, the Public Defender Office, which includes the Alternate Defender Office (PDO and ADO, “the Department”), has paralegals screen clients for a history of mental health conditions during client intake, along with other intake questions. Paralegals upload client responses to JustWare, the PDO/ADO case management system. Attorneys also evaluate their clients’ mental health conditions and decide if a social worker could provide services to help in clients’ defense or release planning, such as safe and successful release from incarceration to mental health and substance abuse treatment programs, or alternatives to incarceration. If clients have MediCal they are referred to the Behavioral Health Services Department. Though social workers are staffed in the Department to evaluate and connect clients to community resources, per classification description, not all clients who need mental health services are connected with social workers as clients, or, as applicable, when transitioning out of incarceration. Regardless of paralegal screenings, attorneys must request social worker assistance for their clients. Social workers do not otherwise contact clients identified as having mental health conditions during intake. Of 101 clients with more than 25 cases each with the Department, 80 went to treatment court where they received social worker services from the Superior Court. Of the remaining 21 clients, 12 were never seen by a Department social worker. Only 9 of the 101 high-volume clients met with a PDO social worker, despite their role in evaluating and connecting clients to community resources. Recidivating clients with a mental health condition are less likely to access needed mental health and related services without social worker support, which may increase their risk of recidivating.

The Department should add social worker responsibilities to their Policy and Procedure manual. The mental health supervisor and social worker team should create a standardized mental health advisement/checklist with steps for attorneys working with misdemeanor clients to serve mental health needs. JustWare should automatically flag and notify attorneys to conduct the mental health advisement/checklist if an assigned misdemeanor client meets the following criteria: 1) JustWare Mental Health attribute, 2) case type designated for clients with mental health conditions, 3) client’s competence is in legal doubt, or 4) case diverted from criminal justice system for mental health reasons. The management analyst team should create a JustWare, or any future case management system, attribute to track recidivism, with recidivism reports social workers can run. These JustWare changes would have a minimal cost but would take time for staff to work with the JustWare vendor to implement changes and for staff to run and analyze new system reports.

Potential savings could accumulate in a lower rate of recidivism, which incurs costs to the County. Clients with mental health conditions would benefit from greater access to County resources that could help them address mental health conditions and mitigate negative impacts of the criminal justice system. The PDO should also monitor for unconscious bias by bi-annually comparing racial and gender proportions of all clients with those who have cases with tasks completed by social workers, and report results to Department management and the Board of Supervisors.

Section 6: Appropriate Use and Oversight of Investigation Technology

The primary goal of the Investigation Units in the Public Defender Office, which includes the Alternate Defender Office (PDO, ADO, “the Department”), is to obtain and develop information and evidence to aid attorneys in making informed decisions regarding defense strategies for their clients. Typical tasks of investigators include interviewing witnesses, assembling and examining physical or documentary evidence, inspecting and documenting crime scenes, and taking statements. Investigators rely on resources such as skip tracing software and databases, social media profiles, Department of Motor Vehicle (DMV) records, audiovisual recording devices, digital data extraction hardware and software, and criminal justice databases, among other systems. The Department does not adhere to local or State guidelines in its use of multiple investigation resources. Per the County Executive’s Social Media Application (SMA) Policy, all County departments that use SMAs to conduct County business must submit a SMA Business Plan to the County Executive’s designee. However, the PDO has not completed a plan that outlines which SMAs it uses for investigations and its goals for these tools. Furthermore, California Title 13 requires requestors of DMV records to maintain a log of these inquiries, but PDO investigators use an outdated form for these logs that does not align with State records retention requirements. In addition, the PDO does not employ appropriate oversight to ensure that all technology resources are used appropriately by investigators. For instance, the Department reported that there is no established procedure for reviewing or auditing DMV query logs kept by investigators. In addition, the PDO did not provide records of when the random audits of County criminal justice database queries occurred. Lack of controls around investigator technology raises the risk of these tools being inappropriately used to infringe on data unrelated to PDO cases, such as when a Wyoming County, New York, public defender employee accessed DMV records for personal use.

The Department should immediately complete a SMA Business Plan and switch its DMV log to the most recent one provided on the DMV website, bringing the Department into compliance with local and State guidelines governing its investigator resources. In addition, the Department should create documented procedures for monitoring and auditing use of Investigation technologies and resources and retain records of these audits. Procedures should incorporate all existing requirements contained in County policies, such as the annual audit provisions in PDO and ADO surveillance use policies. This will better shield against unauthorized use of these tools, thereby protecting the extensive personal information contained in these systems and shielding the County from legal liability. This is especially critical for State-protected information (e.g., DMV records and criminal justice information) for which requesting data under false pretenses is illegal.

Section 7: Tracking Discovery Requests

“Discovery” is information that the prosecution is required to provide, pre-trial, to the defense upon request within a certain timeframe, as per Penal Code Title 6, Chapter 10. Discovery is information obtained by the prosecution, including but not limited to: police reports, witness statements/depositions, body worn camera footage, and crime lab and Medical Examiner-Coroner reports. Requests for discovery are submitted by the Public (or Alternate) Defender Office (PDO or ADO, “the Department”) to the prosecution, namely the District Attorney (DA), County Counsel, or a city attorney. PDO/ADO investigators use discovery to locate witnesses and collect additional evidence, and attorneys use it to develop defense strategies/prepare for trial. A Management Audit Division survey of the PDO and ADO found that attorneys have a range of methods to request discovery, including directing other staff to request discovery which occurs at least a third of the time. Attorneys reported, however, that they are not consistently notified when requests are made by other staff (though the survey did not include the Penal Code definition of discovery). The Department’s case management system, JustWare, does not have a feature to track discovery requests, elapsed time since requests were made, or where discovery is stored. Consequently, attorneys use a range of methods, e.g. notes or emails, but roughly a quarter of respondents report they either do not formally track discovery requests or believe other staff are responsible for this task. Not knowing when requests were made makes it difficult or impossible for attorneys to know if the material is late. Penal Code 1054.5(b) allows attorneys to seek a court order for discovery after 15 days have passed since a request, but attorneys must demonstrate compliance with informal discovery procedure, making tracking requests critical. Discovery delays can make it more difficult to locate witnesses and slow down investigations, and attorneys indicated that continuances are the most frequent effect. This negatively impacts case timelines and optimal legal defense, and increases uncertainty and time away from family and employment for clients.

The PDO should create a discovery tab in JustWare, or any future Department case management system, that includes: list of discovery requests, subject of the request and date, elapsed time since request, whether it has been received, and where the discovery is saved, helping to make the discovery process more consistent and efficient. Management should be able to run a report that includes this new tab information, which they should use to identify delays and establish performance measures. The PDO should also update policies and procedures regarding making discovery requests and train all staff on the new case management system discovery tracking feature. These recommendations will decrease the frequency of case delays, which negatively impact clients as well as staff workload.

Section 8: Increasing the Frequency of Staff Evaluations

To facilitate employee development the County and many labor organizations have negotiated performance appraisal programs for County staff. The labor agreement for County attorneys does not dictate an appraisal timeline, but a public defense guide published by the American Bar Association (ABA) states that defense counsel should be “systematically reviewed for quality and efficiency according to nationally and locally adopted standards.” Within the Public Defender Office, which includes the Alternative Defender Office (PDO, ADO, “the Department”), a supervising attorney is responsible for formally evaluating the performance of subordinate attorneys. Several non-attorney classifications are entitled to an annual or probationary evaluation per

their respective labor union agreements. Non-attorney evaluations are completed by supervisory staff in their respective units (e.g., Investigations, the Paralegal Unit, and Administrative Support). The Department does not have a documented procedure for completing performance appraisals. In the absence of such a procedure, Department staff have noted inconsistent evaluation timelines. For instance, in an internal survey conducted for this audit report, 72.73% of PDO attorneys and 46.67% of ADO attorneys responded that they had not been issued a performance evaluation in over a year. Further, 16 of 93 non-attorney respondents (16.13%) had not been issued evaluations according to timelines required by their unions. The Department was also unable to provide complete records of past evaluations. Upon request, the ADO only provided two of 15 attorney evaluations from 2017 and seven "timeliness" worksheets for investigators during calendar years 2020 and 2021 (these worksheets did not use standard appraisal templates provided by the County's Employee Services Agency). The ADO reported that several attorney, clerical, and legal evaluations were lost or destroyed during the ADO's relocation in August 2020. Meanwhile, the PDO did not provide any of its evaluations due to confidentiality concerns, only providing logs of when appraisals were last completed. These logs corroborated the inconsistent evaluation schedules noted in staff survey responses. Failing to periodically review staff performance impedes employee growth, creates unclear expectations, and may ultimately impact the quality of the Department's service delivery.

The Department should create a documented procedure for performance appraisals, a practice employed by other County departments. This procedure should be consistent with appraisal timelines stated in County labor agreements and should also determine a standard (e.g., annually) for "systematic review" of attorney performance, per ABA guidelines. This would better ensure compliance with the County's labor agreements, create an avenue for employees to understand their strengths and weaknesses, and may potentially translate to better defense delivery for the Department's clients. In addition, the Department should develop a tracking and retention system for its appraisals to ensure that managers are meeting the evaluation requirements in this new procedure. This might also help the County defend against potential employment-related litigation.

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Introduction

INTRODUCTION

This Management Audit of the Public Defender Office was authorized by the Board of Supervisors of the County of Santa Clara as part of the County's Fiscal Year 2019-20 Management Audit Work Plan pursuant to the Board's power of inquiry specified in Article III, Section 302(c) of the Charter of the County of Santa Clara.

PURPOSE, SCOPE, AND OBJECTIVES

The purpose of the audit was to examine the operations, staffing, management practices, and finances of the Public Defender Office, which consists of the Public Defender Office (PDO) and Alternate Defender Office (ADO) ("the Department"), and to identify opportunities to increase the Department's efficiency, effectiveness, and economy. This audit excluded the Independent Defense Counsel Office (IDO), which administers and oversees a panel of private attorneys that provide indigent defense services when there is a conflict of interest with both the PDO and the ADO, because it is located within the Office of the County Counsel. However, to the extent that the Public Defender and Alternate Defender coordinate with other County departments, particularly the IDO, that coordination was within the scope of this audit.

Work on this audit began with an entrance conference on June 16, 2020 and a draft report was issued to the Public Defender Office on August 13, 2021. The Management Audit Division also sent the audit draft to the Office of the County Counsel, and relevant sections of the audit draft to the Technology Services and Solutions Department (TSS) for review and comment.

Exit conferences were held with the Public Defender Office on October 4, October 19, and October 20, 2021, and a revised draft incorporating feedback from the exit conferences was issued to the Public Defender Office, TSS, and the Office of the County Counsel on November 8, 2021 for written response. This final report includes those written responses as Attachment A on page 119, Attachment B on page 131, and Attachment C on page 133.

AUDIT METHODOLOGY

As part of this management audit the Management Audit Division conducted interviews with all staff levels, executive management to line staff, and across all Department classifications. Most interviews were conducted one-on-one with staff members, but Management Audit Division staff also conducted focus groups of investigators and attorneys in the PDO and ADO. Focus groups were limited to 10 or fewer staff at a time. Additional interviews included meetings with the IT Director for the Technology Services and Solutions Department, the Office of the County Counsel, and the Criminal Justice Information Control (CJIC) Management Control Agency.

The Management Audit Division also conducted an internal survey which was sent to all PDO and ADO staff and had an overall response rate of 62.95% (see Attachment D on page 135 for full survey results). A separate survey of benchmark Public Defender offices was administered, and the following counties participated: Contra Costa County, Fresno County, Riverside County, San Bernardino County, the County of San Diego, Stanislaus County, and Ventura County (see Attachment E on page 155 for full survey results).

Management Audit Division staff reviewed procedure manuals and training materials, fees charged for services, and relevant case record information which included: referral dates, case status, case conflict information, count of court hearings, case assignment information, disposition, sentencing, felony points, expungement data, and client demographic information.

Due to COVID-19 pandemic health risks, Management Audit Division staff were unable to conduct site visits at PDO offices or at the Superior Court of Santa Clara County ("Superior Court"). All interviews and work on this audit were conducted remotely.

COMPLIANCE WITH GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS

This management audit was conducted under the requirements of the Board of Supervisors Policy Number 3.35 as amended on May 25, 2010. That policy states that management audits are to be conducted under generally accepted government auditing standards issued by the United States Government Accountability Office. We conducted this performance audit in accordance with generally accepted government auditing standards set forth in the 2018 revision of the "Yellow Book" of the U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. In accordance with these requirements, we performed the following management audit procedures:

Audit Planning - This management audit was selected by the Board of Supervisors using a risk assessment tool and an estimate of audit work hours developed at the Board's direction by the Management Audit Division. After audit selection by the Board, a detailed management audit work plan was developed and provided to the Department.

Entrance Conference - An entrance conference was held with Public Defender Office managers to introduce the management audit team, describe the management audit program and scope of review, and respond to questions. A letter of introduction from the Board, a management audit work plan, and a request for background information were also provided at the entrance conference.

Pre-Audit Survey - A preliminary review of documentation and interviews with Public Defender Office managers and staff were conducted to obtain an understanding of the program, and to isolate areas of operations that warranted more detailed assessments. Based on the pre-audit survey, the work plan for the management audit was refined.

Field Work - Field work activities were conducted after completion of the pre-audit survey, and included:

- focus group interviews with and written surveys of Public Defender Office attorneys and investigators;
- interviews with members of the Technology Services and Solutions Department, the Office of the County Counsel, and the Criminal Justice Information Control (CJIC) Management Control Agency;
- further review of documentation and other materials provided by the Public Defender Office and available from other sources, including the American Bar Association and academic research;
- analysis of data provided by the Public Defender Office and by the Criminal Justice Information Control (CJIC) Management Control Agency;
- surveys of other benchmark public defender offices and an interview with a pretrial release unit to measure performance and to determine organizational and operational alternatives that might warrant consideration by the County of Santa Clara;

Draft Report - On August 13, 2021 a draft report was prepared and provided to Public Defender Office containing our preliminary findings, conclusions, and recommendations.

Exit Conference - Exit conferences were held with the Public Defender Office managers on October 4, October 19, and October 20, 2021, to collect additional information pertinent to our report, to obtain their views on the report findings, conclusions, and recommendations, and to make corrections and clarifications as appropriate. Following the exit conferences, a revised draft was provided to the Public Defender Office for its use in preparing its formal written response.

Final Report - A final report was prepared following the exit conferences and provided to the Public Defender Office, TSS, and the Office of the County Counsel on November 8, 2021, with requests to provide a written responses to the report, which are attached to this final report.

BACKGROUND

Overview of the Public Defender Office

The Public Defender Office, which includes the Alternate Defender Office, provides legal representation to indigent clients who are charged with a criminal offense alleged to have been committed in the County. Upon the request of a defendant for counsel, or the order of the Santa Clara County Superior Court (“Superior Court”), California law and Santa Clara County code designate the Public Defender Office with the responsibility of defending any person who is not financially able to employ counsel.¹ Though the US Constitution and case law suggests a person is entitled to a public defender if they cannot afford to employ counsel, the State of California has not set a maximum income threshold or other means of measuring a person’s ability to afford counsel (see Section 2, starting on page 41 for further discussion of how financial eligibility is determined in Santa Clara County).² The PDO also provides legal representation to minors against whom delinquency petitions have been filed in the Juvenile Division of the Superior Court, and clients in civil commitment proceedings as mandated by State law, including those involuntarily committed under the State Lanterman-Petris-Short Act, the developmentally disabled, and mentally impaired seniors.

Within the Public Defender Office is the separate and distinct Alternate Defender Office, which is responsible for defending cases when the Public Defender Office has a conflict of interest. For example, if there are multiple defendants charged for a case it would be a conflict of interest for the Public Defender Office to represent more than one of the defendants. If the Alternate Defender Office also has a conflict, then the defendant is referred to the Independent Defense Counsel Office (IDO), which administers and oversees a panel of private attorneys that provide indigent defense services when there is a conflict of interest with both the PDO and the ADO. The IDO was not within the scope of this audit. The Alternate Defender Office also handles most of the felony cases referred to the Public Defender Office.

Department Organization

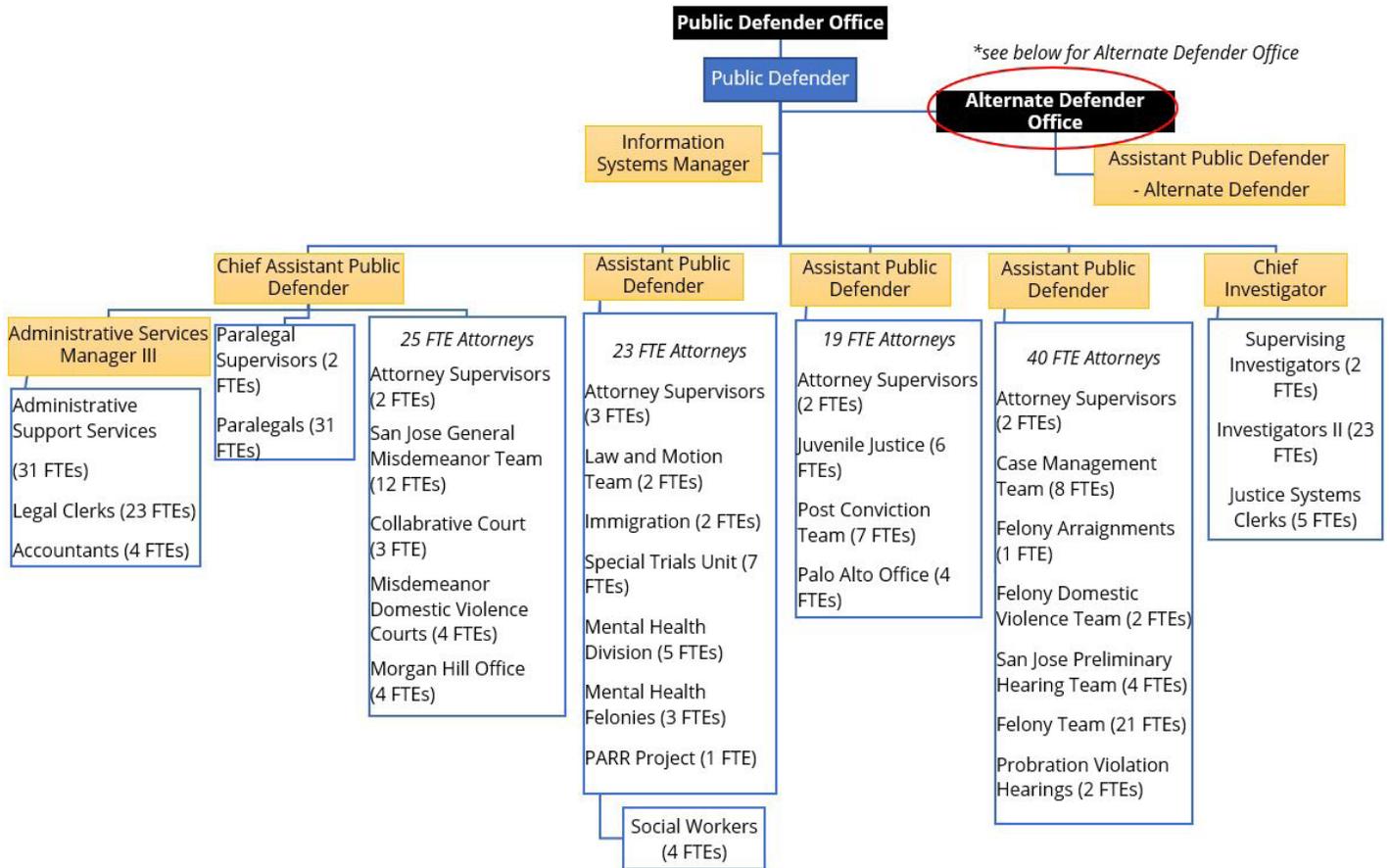
As of Fiscal Year 2021–22 the Public Defender Office consists of 284 staff total, 242 in the Public Defender Office and 42 in the Alternate Defender Office. Most of the staff in the Department are budgeted through the General Fund, however, AB109 Realignment funds cover the cost of five staff members (one attorney, one legal clerk, and three paralegals).³ Attorneys are arranged into teams which handle different case types (e.g. Juvenile Justice, General Misdemeanor, Immigration, Mental Health, Felony Domestic Violence, Felony Trial, Homicide, Post-Conviction). In the Public Defender Office, these teams are grouped under four separate Assistant Public Defenders, versus in the Alternate Defender Office, where a single Assistant Public Defender manages the office and oversees the 17 attorneys, as illustrated in Figure I.1 on the following two pages.

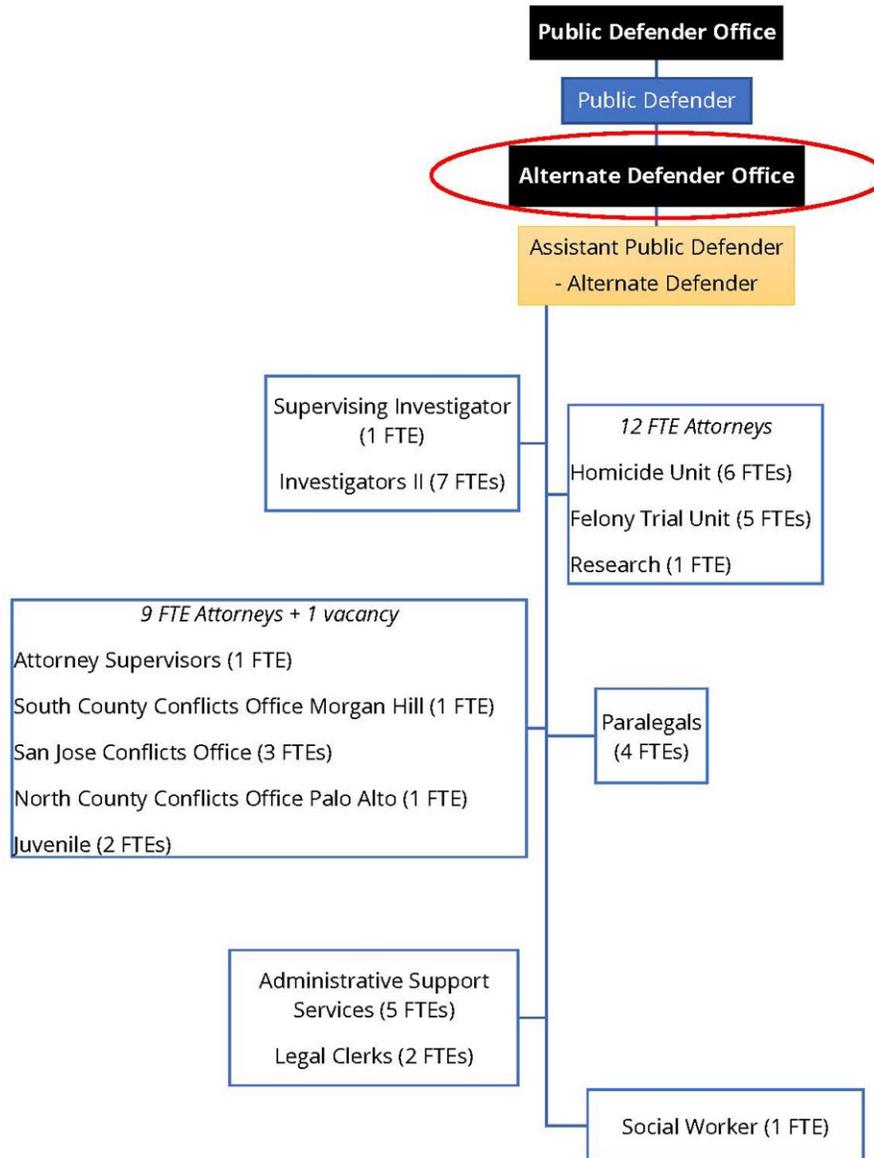
1 [Government Code § 27706](#)

2 [Williams v. The Superior Court of Stanislaus County \(1964\)](#)

3 California passed the Public Safety Realignment Act (AB 109) in October 2011. The law seeks to alleviate prison overcrowding by mandating that low-level felons become the responsibility of local jurisdictions. Santa Clara County has applied most of its Realignment funding into rehabilitation, relying on collaboration between the Public Defender Office, the Offices of the Sheriff, Probation Department, Social Services Agency, Behavioral Health Services Department, Custody Health, Ambulatory Care, and the Office of Supportive Housing among others.

Figure I.1: Organizational Chart of Budgeted FTEs in the Public Defender and Alternate Defender Office, as of April 19, 2021





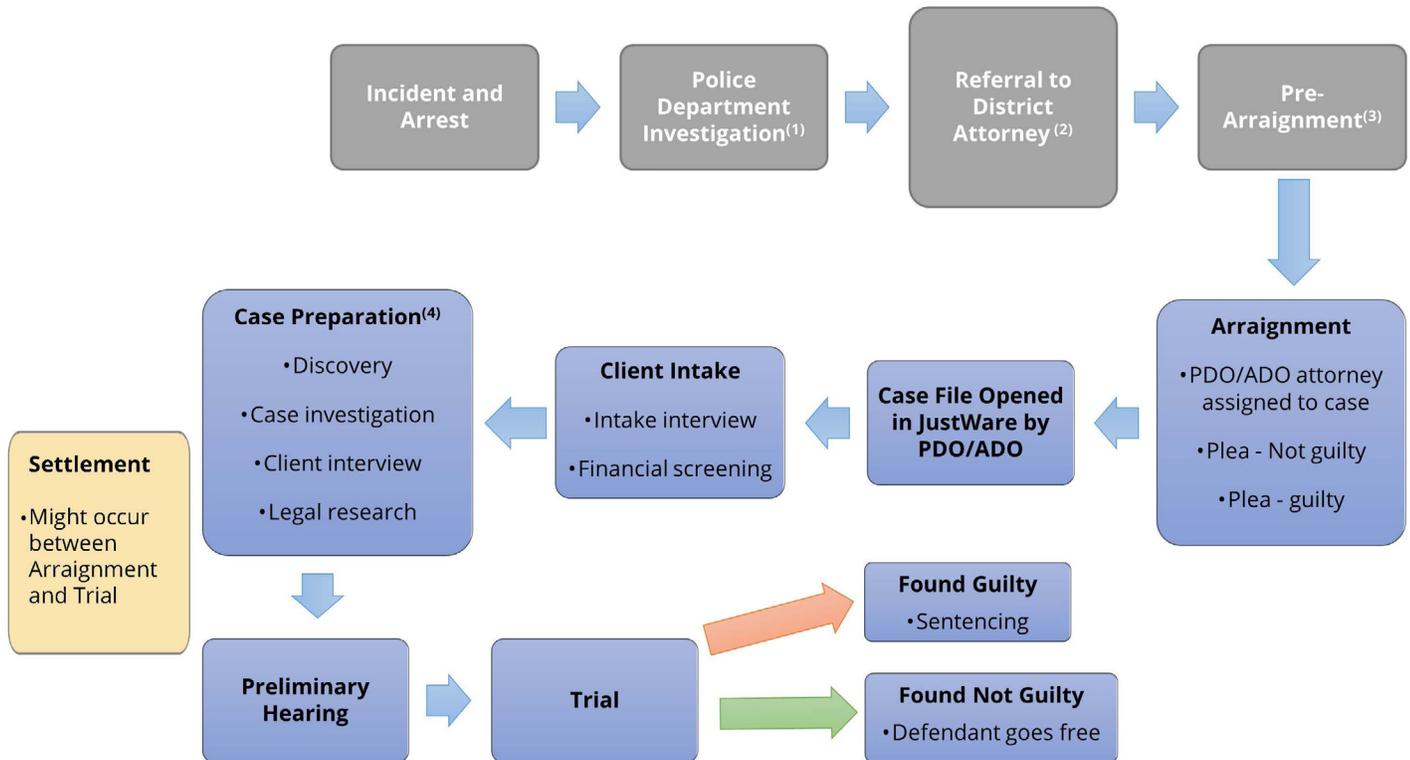
Source: Management Audit Division chart representation of staffing and assignment information provided by the Public Defender Office and Alternate Defender Office and the April 19, 2021 Position Status Report provided by the Office of Budget Analysis.

Legal clerks, paralegals, and investigators each report to their own classification supervisor, but may be assigned to work on tasks from a certain team/group of attorneys. An attorney's team assignment does not reflect the full spectrum of cases that attorney is carrying, as attorneys are moved between teams every 12–18 months and continue to carry cases from their previous team assignment (see Section 1, starting on page 21 for a discussion of staff workload).

Public Defender Case Progression

Cases assigned to the PDO/ADO follow a general path from alleged incident to case conclusion (see Figure I.2 below).

Figure I.2: Overview of Case Progression, from Incident to Case Conclusion



Source: Survey interviews with PDO and ADO staff.

Notes:

- (1) A case might not be referred to the District Attorney (DA) if the police department determines there is insufficient evidence. If the case is not referred to the DA, then no charges are brought against the individual.
- (2) If the DA receives a case from the police department but determines there is insufficient evidence to press charges, then the DA might drop the case.
- (3) PARR Project attorneys in the Public Defender Office will contact some defendants at this stage and begin investigating the case and contacting character witnesses so more information about the defendant is available at Arraignment, but attorneys are not assigned to a case until Arraignment (see Section 3, starting on page 51 for discussion of the PARR Project).
- (4) Case preparation can begin before the client intake interview, depending on the length of time it takes to schedule that interview versus to receive discovery information for the case.

Several variables can result in variations on this path, such as:

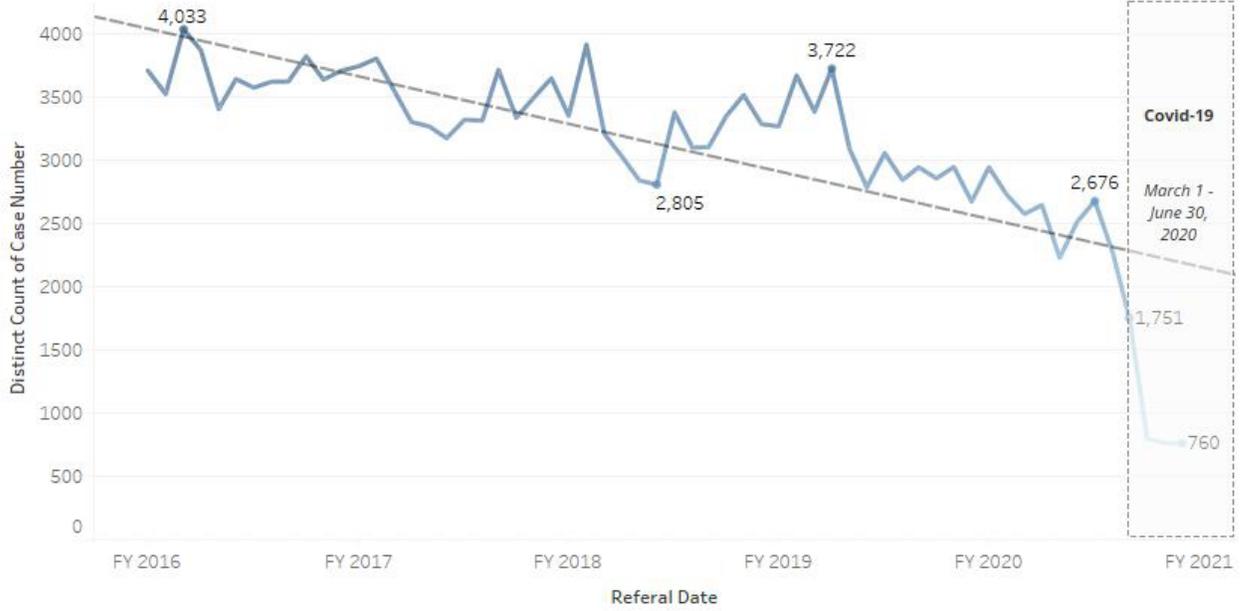
- the nature of the alleged offense/case type (e.g. Juvenile Justice, General Misdemeanor, Homicide, etc.)
- the age of the defendant
- whether the PDO or ADO identify a case conflict and must refer the case to another office (the PDO would refer the case to the ADO and the ADO would refer to the IDO if there is an office conflict)
- delays in discovery and/or difficulty in identifying or locating witnesses or evidence.
- These variables can also affect the length of time it takes for a case to complete, either because of the complexity of the case or other unforeseen delays (see Section 7, starting on page 93 regarding the effects of discovery delays).

Number of Cases Handled by the Public and Alternate Defender Office

Case data from the Public Defender Office shows a decreasing number of cases referred to the PDO and ADO from the start of Fiscal Year 2016 to the end of Fiscal Year 2020 (see Figure I.3 on page 17). Although the number of cases referred during the last quarter of FY 2020 were directly affected by the COVID-19 pandemic (see discussion of COVID-19 below), the number of cases handled by the Department as a whole had been decreasing at an average of 2,400 cases each fiscal year over the last four fiscal years prior to FY 2020. In FY 2016 the Department received 45,646 case referrals total (44,143 to the PDO and 1,503 to the ADO). During FY 2019 the Department received 38,363 case referrals (37,216 to the PDO and 1,147 to the ADO).

Figure I.3: Count of Monthly Case Referrals by Referral Date, FY 2016–2020

Cases Referred to the PDO



Count of PDO Cases



Cases Referred to the ADO



Count of ADO Cases



Source: Case data provided by the Public Defender Office.

Proportion of Superior Court Cases Represented by the Public or Alternate Defender Office

To determine the proportion of Superior Court cases which are represented by the Public or Alternate Defender the Management Audit Division reviewed County statistics from the California Courts.⁴ The Court Statistics Reports provide case and caseload statistics for each county in the State by fiscal year. According to these reports, the Superior Court refers roughly 20% of cases to the Public Defender or Alternate Defender Office (see Figure I.4 below).

Figure I.4: Proportion of Santa Clara County Superior Court Cases Referred to the Public and Alternate Defender Offices, FY 2016–18⁽¹⁾

Fiscal Year	Superior Court Cases	Total Cases Referred to the PDO/ADO	% of Cases Referred to the PDO/ADO
2015–16	219,629	45,646	20.78%
2016–17	184,225	43,009	23.35%
2017–18	211,627	40,157	18.98%
2018–19		38,363	unknown

Source: California Court Statics Reports: 2015-2020 and case data provided by the Public Defender Office.

Note: (1) The Santa Clara County Superior Court did not report case statistics to the State for FY 2019.

The Management Audit Division attempted to request case data from the County's Criminal Justice Information Control system (CJIC) to get more accurate and detailed information regarding the proportion of case types that are referred from the Superior Court.⁵ Three months after the original request through the CJIC Management Control Agency and Technology Services and Solutions, the Management Audit Division received the "total cases filed" for calendar year 2019 as 30,928, with no supporting data. Given the case numbers reported to the State by the Superior Court in FYs 2016–18, and the total case count reported by the PDO and ADO for FY 2019, which exceeds 38,000 cases, this number was determined to be unreliable. It was therefore not possible for the Management Audit Division to confirm the accuracy of the case counts in the California Court Statistics Reports, or to calculate the proportion of cases referred to the PDO/ADO during Fiscal Year 2019. These numbers should therefore be taken as unreliable as they are not in compliance with Generally Accepted Government Auditing Standards.

⁴ Court Statistics Reports: 2015-2020. Retrieved April 27, 2021, from <https://www.courts.ca.gov/13421.htm>.

⁵ Specifically, the Management Audit Division requested the following information: case numbers, court department, whether the case was referred to the PDO/ADO/IDO (and the referral date), case type, case status, client age at referral, client ethnicity, client gender, most recent court event date, case disposition information, sentencing information, and financial screening information.

The COVID-19 Pandemic

At the outset of this audit, in June 2020, Department staff expressed concerns regarding COVID-19 safety in the Superior Court for themselves, their clients, other staff members, and witnesses. On May 7, 2020, the Public Safety and Justice Committee had begun receiving reports from all County Departments about their progress towards the COVID-19 “stay at home order”, and efforts to continue to provide services to County residents through the pandemic. Reports covered important milestones and efforts to reduce the jail population, get staff set up to work from home, require masks be worn in courtrooms, reduce courthouse crowding, and reinstate visitor access to the jails and juvenile hall.

Due to court room closures, or partial closures where only limited cases were processed, for the majority of 2020, there is a risk that a backlog of cases has formed. As of February 1, 2021 the Superior Court had reported to the Public Safety and Justice Committee that they were resuming jury trials, and had called upon retired Judges to work on backlogged cases. On March 4, 2021, the Department reported to the Public Safety and Justice Committee that all Public Defender attorneys had been vaccinated and reported feeling more comfortable working closely with their clients in the courtroom and more confident speaking without the worry of spreading COVID-19.

RECOMMENDATION PRIORITIES

The priority rankings shown for each recommendation in the audit report are consistent with the audit recommendation priority structure adopted by the Finance and Government Operations Committee of the Board of Supervisors, as follows:

Priority 1: Recommendations that address issues of non-compliance with federal, State and local laws, regulations, ordinances and the County Charter; would result in increases or decreases in expenditures or revenues of \$250,000 or more; or, suggest significant changes in federal, State or local policy through amendments to existing laws, regulations and policies.

Priority 2: Recommendations that would result in increases or decreases in expenditures or revenues of less than \$250,000; advocate changes in local policy through amendments to existing County ordinances and policies and procedures; or, would revise existing departmental or program policies and procedures for improved service delivery, increased operational efficiency, or greater program effectiveness.

Priority 3: Recommendations that address program-related policies and procedures that would not have a significant impact on revenues and expenditures, but would result in modest improvements in service delivery and operating efficiency.

DEPARTMENT ACCOMPLISHMENTS

Audits typically focus on opportunities for improvements within an organization, program or function. To provide additional insight into the Public Defender Office, we requested that it provide some of its noteworthy achievements. These are highlighted as Attachment F on page 169 to this report.

ACKNOWLEDGMENTS

We would like to thank the management and staff of the Public Defender Office for their assistance and cooperation with this audit. In addition, we are grateful to Santa Clara County staff at the Technology Services and Solutions Department, the Office of the County Counsel, the Criminal Justice Information Control (CJIC) Management Control Agency, as well as staff in public defender offices in: Contra Costa County, Fresno County, Riverside County, San Bernardino County, the County of San Diego, City and County of San Francisco, Stanislaus County, and Ventura County.

Section 1: Tracking Staff Workload

Background

Clients of the Public Defender Office (PDO or “the Department”), including the Alternate Defender Office (ADO), are entitled to a speedy trial without undue delays. Due to interdependent workflows, workload related delays for one classification can cause delays for other classifications. It is the responsibility of Department management to monitor staff workload and avoid assigning excessively large/complex workloads which may interfere with quality representation and lead to a breach of professional obligations.

Problem, Cause, and Adverse Effect

Between April 1, 2019, and June 30, 2020, Department attorneys were assigned different case types under different supervisors within a single month. When surveyed 38.27% of attorneys reported currently carrying cases from previous team assignments. Attorney caseload reports utilized by supervisors do not include these previous assignments. Not including full caseload information may violate the Government Attorneys Association Memorandum of Understanding with Santa Clara County, which allows attorneys to keep previous assignment cases so long as they are considered when assigning new work. Investigator and paralegal reports are limited by tasks assigned within a date range, rather than all incomplete tasks which comprise their workload. While some supervisors may keep their own caseload records, JustWare only captures assigned active cases/tasks as entered by staff by month. JustWare reports, and records prepared by Department supervisors, only reflect new assignments, not active caseload/task load. Not tracking active caseload/task load of staff may leave Department supervisors and management unaware of excessively high workloads, making the Department, and County, open to potential litigation regarding resources available for indigent defense. The Department had been working to eliminate a backlog of unopened cases in April 2019, after not tracking the backlog or its effects on cases. By June 2020 the Department was opening more cases each month than referred, they likely made headway on the backlog and it is now resolved, but the Department was unable to confirm based on how they track case openings. Furthermore, the Department does not track elapsed time from case referral to opened JustWare case. Of cases referred to the PDO and ADO, 33.07% and 13.54% were opened six or more days after the case referral date respectively.

Recommendations

The Department should have its Management Analyst Team develop workload reports for management and supervisors, showing active tasks and cases for attorneys, investigators, and paralegals. The Department should also use JustWare to track the number of cases opened, and time to open cases, and compare those numbers to incoming referrals. The Department should provide these workload reports to the Board of Supervisors. The Department should annually assess attorney/supervisor and attorney/investigator ratios in each office and report to the Board of Supervisors for supervisor or investigator staffing increases as needed to meet national guidelines.

Savings, Benefits, and Costs

Tracking workload of staff more accurately by automating ‘assignment active date’ for attorneys, requiring staff to update ‘assignment inactive date’ consistently for attorneys, and generating and reporting accurate workload reports for supervisors, management, and the Board would better ensure effective, efficient, defendant representation with minimal to no County cost. It would also mitigate risk of lawsuits claiming a lack of resources available to meet indigent defense needs, which can cost anywhere from \$2.7 million to \$4.5 million dollars.

FINDING

Background

Clients of the Public Defender Office (PDO or “the Department”), which includes the Alternate Defender Office (ADO), are entitled to a speedy trial without undue delays.⁶ Undue delays can be caused by a high level of workload for attorneys, investigators, paralegals, or legal clerks. Due to the nature of interdependent workflow, if one classification has more work than can be completed in a reasonable time frame, other classifications’ work can be delayed. It is the obligation of the PDO and ADO management to monitor staff workload to avoid assigning excessively large or complex workloads which may interfere with providing quality representation and may have significant potential to lead to a breach of professional obligations.⁷

Cities, counties, and states have had lawsuits brought against them by previous Public Defender clients as a result of case delays due to high staff workloads, which caused negative case outcomes. In New York State, defendants did not receive legal counsel even though they were assigned to the Public Defender.⁸ The State reached a settlement, agreeing to spend \$4 million over two years on improving Public Defender services, increasing staff trainings, and allowing regular supervision of the changes by the plaintiff. The ACLU sued the Cities of Mount Vernon and Burlington, Washington, where attorneys were carrying over 1,000 cases annually because the system was underfunded, causing an inadequate defense system for clients.⁹ The court required Burlington and Mt. Vernon to hire a supervisor to ensure their defense systems comply with constitutional standards, and it kept jurisdiction over the case for three years while the Public Defender offices implemented the reforms. The California Governor has sign AB 625 (2021) into law which mandates that the State Public Defender, the California Public Defenders Association (CPDA), and other subject matter experts undertake a study to assess appropriate workloads for public defenders throughout the State and submit a report to the State Legislature no later than January 1, 2024. The Santa Clara County Public Defender is on the board for CPDA and will help conduct this study.

Recommendations Made During 2007 Audit

In 2007, the Management Audit Division released an audit of the Public Defender’s Office. Many changes have taken place within the PDO and ADO since. However, some recommendations adopted by the Board central to tracking workload and allowing for the identification of case assignments and increases in cases have not been implemented. The 2007 audit addressed issues of tracking workload, case assignment, and cost per case (see Attachment G on page 171 and Attachment H on page 189). Furthermore, the 2007 audit recommended the creation of a senior management analyst position, responsible for creating and supplying workload reports to the Department (see Attachment G on page 171).

6 American Bar Association, Speedy Trial and Timely Resolution of Criminal Cases.

7 American Bar Association, Securing Reasonable Caseloads.

8 Hurrell-Harring et al. v. State of New York.

9 Wilbur v. City of Mount Vernon.

The Department was unable to provide evidence that reports were regularly being generated to allow Department management to analyze and control staff workload. The Department has not been tracking workload of legal clerks opening newly referred cases in JustWare, or whether attorneys, paralegals, and investigators have full and manageable caseloads consistent with national indigent defense standards. Therefore, the PDO and ADO are unable to determine if their assignment process for attorneys, legal clerks, paralegals, or investigators is efficient or if they are optimally serving their clients in the pursuit of a speedy trial with encompassing defense services.

Data Used to Assess Current Workload

The Department switched to JustWare from their previous case management system (Scales) on March 25, 2019. The data analysis in this section focuses on April 1, 2019, through June 30, 2020, to limit data errors which may have arisen from the switch to the new case management system. From April 1, 2019, through June 30, 2020, the PDO received 33,106 case referrals from the Santa Clara County Superior Court ("Superior Court") to represent clients and the ADO received 1,345 case referrals. Of those referrals, 718 PDO cases and 89 ADO cases were referred from the Department to the Independent Defense Counsel Office (IDO) due to conflicts of interest in the office(s) (see Introduction, starting on page 9). This period also includes a reduction of case referrals from the court to the PDO and ADO due to court closings caused by the COVID-19 pandemic from March 2020 onwards. Across the Department, methods of tracking workload and assigning tasks vary between classifications. For attorneys, tracking workload and assignments can also vary by case type/team. The Department does not track management or supervisor use of reports available through JustWare.

Attorneys

Between April 1, 2019, and June 30, 2020, PDO attorneys were *assigned* to 31,523 cases and ADO attorneys were *assigned* to 1,313 cases, 95.22% and 97.62% of cases referred to each office, respectively, during that timeframe (see Figure 1.1 on page 24).¹⁰ Based on the number of cases referred to each office, this means that on average each PDO attorney was assigned 227 cases and each ADO attorney was assigned 47 cases.

Some of the cases not recorded as assigned may make up some of the 2.17% and 6.61% of cases that were referred to the IDO. The PDO has fewer cases referred to the IDO than are unassigned; this could be caused by the backlog of case openings experienced by legal clerks, potentially delaying attorney assignments to cases, addressed later in this section. This cannot be fully measured because assignment active dates for an attorney on a case are not required to be input by staff in JustWare, and when they are input by staff, they are sometimes unreliable (e.g., across both offices the Management Audit Division found that 3.77% of the assignment dates either pre-dated the referral date or were missing). It was not possible to measure the accuracy of the assignment dates that occurred after the case referral dates, so the true error rate is unknown but is at least 3.77%. Furthermore, attorney supervisors noted the inaccuracy of JustWare's ability to track caseload for attorneys, and some created their own reporting system and tracking outside of JustWare.

¹⁰ The PDO and ADO had 33,106 and 1,345 cases referred to each office respectively during this period.

Figure 1.1: Cases Assigned to Attorneys in JustWare by Case Type, April 1, 2019, to June 30, 2020

Case Type	PDO			ADO		
	Total Cases Assigned	Total Attorneys Assigned	Average Cases Assigned per Attorney ⁽²⁾	Total Cases Assigned	Total Attorneys Assigned	Average Cases Assigned per Attorney ⁽²⁾
Adult Felony	6,144	109	56	905	25	36
Adult Misdemeanor	19,940	114	175	45	13	3
Cert of Rehabilitation	20	13	2	0	0	0
Criminal	68	18	4	6	4	2
Extradition	20	12	2	0	0	0
Habeas Corpus	2	1	2	1	2	1
Immigration	8	3	3	0	0	0
Juvenile	715	21	34	302	7	43
Mental Health	588	8	74	0	0	0
Post-Conviction	4,019	91	44	54	21	3
Total:	31,524	139⁽¹⁾	227	1,313	28⁽¹⁾	47

Source: Management Audit Division analysis of case data from JustWare.

Notes:

- (1) The same attorney could have multiple case types assigned, therefore the total number of individual attorneys assigned is lower than the sum of attorneys assigned across case types.
- (2) Average Cases Assigned excludes case types where zero cases were assigned, and values are rounded to the nearest whole case.

It is important to note that the ADO handles more felony cases than any other case type, while the PDO handles mostly misdemeanors as the bulk of their caseload (see Figure 1.1 above). Furthermore, it is important to limit attorney workload to no more than 150 felony, 400 misdemeanor, 200 juvenile, 200 mental health, and 25 appeals cases per year based on Guidelines from the National Advisory Commission on Criminal Justice Standards and Goals (NAC), a 1973 U.S. Department of Justice-funded initiative, referenced within American Bar Association Principles.¹¹ The standards do not distinguish between different felony types. Average assigned cases per attorney, in Figure 1.1, are well below the yearly limits set by the NAC. The NAC standards do not account for attorneys carrying multiple case types (i.e. misdemeanors and felonies).

¹¹ [National Advisory Commission, Standard 13.12.](#)

Caseloads can significantly vary between attorneys because Department attorneys tend to work on different case types. Management is responsible for monitoring and determining if any one caseload is too high for an attorney based on case types and complexity. Even though the PDO and ADO appear to be within national attorney caseload limits overall, management needs to be able to track the workload of staff to ensure case limits are not exceeded for any attorney. Without accurate workload reports to provide this assurance, the Department cannot guarantee that all attorneys are assigned reasonable workloads. Tracking workload for all staff would allow the Department to quickly identify if staffing adjustments are needed.

The caseload standards established by the NAC have been criticized as being outdated and members of the criminal justice community have conducted workload studies which suggest caseload limits should be lower, or at least adjusted for certain circumstances. The American Bar Association has worked to develop weighted caseload studies to set appropriate caseload limits.¹² The report identifies common steps to set workload limits:

1. Select case types of interest for a weighted caseload study.
2. Attorneys meet to determine relevant workload factors and tasks associated with effective representation in each type of case.
3. Train attorneys on how to track and record time within the case management system.
4. Have attorneys record time spent on case-related and non-case-related activities for six weeks.

The PDO could conduct such a time study for each case type, by stage, to have a more accurate measure of workload, but it needs to secure a full reporting system that covers all cases for an attorney including those from previous team assignments.

Since PDO and ADO attorney supervisors can only track the new assignment of cases by case type within JustWare, the Department cannot be certain attorneys have an acceptable workload to meet standards. All the cases presented in Figure 1.1 on page 24 were referred to the Department between April 1, 2019, and June 30, 2020, and assigned on top of an unknown pre-existing caseload. Therefore, the Management Audit Division could not confirm if Department assignment practice is consistent with NAC annual caseload limits because of the inability of JustWare to track caseloads for attorneys, causing some supervisors to create their own tracking and reporting system outside of JustWare. A report from JustWare showing cases assigned in a year does not necessarily capture all cases handled that year to ensure adherence to the NAC caseload standards, particularly considering cases that were assigned in a prior year and are still active. Attorney supervisors regularly communicate with attorneys they supervise and may have a reasonable understanding of their reporting attorneys' workload; however, reports available in JustWare to monitor attorney workload are insufficient in tracking active caseload rather than just new assignments.

¹² Hanlon, S., M. Brink, & N. Lefstein. (2021). Use of Delphi Method in ABA SCLAIID Public Defense Workload Studies: A Report on lessons Learned. American Bar Association: Standing Committee on Legal Aid and Indigent Defense.

Additionally, the Department needs to slightly adjust its supervision of attorneys. The National Legal Aid & Defender Association guidelines recommend that for every 10 FTE attorneys the office have one full-time or two part-time supervisors.¹³ As of April 19, 2021, the PDO had nine attorney supervisors for 107 attorneys, which is an average of 11.89 attorneys for every supervisor; the ADO had one supervisor for 21 attorneys (see Introduction, starting on page 9). So as of April 19, 2021, the Department was not meeting minimum standards for attorneys to supervisors in the PDO and ADO. The Department should annually assess attorney to supervisor ratios in each office and report to the Board of Supervisors for supervisor staffing increases as needed to meet national guidelines. Since these numbers will likely change somewhat year to year, a request for new positions should be based on a multi-year significant deficiency rather than slight shortfalls or overages in an individual year.

Tracking Caseload as Attorneys Transition Between Teams

There are 19 teams in the PDO and five teams in the ADO, and the teams roughly correspond to case types, such as General Misdemeanor, Juvenile Justice, Felony Team, etc. (see Introduction, starting on page 9). The Department Policy and Procedure manual states that attorneys transition to a new team on a one-year cycle and can carry assignments from previous teams, which adds to the challenge of assessing workload because reports attorney supervisors have access to within JustWare, which some may use in making new case assignment decisions, only reflect cases assigned within a time period within an attorney team. JustWare has the data to show how many cases are active on an attorney's caseload, but the reports supervisors have access to do not capture that. An attorney supervisor would need to look up each attorney's caseload on their team individually to have this information. Some supervisors look up each attorney on their team within JustWare to see their caseload and others create their own reports used for tracking workload outside of JustWare. Furthermore, the County has a Memorandum of Understanding with the Government Attorneys Association, which states that upon the request of an attorney they may be switched from a trial assignment within 90 days of the request for a 6-month duration if they were on a trial assignment for the previous three or more years.

Using case data from JustWare, the Management Audit Division found that there were 52 PDO and zero ADO attorneys with caseloads from two or more case type groups (i.e. Misdemeanor, Felony, Post-Conviction, and Juvenile) which would have come from two or more separate supervisor teams within a month or across two or more months within the data period of April 1, 2019, to June 30, 2020 (see Figure 1.2 on page 27). Attorneys were on an average of four PDO and one ADO teams a year, respectively, from April 1, 2019, to June 30, 2020 based on the same data. Some PDO attorneys were on as many as six teams with at least 2 different supervisors a year based on the JustWare team assignment reports (see Figure 1.2 on page 27).

13 Guidelines for Legal Defense Systems in the United States. Guideline 4.1. National Legal Aid & Defender Association.

Figure 1.2: Attorneys with Case Types from One or More Teams with Different Supervisors Within the Same Month

	PDO	ADO	Total Count	Total %
1 Supervisor	87	28	115	68.86%
2 or More Supervisors	52	0	52	31.14%

Source: Management Audit Division analysis of case data from JustWare.

The Department may not be accurately capturing or actively analyzing cases assigned to attorneys across different teams with different supervisors. Reducing how often attorneys switch teams, especially supervisors within a single year, would benefit the Department by allowing attorneys to specialize. This problem may stem from the case assignment process. Supervisors of more complex case types are responsible for assigning cases to attorneys on their teams while legal clerks are assigning misdemeanors to attorneys. In Figure 1.2 above, the bulk of the attorneys identified as being on multiple teams had misdemeanor and felony cases across several months.

Additionally, the caseloads attorneys were already carrying under a different supervisor at the time they switched to a team with a new supervisor are difficult for the new team supervisor to capture and consider when assessing current workload and assigning new cases because of the limitations of the JustWare reports that attorney supervisors have access to. The attorney assignment reports attorney supervisors provided as examples from JustWare are run by Court calendar, attorney team, or case type. Furthermore, as mentioned previously, assignment active and inactive dates are inconsistently input into JustWare. Even if supervisors ran reports by assignments attorneys were active on, it might not capture their full workload. This is caused not only by the assignment active date error rate, but also the lack of use of the assignment inactive date in JustWare. Proper use of these two fields would allow for a complete picture of cases attorneys are working on as well as total processing time for each case. To compensate for the incomplete information in JustWare, some attorney supervisors keep their own case assignment records in Excel, which tend to reflect assignments made by that team, but may not include cases an attorney may be carrying from previous teams.

The Management Audit Division conducted a voluntary survey of Public and Alternate Defender staff and supervisors. Of the 81 attorneys responding to the survey overall, 38.27%, 31 attorneys, reported they were still carrying cases from previous team assignments (see Figure 1.3 below).

Figure 1.3: Attorneys Reporting They Still Carry Cases from Previous Assignments

<i>Do you still carry cases from a previous team you were assigned to?</i>				
	PDO	ADO	Total Count	Total %
Yes	25	6	31	38.27%
No	41	9	50	61.73%

Source: Internal survey of PDO and ADO staff and supervisors conducted by the Management Audit Division.

Analysis of cases that had been assigned between April 1, 2019, and June 30, 2020, in JustWare, and were still open as of July 28, 2020, showed that attorneys were carrying multiple case types from previous teams, all of which had different supervisors. In the PDO 37.41%, or 52 of 139 attorneys, were carrying cases from previous teams (see Figure 1.2 on page 27).¹⁴ The overlap of assignment types for attorneys is not readily available in the JustWare reports supervisors can run. The case assignment data showed this was not occurring in the ADO on that same date. This may be because the ADO tends to receive felony cases or because the ADO has a streamlined management structure with fewer attorney teams which do not necessarily correspond with all the case types the office receives (see Introduction, starting on page 9, for an organization chart and Figure 1.1 on page 24 of this section for a breakdown of the average number of cases an attorney carries for the PDO and ADO by case type).

Ability of Attorney Supervisors to Run Workload Reports in JustWare

Of the 13 supervising attorneys who responded to the Management Audit Division survey, 10 said they can run reports on staff workload themselves using JustWare (see Figure 1.4 below). Three of these supervisors provided examples of these workload reports, but only one of these reports appears to have originated from JustWare. Other supervisors indicated that they cannot run meaningful workload reports for the attorneys they supervise through JustWare and instead keep their own spreadsheets; these tend to reflect assigned cases per attorney from that supervising attorney within a month but don't capture all cases that the attorneys are carrying at that time. As shown in Figure 1.2 and Figure 1.3 on page 27, attorneys often carry cases from more than one supervisor.

Figure 1.4: Are Attorney Supervisors Able to Run Workload Reports in JustWare?

<i>Do you currently have the ability to run reports on staff workload or performance in JustWare yourself?</i>				
	PDO	ADO	Total Count	Total %
Yes	8	2	10	76.92%
No	2	1	3	23.08%

Source: Internal survey of PDO and ADO staff and supervisors conducted by the Management Audit Division.

Given the current state of assignment tracking for attorneys, it is difficult to truly assess the workload of an individual attorney, especially when 37.41% have multiple teams actively assigning cases. It is fine for attorneys to carry cases from previous assignments, but the data suggests some attorneys are actively receiving many new assignments from more than one management team within the same month for several months and their supervisors are not able to systematically track all of these cases. Recall, attorney supervisors noted the inaccuracy of JustWare's ability to track caseload for attorneys because JustWare reports show assigned cases within a team rather than active caseload.

¹⁴ Whether or not a given attorney has multiple supervisors assigning them work was determined by whether the attorney's caseload had multiple felony and misdemeanor assignments within the same month for more than one month.

The Government Attorneys Association Memorandum of Understanding with Santa Clara County allows for attorneys to keep cases from previous assignments so long as the previous assignment's cases are considered when assigning new work. There is no evidence to show the PDO or ADO have access to information from JustWare to systematically track the full caseload of attorneys in making case assignments. Therefore, the PDO and ADO need to require staff to use the assignment active date field when updating attorney assignments in JustWare or set JustWare up to automatically generate the assignment active date field when the attorney's name is added to the case. The assignment inactive date should remain a manually input field to allow for cases with multiple attorneys assigned. The PDO and ADO also need to add workload reports to JustWare which capture the total number of cases attorneys are actively assigned to, regardless of case type or team, and require attorney supervisors to use them when making new case assignments. Furthermore, the Department needs to regularly provide workload reports run through JustWare to PDO management to provide assurance that caseloads are not excessive and that all staff are functioning efficiently and to the Board of Supervisors as needed to ensure staffing levels are adequate for case referrals and client services.

Investigators

Between April 1, 2019, and June 30, 2020, PDO investigators were assigned to 2,107 cases according to JustWare and ADO investigators were assigned to 207 cases based on JustWare assignment records, 6.36% and 15.39% of the total cases referred to each office, respectively, during that timeframe (see Figure 1.5 on page 30).¹⁵ This means, on average, each PDO investigator was assigned 73 cases and each ADO investigator was assigned 21 cases during the 15 months reviewed.

¹⁵ The PDO and ADO had 33,106 and 1,345 cases referred to each office respectively during this period.

Figure 1.5: Cases Assigned to Investigators in JustWare Versus in Separate Workload Reports

Case Type	PDO			ADO		
	Total Cases Assigned	Total Investigators Assigned	Average Cases Assigned per Investigator ⁽²⁾	Total Cases Assigned	Total Investigators Assigned	Average Cases Assigned per Investigator ⁽²⁾
Adult Felony	1,213	27	45	185	10	19
Adult Misdemeanor	751	25	30	0	0	0
Cert of Rehabilitation	1	3	0	0	0	0
Juvenile	135	19	7	22	5	4
Mental Health	2	4	1	0	0	0
Post-Conviction	5	5	1	0	0	0
JustWare Total:	2,107	29⁽¹⁾	73	207	10⁽¹⁾	21
Separate Workload Reports Total:	4,462	29	154	568	10	57

Source: Management Audit Division analysis of case data from JustWare, April 1, 2019, to June 30, 2020.

Notes:

(1) Investigator staff totals are below total assigned by case type because the same investigator can have cases from multiple case types.

(2) Average Cases Assigned excludes case types where zero cases were assigned, and values are rounded to the nearest whole case.

PDO attorneys have a duty to conduct an independent investigation regardless of the client's admissions or statements to the attorney of the facts of the case.¹⁶ The attorney should seek assistance from an investigator for witness interviews, fact investigations, and information collection for pre-trial release.^{17 18} A minimum of one investigator should be employed for every three attorneys in an office, according to national best practice guidelines.¹⁹ As of April 19, 2021, the PDO had 23 investigators for 107 attorneys, which is an average of 4.65 attorneys for every investigator; the ADO had seven investigators for 21 attorneys, or an average of three attorneys to each investigator (see Introduction, starting on page 9). As of April 19, 2021, the ADO was and the PDO was not meeting national guidelines for investigator staffing levels. The Department should annually assess attorney to investigator ratios and report to the Board of Supervisors for investigator staffing increases as needed to meet national guidelines.

16 Performance Guidelines for Criminal Defense Representation. Guideline 4.1. National Legal Aid & Defender Association. (2006).

17 Performance Guidelines for Criminal Defense Representation. Guideline 4.1.(b)(3). National Legal Aid & Defender Association. (2006).

18 Guidelines for Legal Defense Systems in the United States. Guideline 1.3. National Legal Aid & Defender Association.

19 Guidelines for Legal Defense Systems in the United States. Guideline 4.1. National Legal Aid & Defender Association.

Investigator Supervisor Report Counts Show Inconsistencies with JustWare Reporting

The PDO and ADO supplied separate investigator workload reports kept in spreadsheets by investigator supervisors outside of JustWare. These reports are created each month by staff who update their own worksheets and supervisors who combine the sheets to show available hours and the total amount of tasks staff have been assigned. The Management Audit Division cannot confirm if all task information for cases is included in these reports because the information is manually entered and tracked with no connection to JustWare. Management has indicated these reports are used to true up task assignments in JustWare and to track investigator time per task through their points system. Reports from JustWare allow supervisors to view all tasks assigned to an investigator or assigned and completed within a date range; however, these reports do not show tasks assigned before the selected date range which may still be incomplete.

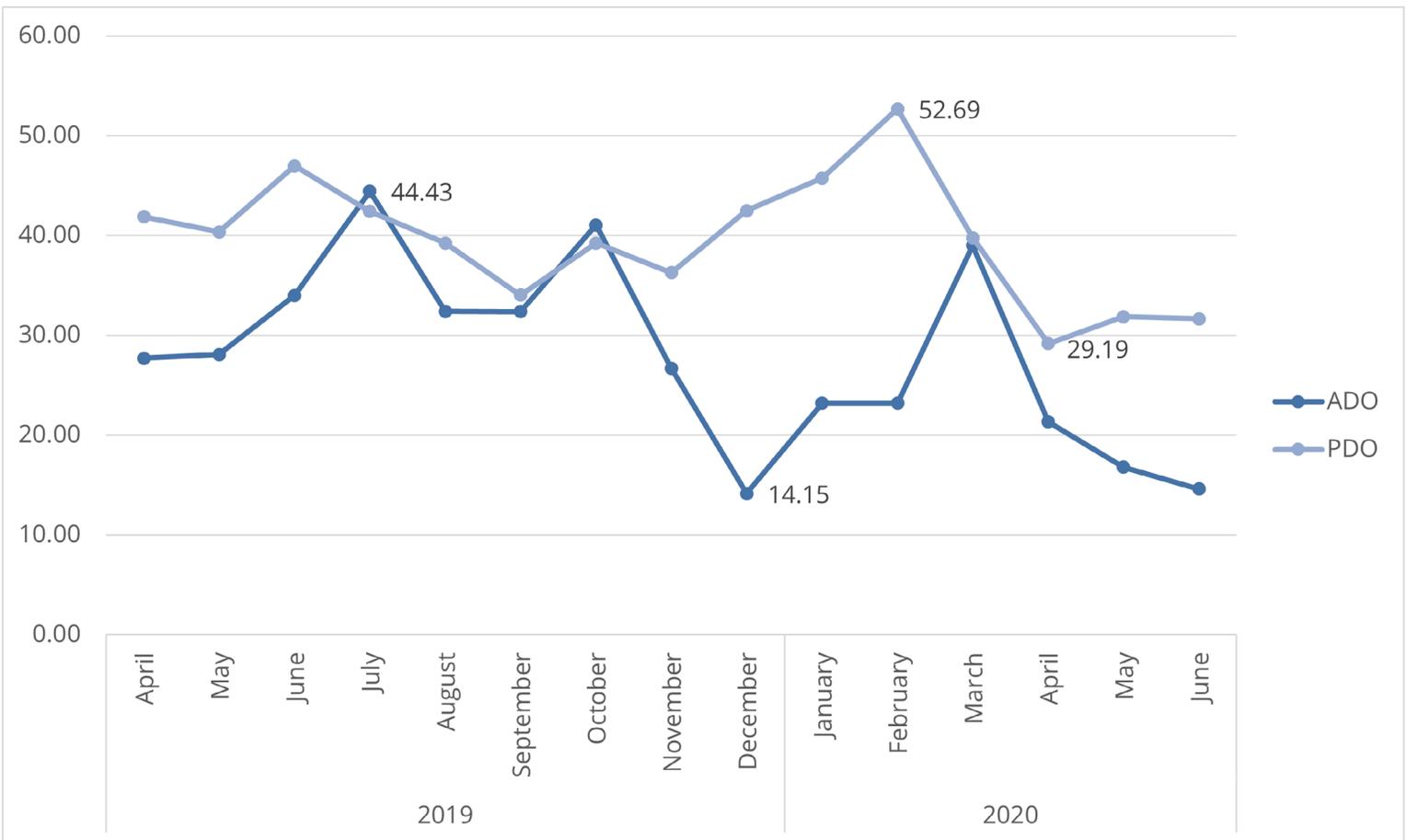
According to these reports, investigators were assigned to 4,462 and 568 cases respectively, 13.48% and 42.23% of all cases referred to the PDO and ADO between April 1, 2019, and June 30, 2020. Based on this data, on average each PDO investigator was assigned 154 cases and each ADO investigator was assigned 57 cases, which is dramatically higher than the cases recorded in JustWare and shown in Figure 1.5 on page 30. This indicates that most investigator case work is tracked in spreadsheets rather than JustWare.

Supervisor Point System for Tracking Investigator Workload Also Show Low Average Workload

Investigators are assigned case tasks in supervisor spreadsheets in the form of points. Each point equals two hours of work. Attorneys request a specific task for a case in JustWare, and investigator supervisors assign the task, and points they think are needed to complete the task, to an investigator. The process for assigning points based on the type of case task is not well defined and the number of points allocated varies even for the same task between different cases. Furthermore, some investigators have reported there are not enough points assigned for some tasks, especially when there are more hurdles to overcome than finding a witness to secure an interview report for an attorney (e.g., when a translator is used during the interview, or when there are complications finding a witness due to redacted police reports or a witness being difficult to contact). This means investigators may be using more time to complete a task than was originally assigned. Supervisors purposely do not give investigators a full schedule of assigned hours to leave room for administrative tasks. According to management, an investigator should have 60% of their time filled with assigned case tasks. The rest of their time is for trainings, administrative work, paid time off, sick leave, etc.

Between April 1, 2019, and June 30, 2020, PDO investigator assignment reports show on average investigators had 39.60% of their time filled by case tasks, an average of 53 hours in a month. Similarly, the ADO assignment reports show on average investigators had 28.15% of their time filled by case tasks, an average of 32 hours in a month in which full-time employees are paid for 168-176 hours for most months. On a monthly basis, investigator assignments were consistently below the Department's 60% capacity for case tasks (see Figure 1.6 on page 32).

Figure 1.6: Average Percentage of Time Spent on Cases by Investigators in the PDO and ADO, April 1, 2019, to June 30, 2020



Source: Workload reports used by Investigator Supervisors to assign case tasks.

Note: Investigators who were assigned zero tasks during this period were filtered from this analysis.

Based on the above data, either investigators are working on case assignments an average of 20.40–31.85% below the office capacity for investigator case assignments of 60%, or case work is not being consistently tracked within the Department workload reports either, even though the assigned work is higher than what is recorded in JustWare. Both scenarios emphasize the need to track investigator workload consistently and accurately. Furthermore, the Department provided reports only reflect newly assigned tasks for that month and do not show incomplete tasks which carried over from previous months. This ‘carry-over’ information would be needed to accurately measure workload. The lack of this information means supervisors are not actually able to measure the current workload of investigators when assigning new case tasks.

Need for Tracking Workload in Case Management System

The Department needs to incorporate attorney requests for investigation work in JustWare, including: task type, an indication for whether interpretation services will be needed, points or total time assigned for the task, a measure of active time spent on a given task, and when a task is complete. The measures for time spent on tasks, a running total of tasks yet to complete, and the available time an investigator has within a given month, would need to be considered in decisions for selecting new case management software in the future because the Department has indicated JustWare does not currently have this capability.

Automatically tracking this information within the case management system could reduce manual time spent on creating and updating external reports to show the active workload of staff. Until that is possible, the Department needs to actively track the task load of investigators using the investigator task tab in JustWare by consistently assigning tasks in this tab and marking tasks as complete. Supervisors should run and use reports from JustWare to assess current workload and make assignment decisions. Furthermore, the Department needs to regularly provide workload reports run through JustWare to PDO management to ensure staffing levels are adequate for case referrals and client services and that investigator staff are all functioning effectively and efficiently.

Paralegals

Between April 1, 2019, and June 30, 2020, PDO paralegals were assigned to 4,778 cases and ADO paralegals were assigned to 855 cases in JustWare, representing 14.43% and 63.57% of cases referred to the offices during that time (see Figure 1.7 on page 34 below).²⁰ This means on average each PDO paralegal was assigned 149 cases and each ADO paralegal was assigned 122 cases. Responsibilities between PDO and ADO paralegals differ, including varying degrees of involvement with requests for discovery (see Section 7, starting on page 93, for a discussion of discovery practices).

²⁰ The PDO and ADO had 33,106 and 1,345 cases referred to each office respectively during this period.

Figure 1.7: Count of PDO and ADO Cases with Tasks Assigned to Paralegals

Case Type	PDO			ADO		
	Total Cases Assigned	Total Paralegals Assigned	Average Cases Assigned per Paralegal ⁽²⁾	Total Cases Assigned	Total Paralegals Assigned	Average Cases Assigned per Paralegal ⁽²⁾
Adult Felony	1,412	25	56	693	7	99
Adult Misdemeanor	2,030	25	81	22	4	6
Cert of Rehabilitation	1	1	1	0	0	0
Criminal	0	0	0	2	1	2
Habeas Corpus	1	1	1	1	1	1
Juvenile	643	3	214	120	4	30
Mental Health	586	3	195	0	0	0
Post-Conviction	105	9	12	17	3	6
Total:	4,778	32⁽¹⁾	149	855	7⁽¹⁾	122

Source: Management Audit Division analysis of case data from JustWare, April 1, 2019, to June 30, 2020.

Notes:

(1) Paralegal staff totals are lower than total assigned by case type because the same paralegals can have cases from multiple case types.

(2) Average Cases Assigned excludes case types where zero cases were assigned, and values are rounded to the nearest whole case.

Tracking Paralegal Workload Outside of JustWare

The PDO uses JustWare reports to track workload of paralegals and relies on supervisors and attorneys to assign tasks to cases for JustWare to have record of them. However, the reports do not show active workload, but rather the number of tasks assigned within a month, whether they were completed, and inconsistent completion dates with many completion dates occurring before the date the task was assigned. Furthermore, the report supervisors have available includes all tasks for all staff and must be filtered by each paralegal's name to have a paralegal only task report. The report provided to the Management Audit Division included tasks for all classifications.

The tasks tracked by the PDO have a type, due date, and allow staff to fill in the date completed. Based on the PDO reports, paralegals were assigned approximately 24,053 tasks for 13,499 distinct cases referred to the PDO from April 1, 2019, through June 30, 2020, or 40.78% of cases referred during that time.

The ADO uses Excel spreadsheets outside of JustWare to track newly assigned tasks each month. The ADO tracks tasks by month and by type but does not track whether the task was completed. Though these reports track assignments, they do not capture tasks that have yet to be completed or those that carry over from previous months; therefore, they are not a measure of active workload for paralegals.

The reports from the PDO and ADO do not show active workload for staff, but instead track new assignments by period: a week for the PDO and a month for the ADO. The ADO reports also do not allow for immediate review of assignment comparisons between paralegal staff. The Department needs to actively track task load of paralegal staff using the paralegal task tab in JustWare by consistently assigning tasks in this tab and marking tasks as complete. Supervisors should run and use reports from JustWare to assess current workload and make assignment decisions. Furthermore, the Department needs to regularly provide workload reports from JustWare to the Board of Supervisors to ensure staffing levels are adequate for case referrals and client services.

Social Workers

Social workers are meant to be responsible for evaluating client problems; developing complete treatment plans; following each case through to solution; developing case plans, court reports, and associated legal documents; interpreting rules, regulations, policies, and programs to clients and the public; acting as a resource specialist; maintaining a listing of community resources; and assisting clients in utilizing community resources.

Before the social worker task tab was added to JustWare on December 12, 2020, social workers would receive email requests from attorneys and keep track of their client assignments and tasks in Excel and notebooks for their own records. Given this system of recordkeeping, it is not possible to quantify social worker workload.

Legal Clerks

A case only appears in JustWare if a new case is created in JustWare, which is the responsibility of legal clerks. Different case types, especially felonies or more serious cases with extensive paperwork, take longer to open in JustWare than a misdemeanor due to the likelihood of the case having more detailed police reports and more evidence. When a legal clerk opens a new case in JustWare, the system auto-generates a "created on" date, as well as a field with the name of the staff who created the case. The referral date (the date the court appointed the PDO/ADO to defend the client) must then be entered manually. The Management Audit Division has classified any case with a "created on" date which is six or more days after the referral date as having been a "backlogged case" or a case which was "opened late" for the following analysis.

Proportionally, the PDO and ADO had one legal clerk for every 1,226 and 673 cases referred between April 1, 2019, and June 30, 2020, respectively. Therefore, to remain on track with case referrals, each legal clerk needed to open four PDO or two ADO cases in JustWare every day during that period.²¹ This opening rate, however, assumes there was no backlog of cases at the start of this period, which was not the case (see discussion of backlog below). Between April 1, 2019, and June 30, 2020, PDO legal clerks opened 31,099 cases and ADO legal clerks opened 1,239 cases in JustWare, which is 86.81% and 90.70% of all cases opened respectively by each office during this period (see Figure 1.8 on page 36).²² The remaining case files were opened in JustWare by non-legal clerk staff in each office.

²¹ There are 311 business days between April 1, 2019, and June 30, 2020. The number of cases a legal clerk would need to open daily has been rounded up to the nearest whole number.

²² The PDO and ADO had 33,106 and 1,345 cases referred to each office respectively during this period.

Figure 1.8: Cases Opened in JustWare, from April 1, 2019, to June 30, 2020

	Classification	Staff Opening Cases	Total Cases Opened ⁽¹⁾	Cases Opened Late ⁽²⁾	% of Cases Opened Late
PDO	Legal Clerks	27	31,099	10,530	33.86%
	Other Staff	63	4,726	1,318	27.89%
	PDO Subtotal:	90	35,825	11,848	33.07%
ADO	Legal Clerks	2	1,239	176	14.21%
	Other Staff	9	127	9	7.09%
	ADO Subtotal:	11	1,366	185	13.54%
Department Total:		101	37,191	12,033	32.35%

Source: Management Audit Division analysis of case data from JustWare, April 1, 2019, to June 30, 2020.

Notes:

(1) During this period, the PDO received 33,106 case referrals and the ADO received 1,345 case referrals. Cases opened in excess of these referrals were backlogged cases.

(2) Cases Opened Late are cases which were opened six or more days after their referral date.

The Department reports it is difficult to track cases that need to be opened and legal clerk supervisors do not receive regular workload reports or regularly track case openings that have fallen behind. Supervisors have access to reports in JustWare which show how many cases a legal clerk has opened, and how many updates they have made to various cases in the system. However, unless a case is open in the system, it is difficult to know if there are cases waiting to be opened because of a backlog. These factors likely contributed to the large case opening backlog in the Department by creating a situation wherein each office was unaware of the extent of the backlog as it grew over time. Additionally, the switch to JustWare from Scales, the limited ability to populate case data from CJIC into JustWare, and the limited capacity of the Department to rollout modifications, updates, and trainings for JustWare also contributed to the growth of the backlog (see Section 4, starting on page 61, regarding auto-populating information from CJIC).

Case Opening Backlog and Lack of Tracking

The PDO and ADO reported that the switch to JustWare from their previous case management system, Scales, on March 25, 2019, caused the backlog. However, JustWare reports indicate that the PDO and ADO had already been experiencing a backlog of cases waiting to be opened, with referral dates prior to March 25, 2019, when the Department made the switch to JustWare. Reports from JustWare indicate that 4,850 case files were created after the switch to JustWare but were referred between 2015 to early March 2019. Referral dates are manually entered and therefore subject to error. Our data request for case openings only included cases opened in JustWare from April 1, 2019, onward; therefore, we believe this indicates the backlog existed before the switch to JustWare. In a survey conducted by the Management Audit Division, only 50% of legal clerks in both offices reported tracking their case opening backlog either in Excel, emails, or paper logs.

Neither office started tracking the backlog until May 2019. At that time, the PDO began recording a backlog in case openings, closings, bench warrant notifications, and case updates, making up over 7,000 tasks weekly from May 10, 2019, through March 12, 2020. According to their spreadsheets, the backlog affected anywhere from 4,117 to 18,230 individual cases, approximately 73.27% of which were out of custody cases. It is not possible to know exactly how many cases were affected because the PDO tracked the backlog by tasks rather than individual case numbers. The PDO stopped tracking the backlog in March 2020, stating it had been resolved. The ADO tracked the backlog of their case openings and closings within bi-weekly email updates from legal clerks. The ADO could not show when the email updates started, and stated the backlog was completely resolved in April 2020. The Management Audit Division, however, could not confirm that the backlog has been resolved because case opening counts closely resembled total referrals from April 1, 2019, through June 30, 2020.

Since the difference in total cases opened in each office compared to total referrals during that period are likely a result of human error, it is likely the PDO and ADO made headway on the backlog and it is likely now resolved (see Figure 1.8 on page 36). True backlog counts cannot be measured because if JustWare has a record of a case referral, then the case was opened in JustWare. Given the fact that the PDO and ADO opened 37,191 total cases out of 34,451 cases referred in JustWare, we assume the PDO and ADO were opening cases which were backlogged from before the case referral sample period. It is important to note that this period includes a reduction of case referrals from March 2020 onwards due to the COVID-19 pandemic and court closures; the number of cases opened each month decreased from pre-pandemic numbers.

Backlog Causes Delays in Case Information in JustWare Which Affects Cases

When the backlog was occurring, the PDO and ADO reported instructing legal clerks to open cases without entering all the case information, referring to them as “shell openings”. Staff limited witness information they input into JustWare for such cases, by case type. Felony cases delayed in opening, for example, were opened without police officer witness information added to the case file. Opening delays for Misdemeanor cases were handled by holding off on adding police officer witnesses and complaining witnesses unless the case was a Jury Trial case. It is unclear from the available data how or if the PDO and ADO tracked these partial openings, if the partial openings became full openings within a reasonable timeframe, or how the partial information affected the ability of attorneys to develop defense strategies or investigators to gather evidence for a case. As shown in Figure 1.8 on page 36, legal clerks from the PDO and ADO opened 10,530 and 176 cases late, or 33.86% and 14.21% of all cases opened during that time, respectively, from April 1, 2019, through June 30, 2020. Additionally, 1,318 and 9 cases were opened late by all other staff members in the PDO and ADO, or 27.89% and 7.09% of all cases opened.

The backlog and shell openings caused delays in identifying conflicts of interest, increases in continuances and the limitation of attorneys, investigators, and paralegals to make progress on case work, which potentially caused an immeasurable effect for client outcomes and case timelines (see Section 7, starting on page 93, regarding the impacts of delayed discovery). In the internal survey conducted by the Management Audit Division, 32 out of 44 paralegals in the Department, or 72.72%, reported that the backlog affected their ability to work in many ways, including: discovery request delays, inability to work on a case due to not having it open in JustWare, the wrong attorney was assigned to the case, delays in tasks assigned by

attorneys, conflicts of interest were identified later in a case, witnesses were harder to identify, and one individual even reported opening their own cases as standard practice. Furthermore, there is an unmeasured effect the backlog likely had on defendants served by the PDO and ADO. Delays in opening cases can cause delays in service. If there is a delay in the case opening which causes the PDO to declare a conflict of interest on the case later, the ADO is handed the defendant's case later in the process and must catch up.

The PDO and ADO need to develop an extensive workload tracking system within JustWare to avoid future backlogs and delays on client cases. The Department should track case opening tasks in JustWare for legal clerks and link that tracking with the case file and track the time it takes to open cases to verify legal clerk workload for case openings is manageable. Furthermore, the Department needs to regularly provide workload reports run through JustWare to the Board of Supervisors to ensure staffing levels are adequate for case referrals and client services. Not tracking and providing PDO management with legal clerk workload reports on a regular basis, or whether delays in opening cases have a negative effect on the clients or the case, leaves the Department vulnerable to another backlog, especially as case referrals increase as courts are opening again post-COVID-19.

If enhanced workload reports reflect legal clerks cannot meet the demand of case openings due to the expected influx of cases as the courts re-open, then a reevaluation of staffing levels will be necessary. Workload reports will help to justify the creation of new legal clerk positions for the Department, especially since a legal clerk salary is lower than the salaries of other classifications.

CONCLUSION

The Offices of Public and Alternate Defender have used case assignment data which only encompassed assignments within a certain period rather than current tasks or cases which are unresolved for paralegals and investigators. Legal clerks do not have any sort of workload tracking other than what the departments did to address the backlog. After they believed the backlog to be resolved, they returned to not tracking workload. Because of this incomplete tracking it is unclear whether a backlog in opening cases remains or the level of workload for legal clerks. Overall, the PDO and ADO do not track the full workload of their staff. Tracking tasks assigned but not whether the tasks were completed means supervisors are unaware of staff's active workload and whether there is a growing number of late tasks that staff struggle to accomplish. This can result in backlog which goes unnoticed as it grows.

Requiring staff to update the assignment inactive date when the case is closed or assigned to another attorney will help create a method for tracking attorney workload within JustWare. Assigning the Management Analyst Team to create workload reports in JustWare that capture the total number of cases attorneys are actively working on will address previous audit recommendations, improve Department tracking of attorney caseload, and assist supervisors in making case assignment decisions. This could result in fewer assignments being made to one attorney from different teams. By assigning the Management Analyst Team to create reports which actively track task load of paralegal and investigator staff, supervisor management can pull up to date reports for assigning tasks within JustWare, rather than keeping Excel spreadsheets with this information, which will lower supervisor work required to make assignment decisions. Tracking case opening timelines in JustWare for legal clerks and all other staff members by case number will help track if a backlog occurs again, the effects

of any new backlog on a case, staff performance in case openings per day, and the number of staff working on opening cases to work towards having only legal clerks work on opening cases in JustWare. Regularly providing workload reports from JustWare to PDO management and the Board of Supervisors can help ensure that there are enough staff and resources available to serve the community.

RECOMMENDATIONS

The Santa Clara County Office of the Public Defender should:

- 1.1 Annually assess attorney to supervisor and attorney to investigator ratios in each office and report supervisor and investigator staffing increases needed to meet national guidelines to the Board of Supervisors based on clear trends of significant deficiencies over a multi-year period such as three years. (Priority 1)
- 1.2 Require staff to use the assignment active date field when updating attorney assignments in JustWare or set it up to automatically generate the assignment active date field when the attorney's name is added to the case. (Priority 1)
- 1.3 Require attorney staff or their supervisors to update the assignment inactive date when the case is closed or assigned to another attorney. (Priority 1)
- 1.4 Assign the Management Analyst Team to create workload reports in JustWare that capture the total number of active cases assigned to attorneys, regardless of case type or team, as previously adopted by the Board of Supervisors in 2007. (Priority 1)
- 1.5 Assuming the adoption of 1.4, require attorney supervisors use the reports when making new case assignments. (Priority 1)
- 1.6 Assign the Department's Management Analyst Team to create reports that actively and independently track task load of paralegal and investigator staff using the paralegal and investigator task tab in JustWare by quantifying all tasks that have not been marked as complete as of the date the report is pulled. (Priority 1)
- 1.7 Assuming the adoption of 1.6, require paralegal and investigator supervisors use the reports in making assignment decisions. (Priority 1)
- 1.8 Assign the Management Analyst Team to create reports that actively track task load of social workers using the social worker task tab in JustWare by quantifying tasks which have not been marked as complete or cancelled and report outputs to social worker managers. (Priority 1)
- 1.9 Track the elapsed time from the case referral date to the date the case is opened in JustWare. (Priority 1)
- 1.10 Regularly report workload reports run through JustWare to PDO management and, as needed, to the Board of Supervisors to ensure staffing levels are adequate for case referrals and client services. (Priority 2)

SAVINGS, BENEFITS, AND COSTS

Tracking workload effectively and accurately will make the Department more efficient in assigning tasks to staff. Furthermore, we expect an increase in defense timeliness and service if the PDO and ADO can evenly distribute workload throughout staff and use workload reports to assess staff effectiveness and goals (see Section 8 regarding staff evaluations). This would reduce the risk of lawsuits resulting from staff having high workloads or accusations of limited resources allocated to cases in terms of paralegal or investigator tasks. Also, tracking case openings which can affect discovery and case hearing timelines will also help the Department negate backlogs and potential lawsuits surrounding the right to a speedy trial if clients experience negative effects in terms of sentencing due to timelines for cases being extended beyond what is reasonable. Based on experience elsewhere, lawsuits regarding insufficient defense of clients served by the PDO could cost anywhere from \$2.7 million to \$4.5 million dollars.²³ Making the recommended changes to track workload and staffing levels have a minimal to no cost to the County, with huge potential to avoid litigation surrounding resources awarded in relevant indigent defense cases. Even though the PDO and ADO may not be exceeding attorney caseloads or assigning high volumes of work to ancillary staff, management needs to be able to track the workload of staff to ensure case limits are not exceeded and staff are not assigned excessively large workloads which may limit their capacity to perform tasks for case progression. Tracking workload for all staff would allow the Department to quickly identify if staffing increases are necessary. Additionally, staffing ratios should meet or exceed national guidelines for investigators and attorney supervisor staff when compared to full-time attorney staff. Without these assurances, the Department cannot guarantee they are providing the best defense possible under national standards and best practices.

²³ Wilbur v. City of Mount Vernon and Hurrell-Harring et al. v. State of New York.

Section 2: Client Eligibility Criteria and Screening for PDO Services

Background

The Santa Clara County Superior Court (Superior Court) is responsible for making the final determination in each case whether a defendant is financially able to employ counsel and qualifies for Public Defender services according to State law (Government Code § 27706). However, the same law allows the Public Defender to render legal services to anyone they determine to be unable to employ counsel and provides that they can require a defendant or person requesting legal services to file a financial statement. By State law, the results of the Public Defender's screenings could be overturned by the Court though this rarely occurs. California law and Santa Clara County code has designated the Public Defender Office, which includes the Alternate Defender (PDO, ADO, "the Department"), with the responsibility to defend any person who is financially unable to employ counsel upon request of the defendant or order of the Superior Court.

Problem, Cause, and Adverse Effect

Consistent with State law, PDO policy is to conduct financial screenings of defendants before services are provided though the results of such screenings could be overturned by the Superior Court since State law assigns ultimate authority on these matters to the Court. There is potential for inequality in the client experience because PDO records show that 26% of clients were not financially screened from March 26, 2019, to August 25, 2020. Furthermore, PDO staff have reported inconsistent reasons for screening clients, and cannot track when screenings were conducted for in-custody clients because the screening forms do not have a date field. This may result in the PDO continuing to represent clients who might not financially qualify for services. The PDO has set an unchanging gross maximum income eligibility standard for services of \$3,000 to \$3,500 per month while the County's living wage ranges from \$3,394 to \$14,524 depending on household size. There is a risk clients could be turned away who could not otherwise secure private counsel without going bankrupt before they meet this income standard.

Recommendations

The PDO should comply more thoroughly with the State law requirement to make a determination in each case as to whether a defendant is financially able to employ counsel and qualifies for the services of the public defender. The PDO should have paralegals conduct financial screenings during every intake. The PDO should develop a new financial eligibility standard which incorporates cost of living in the County and review this eligibility standard yearly. The PDO should also add a date field to financial screening forms, so that financial screening forms for all in-custody and out-of-custody clients are dated and can be tied to the start or end of a case.

Savings, Benefits, and Costs

Screening every client during intake will minimally add to paralegal workload because paralegals are already meeting with clients to conduct intake interviews. Additionally, screening all clients will eliminate the risk of potential bias when assuming whether someone qualifies for services. Adding a date field to the in-custody financial screening form will help ensure financial screenings are done with intake interviews, at the outset of a case. Increasing the income eligibility standard will likely have little effect on the number of cases assigned to the PDO by the Superior Court because the Department is not currently conducting financial screenings of all clients nor turning many away for income in excess of the maximum threshold.

FINDING

Background

Upon the request of a defendant for counsel, or by order of the Santa Clara County Superior Court (Superior Court), California law and Santa Clara County code designate the Public Defender Office, which includes the Alternate Defender (PDO, ADO, “the Department”), with the responsibility of defending any person who is not financially able to employ counsel.²⁴ Though case law suggests a person is entitled to a public defender if they cannot afford to employ counsel, the State of California has not set a maximum income threshold or other means of measuring a person’s ability to afford counsel.²⁵ The cost of hiring counsel varies based on the charges and whether the case goes to trial. According to training materials for PDO paralegals, hiring a criminal attorney can average from \$3,500 to \$4,500 nationwide. Cases going to trial can cost over \$10,000 for the defendant.

Responsibility of the Santa Clara County Superior Court and Delegation to the Public Defender Office

The Superior Court is assigned authority by California law to make final determinations of whether a defendant served by the Public Defender is financially able to employ counsel or qualifies for Public Defender services.²⁶ However, California law also requires that the Public Defender provide services for anyone they determine to be not financially able to employ counsel *unless* the Court rules otherwise. In practice, this means the Public Defender needs to make determinations of defendants’ ability to pay for counsel and provide services accordingly unless the Court determines otherwise. The financial screening should be conducted at the outset to determine eligibility so all potential costs for the case are considered when determining the client’s ability to pay for private counsel.

In-Custody Financial Screening Forms Lack Date Information

The PDO uses two distinct financial screening forms, one for in-custody clients and the other for out-of-custody clients. The in-custody form, “Financial Affidavit Under Penalty of Perjury to Obtain Services of Public Defender” (Financial Affidavit), is signed by the client and states their marital status, money available, property, parental support, and employment (see Attachment I on page 203). This form is signed by a witness, but the form does not include a date field for either the client or witness signatures. The Financial Affidavit form was last revised in 2009. The out-of-custody form, “Application for Public Defender Services” (Financial Screening) contains more detailed fields for income, property, assets, family support, debts, bail amount, and if a private attorney had been contacted about the case (see Attachment J on page 205). The Financial Screening form also has a field for a witness signature, but unlike the in-custody form the out-of-custody form includes a date field for the client signature. This form was last revised in 2013. The Public Defender Office should add a date field to the Financial Screening form so that all financial screening forms (for all in-custody and out-of-custody clients) are dated. This will provide proper documentation that financial screenings are being conducted during client intakes to ensure they meet the minimum financial eligibility standards.

²⁴ [Government Code § 27706](#)

²⁵ [Williams v. The Superior Court of Stanislaus County \(1964\)](#)

²⁶ [Government Code § 27707](#)

Screening for Financial Eligibility

A review of tasks assigned in the offices' case management software (JustWare), an internal survey of staff, and a review of documents from a random sample of cases all indicate that the majority of clients referred to the PDO/ADO are not screened for financial eligibility.

PDO Survey Responses Indicate Inconsistencies

The Management Audit Division conducted an internal survey where staff voluntarily chose to participate and respond to questions. Paralegals were asked if they conduct financial screenings and, if so, when they conduct financial screenings (see Figure 2.1 below for paralegal results).

Figure 2.1: Internal Survey Results – Do PDO/ADO Paralegals Conduct Financial Screenings

<i>Do you conduct financial screenings or request registration fees from clients?</i>				
	PDO	ADO	Total Count	Total % (PDO and ADO)
Yes	14	2	16	69.57%
No	7	0	7	30.43%

Source: Internal survey conducted by the Management Audit Division.

Of the 23 paralegals who responded, 69.57% (16 paralegals) in the PDO/ADO stated that they conduct financial screenings or request registration fees from clients. The Department rotates paralegal assignments, and although intake and financial screenings are often assigned to newer paralegals, half of the PDO/ADO paralegals are in assignments that do not require financial screenings and therefore have not conducted them in a long time. Figure 2.2 on page 44 on the following page details the responses of those 16 paralegals to a follow-up question which asked *when* they conduct these financial screenings of clients.

Figure 2.2: Internal Survey Results – When Do PDO/ADO Paralegals Conduct Financial Screenings

When do you conduct financial screening of clients? (select all that apply)				
	PDO	ADO	Total Responses (PDO & ADO)⁽¹⁾	Response Proportions (PDO & ADO)⁽²⁾
During all intake interviews	13	1	14	43.75%
Only when in-person interview is conducted with out-of-custody clients	0	1	1	3.13%
When requested to by the attorney	8	2	10	31.25%
When the client's financial ability to pay is in question	6	1	7	21.88%

Source: Internal survey conducted by the Management Audit Division.

Notes:

(1) Respondents were asked to "select all that apply" and therefore may have selected more than one answer. In total, there were 23 paralegals who responded to this section of the survey.

(2) Respondents were asked to "select all that apply" and therefore may have selected more than one answer. In total, there were 23 paralegals which responded to this section of the survey and 32 selections, or responses.

Of the paralegals who said they conduct financial screenings, only 43.75% of respondents reported conducting the screenings during all intake interviews, and 3.13% of respondents reported conducting the screenings when the out-of-custody interview is conducted in-person. These first two descriptions of when financial screenings of clients referred to the PDO/ADO occur represent a standardized procedure, and yet only 46.88% of paralegal responses (15 responses) indicated that they conduct financial screenings under those circumstances. Alternatively, a combined 53.13% of responses (17 responses) indicated that screenings are conducted when the attorney requested it or when the client's ability to pay was in question, both of which involve subjective decisions to only screen specific clients. These subjective circumstances, however, are not mutually exclusive to the other responses as respondents were able to select all options that applied to their workflow.

Random Sample of Cases Show Low Screening Levels

The Management Audit Division requested a random sample of cases from the PDO/ADO, 50 from each, referred to the Department between March 26, 2019, and August 25, 2020.²⁷ Within this random sample of 100 cases, the Management Audit Division checked for the presence and completion of Financial Affidavit forms, which are supposed to be given to in-custody clients, and Financial Screening forms, meant for out-of-custody clients. The results of this review are provided in Figure 2.3 on page 45 on the following page. The Management Audit Division initially received financial screening forms for 12% of the sampled cases. The Department later found financial screening forms for an additional 22% of the sampled cases in the randomly sampled case file or within another case file for the same client (bringing the percentage of cases with financial screening forms to 34%). Overall, 40% of the sampled cases were

²⁷ The Department transitioned to the new case management system, JustWare, on March 26, 2019, so this date was chosen as the starting point to ensure consistency of the dataset.

identified as likely not requiring a financial screening form because the client secured private counsel.²⁸ The remaining 26% of sampled cases should have had a financial screening form present in the case file or a related case file, but the form could not be located.

Figure 2.3: Presence of Financial Screening Forms in Random Sample of 100 Cases

	PDO	ADO	% of Total (100 Case Sample)
Financial form readily available	11	1	12.00%
Financial form found by Department post-exit conference in sample case file	7	9	16.00%
Financial form found by Department post-exit conference in related case file	4	2	6.00%
Financial form unnecessary⁽¹⁾	21	19	40.00%
Subtotal financial form present or unnecessary	43	31	74.00%
Financial screening form absent	7	19	26.00%

Source: Review of randomly selected sample of 100 PDO/ADO cases by the Management Audit Division.

Note: (1) A financial form was unnecessary if the client had a juvenile case (14), the case settled at arraignment (12), the client failed to appear after release (2), the case was dismissed at arraignment (2), a conflict was declared (6), or the client secured private counsel (3). The Management Audit Division could not confirm if clients who secured private counsel did so at the outset of the case or later in the case. If the client secured private counsel later in the case they should have been financially screened.

Because the Management Audit Division does not know whether the intake interviews for these cases were conducted when the clients were in-custody or out-of-custody it is not possible to say which of these forms should have been found in each file. However, at least one of the screening forms should have been present. In some cases, where an initial interview was completed with an in-custody client and a second interview was done once the client was released from custody, two screening forms should have been present in the file. None of the 100 case records reviewed contained more than- one financial eligibility form; however, the sample did not include any clients who were in custody and released from custody during the progression of their case. Figure 2.3 above demonstrates that cases did not contain either a Financial Affidavit form or a Financial Screening form 26% of the time within the sample, indicating that clients are not screened for financial eligibility by the Department approximately 26% of the time when they should be screened.

²⁸ If the client secured private counsel later in the case, they should have been financially screened, but the Management Audit Division could not confirm whether the client secured private counsel at the outset of the case or later in the case.

Additionally, the Department had difficulty collecting all available financial screening forms from JustWare for the random case sample and later found 16 cases that had a financial screening form in the file not previously provided and an additional six cases had a related case with the same client with a financial screening form. The Department should be able to easily access and audit financial screening forms to ensure each client is screened. The Department should assign the Management Analyst Team to improve access in JustWare or any future case management system for financial screening forms across all cases for a single client. Clients should be rescreened if they return as a PDO client for a new case rather than a post-conviction case in the event their finances may have changed.

Consistently screening all in-custody and out-of-custody clients will ensure fairness and reduce the risk of bias, as opposed to selecting specific clients for eligibility screenings. In-custody clients should always be screened and flagged for re-screening when out-of-custody.

Tasks Assigned in JustWare Indicate Low Screening Levels

When the Management Audit Division reviewed the tasks assigned in JustWare we again found that most clients are not screened for financial eligibility. Cases referred to the PDO/ADO are opened in JustWare, and many tasks for those cases are assigned in that system. Based on data from the Department, only 31.57% of cases (10,450 out of 33,106) have a “financial screening” or “interview” task assigned to them of the cases referred to the PDO/ADO between April 2019 and June 2020. The “interview” task, however, represents the whole intake process, including financial screenings. Because the random sample case documents that we reviewed indicate that financial screenings are not conducted for 26% of clients who should be screened, 31.57% is likely the minimum rate at which financial screenings are conducted.

The paralegal tasks in JustWare also provide indirect data regarding the proportion of clients who are rejected as being financially ineligible, however, if the case was not yet opened in JustWare when the client was denied PDO/ADO representation they would not show up in this dataset. The Department does not track clients who were turned away at or prior to intake due to financial ineligibility, which is problematic because defendants may return later in their case progression and qualify for PDO/ADO defense after losing income.

Client Eligibility Standards

Currently the PDO uses two maximum monthly gross income thresholds for in-custody defendants to determine financial eligibility for services: \$3,000 for those charged with a misdemeanor and \$3,500 for those charged with a felony. However, these thresholds are inaccurate measures of financial eligibility for services.

Clients in-custody are supposed to be screened using the Financial Affidavit, but they automatically qualify for PDO representation so long as they do not have private counsel. Clients out-of-custody charged with a misdemeanor must make a gross monthly income of \$3,000 or less to qualify for services, whereas \$3,500 is the threshold for a client charged with a felony²⁹. This gross income threshold is \$6,838 to \$7,338 below the County's median monthly income (\$10,338).³⁰ Furthermore, this

²⁹ During the financial screening process, \$200 is deducted for every dependent the client has before evaluating their gross monthly income.

³⁰ United States Census Bureau, Santa Clara County, California, 2019.

threshold is less than the average fees for private counsel nationwide, which were estimated by the PDO as \$3,500 to \$4,500 to hire counsel and over \$10,000 if the case goes to trial. It is unrealistic to expect people making just above \$3,500 per month to be able to afford \$3,500 in attorney fees, especially considering the cost of living in Santa Clara County.

This income standard is not within County Ordinance or State Law, nor has it been formally adjusted for inflation, increases in the cost of living, or changes in median income in the County since before 2015. The Public Defender's Office reports that this income limit for client eligibility was last adjusted in 2015, but they could not provide an explanation, methodology, or other documentation for that adjustment. Staff reports the previous income threshold was set at \$2,500 to \$3,000, but the Department could not provide a rationale behind that limit either, only that it had been in place since before 2012. Beyond being financially unable to secure counsel, laws and ordinances do not guide a standard for what makes a client financially ineligible for public defense. It is unclear if the Superior Court is also using this income maximum standard as the Court did not provide any requested information about their screening standards and processes; instead, the Superior Court noted the PDO is solely responsible for financial screenings.

Living Wage in Santa Clara County

A living wage is calculated as the minimum income needed to cover living necessities (food, childcare, healthcare, housing, taxes, and transportation to work and school). The number of adults and children within a household affects the income needed to cover these necessary costs. As the PDO/ADO's purpose is to safeguard the individual rights of clients who are financially unable to employ counsel, the living wage should be the standard used to determine a client's ability to pay for private legal counsel.

As of the start of 2021, Santa Clara County's gross living wage according to the Massachusetts Institute of Technology Living Wage Calculator ranges from \$3,394 to \$14,524 monthly depending on the number of adults and dependents in the household (see Figure 2.4 on page 48). If two adults are working and have no dependents, the financial eligibility threshold for public defense services would be \$106 a month higher than the minimum gross livable income. In all other situations, however, clients making significantly less than the County's minimum livable income would still not qualify for public defense services based on the current financial eligibility thresholds.

For a single-adult household the financial eligibility threshold is \$1,203 to \$10,424 lower than the monthly minimum livable wage. For a household with two adults, only one of whom is working, the financial eligibility threshold is \$3,288 to \$6,028 below the monthly livable wage. If two adults are working to support dependents, then the threshold is again lower than the minimum monthly livable wage by \$1,091 to \$3,203 a month.

Figure 2.4: Livable Monthly Wage in Santa Clara County as of 2021, as Compared to PDO/ADO Thresholds for Financial Eligibility for Services

			PDO/ADO Financial Eligibility Standards			
	Household Dependents	Gross Livable Monthly Income, 2021 ⁽¹⁾	Maximum Monthly Income for Misdemeanor Eligibility ⁽²⁾	Difference from Gross Monthly Wage	Maximum Monthly Income for Felony Eligibility ⁽²⁾	Difference from Gross Monthly Wage
1 Adult	0	\$4,730	\$3,000	(\$1,730)	\$3,500	(\$1,230)
	1	\$9,034	\$3,200	(\$5,834)	\$3,700	(\$5,334)
	2	\$11,043	\$3,400	(\$7,643)	\$3,900	(\$7,143)
	3	\$14,524	\$3,600	(\$10,924)	\$4,100	(\$10,424)
2 Adults (1 Working)	0	\$6,788	\$3,000	(\$3,788)	\$3,500	(\$3,288)
	1	\$8,091	\$3,200	(\$4,891)	\$3,700	(\$4,391)
	2	\$8,781	\$3,400	(\$5,381)	\$3,900	(\$4,881)
	3	\$10,128	\$3,600	(\$6,528)	\$4,100	(\$6,028)
2 Adults (Both Working)	0	\$3,394	\$3,000	(\$394)	\$3,500	\$106
	1	\$4,791	\$3,200	(\$1,591)	\$3,700	(\$1,091)
	2	\$5,883	\$3,400	(\$2,483)	\$3,900	(\$1,983)
	3	\$7,303	\$3,600	(\$3,703)	\$4,100	(\$3,203)

Source: Living Wage Calculation for Santa Clara County, California, hosted by the Massachusetts Institute of Technology & Management Audit Division Analysis of PDO Financial Standards.

Notes:

- (1) This gross livable monthly income is based on the hourly rate that an individual in a household must earn to support themselves and their family. The assumption is that the provider(s) work(s) full-time (2,080 hours per year).
- (2) The Department credits \$200 a month towards the gross monthly household income per household dependent.

Risk of Denying Public Defender Services to People Earning Less Than Living Wage

The current income standards within the PDO/ADO are so low that an individual may be ineligible for Public Defender services, and still be unable to pay for private counsel without losing the ability to pay for basic living necessities for themselves and/or other members of their household. It is possible, based on the cost of living within the County, that people who could not afford to hire private counsel have been denied Public Defender services because they earned more than the current income threshold, assuming they received financial eligibility screening by the PDO. The PDO was unable to provide materials showing the tracking of outcomes for those who were turned away from services, or if individuals came back requesting legal defense later. Immediately updating the income threshold for financial eligibility, using a methodology that considers the livable County wage and household size, and reviewing the income threshold annually, will safeguard against this risk.

CONCLUSION

State law states that the Public Defender will provide services for any party they conclude does not have the ability to pay for private counsel, but such determinations can be overturned by the Court. The criteria to be used by each of these entities is not spelled out in State law though both are allowed to require defendants to provide financial statements.

The PDO at present is not formally screening defendants for their financial ability to retain private counsel. Of the case file records reviewed for this audit 26% did not contain a financial screening affidavit. While these defendants may be informally screened, it is not clear what criteria is being used or if different defendants face different standards based on which attorney or paralegal they are assigned.

Besides screening every client during intake to ensure they meet the minimum standards, the PDO should also increase the income eligibility limit to consider the minimum living wage in the County. Continuing to only screen clients when their eligibility for services is questionable brings potential bias into the equation.

If consistent screenings, with a proper threshold for eligibility, are implemented the risk of serving clients that are ineligible, or introducing selection bias of who is screened, will be mitigated. Furthermore, screening all clients could improve registration fee collections from clients once they are out of custody and able to pay the fee.

RECOMMENDATIONS

The Santa Clara County Public Defender Office should:

- 2.1 Update the income thresholds for financial eligibility screenings using a methodology that considers the livable wage in the County and the number of adults and children in the household. (Priority 2)
- 2.2 Review and update the income threshold for financial eligibility screenings annually at the start of each fiscal year. (Priority 2)
- 2.3 Add a date field to the Financial Affidavit Under Penalty of Perjury to Obtain Services of Public Defender form, so that financial screening forms for all in-custody and out-of-custody clients are dated and can be tied to the start or end of a case. (Priority 3)
- 2.4 Screen all clients during their intake interview for financial eligibility, with regularly produced reports, such as monthly, provided to management on compliance with this requirement. (Priority 1)
- 2.5 Assign the Management Analyst Team to improve access in JustWare or any future case management system for financial screening forms across all cases for a single client with the goal of creating reports to audit financial screening performance for clients who should be financially screened. (Priority 2)

SAVINGS, BENEFITS, AND COSTS

The County has an incentive to ensure clients are eligible for PDO services. When they are not, the PDO can notify the Superior Court to consider the appointment of different counsel. Screening every client during intake will minimally add to paralegal workload, because paralegals are already conducting the intake interviews (see Section 1 Tracking Staff Workload). From 2015 to 2020 there were 4,424 cases which were closed because clients secured private counsel, meaning they were financially able to hire an attorney for their defense. If each of those cases had identified the client's ability to pay at intake PDO staff would have had more capacity to assign staff to other cases (see Section 1 Tracking Staff Workload). Furthermore, adding a date field to the in-custody financial screening form will help ensure financial screenings are done with intake interviews, at the outset of a case.

Increasing the income eligibility standard will likely have little effect on the number of cases assigned to the PDO by the Superior Court because the Department is not currently conducting financial screenings of all clients nor turning many down for income in excess of the maximum threshold. Furthermore, the Superior Court can continue to assign the PDO as counsel even if the client is financially able to secure private counsel. Determining financial eligibility though may enable the PDO to potentially recover more of their costs at the close of a case.

Section 3: Pre-Arrest Representation and Review Services

Background

“Pretrial” is the time between arrest and when charges are resolved, through dismissal, plea, or trial. In California, most jail inmates are pretrial, and the State legislature and judiciary are pushing to eliminate bail and reduce the incarcerated population. The Public Policy Institute of California has shown: 1) pre-trial detention harms defendants and their families socially/economically; 2) wealth disparities affect pre-arrest representation access; and 3) racial disparities are present in pre-trial releases. In May 2019, the Santa Clara County Board of Supervisors approved the creation of a Pre-Arrest Representation and Review Team (PARR Team or “the Team”) to provide pre-arrest legal counsel, representation, and release advocacy to defendants, and increase Public Defender Office (PDO), District Attorney Office, and Pre-Trial Services collaboration. The Team has demonstrated early success, facilitating a joint effort at the start of the COVID pandemic to reduce the jail population by about a third (roughly 3,250 to 2,100 inmates).

Problem, Cause, and Adverse Effect

Positive impacts of pre-arrest services are still unavailable to most defendants. The PARR Team consists of one FTE attorney, investigator, paralegal, and social worker. Limited capacity means the Team contacts in-custody defendants booked on a rotating weekday (i.e. 14.28% of in-custody defendants) for pre-arrest counsel. The remaining defendants have no access to pre-arrest counsel. At arraignment their attorneys are unfamiliar with clients’ family, work, and community connections, which can be critical as judges assess the risk of release versus detaining defendants for the duration of legal proceedings. Defendants with private counsel receive advocacy for release before arraignment. Release means defendants can keep jobs, care for family, partake in community, etc.

Recommendations

The PDO should review attorney, paralegal, and investigator workloads and either shift one FTE paralegal and investigator and two FTE attorneys to the Team, or, if not feasible, request the BOS to allocate up to one FTE paralegal and investigator and two FTE attorneys to the Team. The Department should also request that the BOS allocate one FTE social worker to the Team. The PDO should monitor the ongoing J-PAL and California Policy Lab evaluations of the PARR Team and report the results to the BOS. Upon receiving workload updates from the PDO, and a request for additional Team staff, the BOS should allocate additional staff to the Team as requested to increase pre-trial representation and advocacy.

Savings, Benefits, and Costs

Expanding access to PARR services would help to mitigate incarceration racial disparities, wealth disparities, and social and economic harms of pre-trial detention, while aligning with the State legislative and judicial context. It will also reduce the County’s Jail population. Pre-trial release for an average 250 defendants a month, would yield an annual cost avoidance of \$26,670 for each day ‘early’ defendants were released. The cost of new proposed Team positions would be \$174,886 to \$896,950 annually, depending on if the PDO can shift positions from current teams. Increasing the Team capacity might result in net zero-cost, or even net County savings depending on the pre-trial release count and the days of incarceration ‘cut’. Annually releasing 10% of defendants booked, and reducing incarceration by 30 days or more, would yield cost avoidance of at least \$1,146,863 a year (\$249,913 greater than the high-end cost estimate of expanding the Team (\$896,950 a year)). Positive impacts on defendants’ lives and their families would be immeasurable.

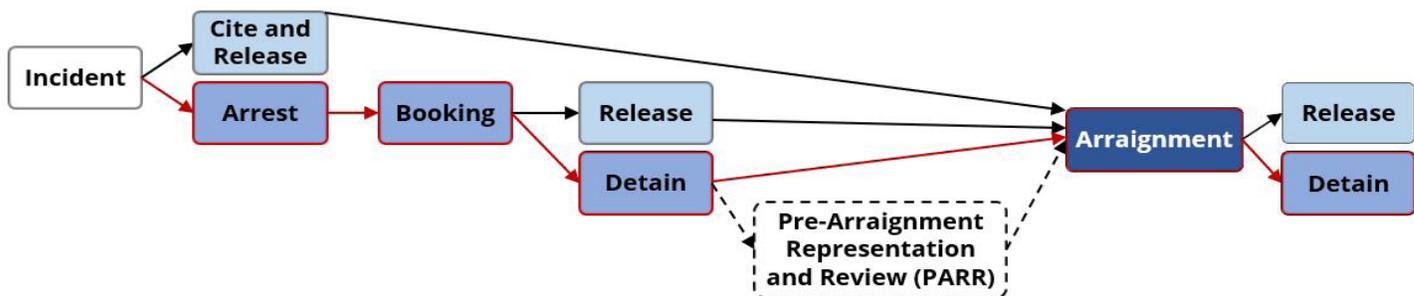
FINDING

Background

Pretrial Detention Prevalence and Impacts

The time between arrest and when charges are resolved, either through dismissal, plea, or trial, is referred to as “pretrial”. During this period, law enforcement officers and judges have a few opportunities to make decisions to release or detain defendants. The process defendants face, and the main opportunities for release up to arraignment, are shown in Figure 3.1 below.

Figure 3.1: Defendant Paths - Incident to Arraignment



Source: Created by the Management Audit Division.

Note: The red line indicates the most common path for defendants in California. The dotted line indicates the path available to those defendants contacted by the PDO's PARR Team.

- *After the Incident* – (arresting) officers decide whether to cite and release people or to take them into custody to be booked.
- *Booking* – booking officers can choose to release people after they are booked or admit them to jail.
- *Arraignment* – judges decide whether to release or detain people prior to and at arraignment, generally relying on bail as a means of ensuring that released defendants will appear at their court proceedings.

In California, pretrial detention is so common that most jail inmates are pretrial detainees. The Public Policy Institute of California found that only about half of defendants accused of a misdemeanor and one-third accused of a felony are released within a few days of arrest.³¹ Even two or three days in pretrial detention can have harmful effects on defendants, their families, and the outcomes of the defendants' cases. Comparing outcomes for people who were released in a day to those released in two to three days, research has found that those held for two to three days were 1.09 times more likely to fail to appear in court and 1.26 times more likely to be rearrested for any crime.³² Strikingly, for individuals assessed as low or medium risk, the number of days spent in detention was the primary statistically significant factor for rearrest or failing to appear in court across all races, genders, and offense types,

31 Harris, Heather and Lofstrom, Magnus. 2020. *Reforming Pretrial Justice in California*. Public Policy Institute of California. Retrieved April 12, 2021, from <https://www.ppic.org/wp-content/uploads/reforming-pretrial-justice-in-california-august-2020.pdf>.

32 Lowenkamp, Christopher T., Marie VanNostrand, and Alexander Holsinger. 2013. *The Hidden Costs of Pretrial Detention*. The Laura and John Arnold Foundation.

though the magnitude of the impact does differ between subgroups. Another area of substantial racial disparity are the defendants who are successful in securing pretrial release versus those who are detained. The Public Policy Institute of California reviewed 12 representative California counties between October 2011 and October 2015. Of the defendants who were booked into jail during that time, 55% of Asian Americans and 49% of whites were released pre-trial, as opposed to only 38% of Latinos and 34% of African Americans.³³ Consequently, researchers concluded that pretrial services “if properly implemented and embraced by the courts, probation, and the jails, could address jail overcrowding and improve the efficiency, equitability, and transparency of pretrial release decision making”.³⁴

New Pre-Arrest Representation and Review Team

On May 21, 2019, the Board of Supervisors approved the establishment of a Pre-Arrest Representation and Review Team (PARR Team or “the Team”) after receiving a report from the Public Defender Office (PDO).

The PDO PARR Team is designed to provide legal counsel, representation, and release advocacy to defendants at and before their first court appearance (arrest). It is also meant to increase communication, trust, and collaboration between the Public Defender Office, District Attorney Office, and Pre-Trial Services relating to pre-trial release decisions and criminal charging decisions. To this end one FTE District Attorney lawyer and one Pre-Trial Services officer were approved in addition to the PDO PARR Team staff as a part of this program. The PARR Team was modeled after the Pretrial Release Unit (PRU) in the San Francisco Public Defender’s Office, and it is the first time this service is being provided in the County. The objectives of the PARR Team are to:

- reduce wealth disparities in access to pre-arrest representation;
- reduce the jail population by diverting eligible defendants to alternatives to jail;
- respond positively to legislative and judicial changes that are moving the State away from a cash bail system;
- at the outset of litigation address the root causes of crime in an expeditious, innovative, and intelligent way;
- reduce the social and economic costs to individuals who would have otherwise been detained during the pretrial stages of the case.³⁵

The PDO PARR Team contacts defendants in custody during the time between booking and arrest (see Figure 3.1 on page 52). The Team can begin investigating the case and contacting character witnesses so more information can be provided at arrest and judges have as much context and client information as possible when they decide whether to release a defendant pending trial. Without the work of the PARR Team, PDO attorneys would not have information to present to the court about their client, thus reducing their chances of being released at arrest for the duration of their legal proceedings. Per the California Penal Code, pretrial release decisions should be based primarily on whether the defendant poses a threat

33 Tafoya, Sonya, Mia Bird, Viet Nguyen, and Ryken Grattet. 2017. *Pretrial Release in California*. Public Policy Institute of California.

34 Tafoya, Sonya. 2015. *Pretrial Detention and Jail Capacity in California*. Public Policy Institute of California. Retrieved April 12, 2021, from https://www.ppic.org/content/pubs/report/R_715STR.pdf.

35 Board of Supervisors Agenda Packet, May 21, 2019. Molly O’Neal (Public Defender). Retrieved June 23, 2021, from <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=10522&Inline=True>.

to public safety, and secondarily on whether the defendant will return to appear for their trial in court.³⁶ These decisions must be made within minutes, so the work done by the PARR Team in the time between booking and arraignment is instrumental in allowing a judge to assess the risk a defendant poses to the community. Under regular circumstances, PDO case attorneys are not assigned until arraignment and therefore do not come to court prepared to argue for the release of their clients (see Introduction, starting on page 9, for full case diagram).

Limited Capacity of the PARR Team

As originally adopted by the Board of Superiors, the PARR Team in the PDO consists of one FTE attorney, investigator, paralegal, and social worker. The PDO had added one additional attorney through a Burns Institute fellowship for two years, June 2019 to June 2021, but now is back to just one attorney. The social worker position is vacant as of the writing of this report. Given its small size, the Team does not have the capacity to contact every in-custody defendant pre-arrest, and instead contacts in-custody defendants who are booked into custody on a rotating day of the week (e.g. the Team will contact defendants booked on the Tuesday of a week, and then the following week it will contact those booked on Wednesday). Using this model, the Team is only able to provide pre-arrest services to one seventh, or 14.28%, of individuals who are in-custody awaiting arraignment. This was the Team's practice for the first few months, until March 2020 when COVID-19, the shelter-in-place order, and the near shutdown of the criminal justice system interrupted the Team's new systems.

Signs of Success Despite Limited Staff and a Pandemic

With the onset of the COVID-19 pandemic, the PARR Team pivoted and used its established relationships with the District Attorney Office and Pre-Trial Services to advocate for pre-trial release of certain defendants, in-line with health and safety recommendations to reduce the jail populations. From March 16 to May 31, 2020, the PARR Team facilitated work with its County department partners to reduce the County's jail population by roughly 35.38% (from approximately 3,250 inmates to 2,100 inmates).³⁷ This jail reduction was an unprecedented joint effort across a number of County agencies, including the Public Defender Office, District Attorney Office, Pre-Trial Services, County Counsel, and Custody Health. Despite the pandemic and its small staff size, the PARR Team has been successful in its objectives of not only developing relationships between the Public Defender Office, District Attorney Office, and Pre-Trial Services, but in collaborating on pre-trial release decisions that have resulted in a reduction of the jail population. This in-turn reduced social and economic costs and serious health risks to individuals who would have otherwise been detained during the pretrial stages of their case. In the context of the pandemic, those costs would have been far greater. The Team was also successful in its objective to reduce the wealth disparity in access to pre-arrest representation.

³⁶ Penal Code § 1270a. Retrieved June 24, 2021, from https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1270.&lawCode=PEN.

³⁷ Re-Entry Network Meeting. "Covid-19 Jail Reduction— Facilitated by PARR". Joint PDO and DAO presentation. June 9, 2020.

Cash Bail Reform and Support in Santa Clara County

The PARR Team program is part of a broader effort to reform cash bail in the State. The 2018 *In re Humphrey* decision, an appellate case in San Francisco, directly addressed the issue of bail setting in California.³⁸ The decision required State judges to undertake *individualized considerations* regarding (1) defendants' ability to pay bail, and (2) whether there exist less restrictive alternatives to jail that protect public safety and insure the defendant's return to court. More recently, on March 25, 2021, the California Supreme Court affirmed the appellate court's decision. This essentially requires that, statewide, indigent defendants be released pre-trial unless they are a flight risk or pose a threat to public safety and those concerns cannot be mitigated by less restrictive nonfinancial conditions of release.³⁹ This ruling reinforces the need for pre-arrest work as decisions regarding potential release of indigent defendants should be based on the *Humphrey* factors:

1. the client's financial status, which the PDO establishes through financial screenings (see Section 2, starting on page 41); and
2. the risk of flight or danger to the public, which can be informed by community ties and support, employment, other relevant life circumstances, and practical solutions regarding release plans and monitoring.

Defendants have a right to submit such information through an attorney,⁴⁰ and attorneys' access to defendants in advance of the pretrial release/detention decisions allow attorneys to do so most effectively for their clients.

In 2018, the California Legislature approved Senate Bill 10 which would have ended cash bail in the State and replaced it with a risk assessment model for pretrial detention. The Senate Bill stemmed from concerns over longstanding economic and racial inequities in detention rates as well as the high pretrial detention levels in the State. The Bill was put on hold for voter approval via Proposition 25, which would have upheld Senate Bill 10. Proposition 25 was rejected statewide by 12.82% in November 2020.⁴¹ In Santa Clara County, however, voters expressed support for Proposition 25, passing it by 5.16%.⁴²

As of June 25, 2021, there were two Bills moving through State Senate committees, Senate Bill 262 and Assembly Bill 329, which would set bail at \$0 for misdemeanors and "low-level felonies," and would require bail money to be refunded if the defendant attends all case court appearances, charges are dropped, or the case is dismissed.⁴³

38 *In Re: Kenneth Humphrey, on Habeas Corpus*, 19 Cal. App. 5th 1006, 228 Cal. Rptr. 3d 513, 2018 Cal. App. Lexis 64 A152056. Retrieved June 24, 2021, from <https://law.justia.com/cases/california/court-of-appeal/2018/a152056.html>.

39 Associate Press. (2021, March 25). California Supreme Court Ends Cash Bail for Some Defendants Who Can't Afford it. KTLA.

40 Penal Code 1269c.

41 43.59%, "Yes"; 56.41%, "No".

42 52.58%, "Yes"; 47.42%, "No". Santa Clara County Registrar of Voters. "November 3, 2020 Presidential General Election Results – State Propositions." Retrieved April 12, 2021, from https://results.enr.clarityelections.com/CA/Santa_Clara/106043/web.264614/#/summary?category=C_7.

43 Dinzeo, Maria. (2021, March 23). Bills to Set Bail at \$0 in California Pass Initial Hurdles. Courthouse News Service.

COVID-19 and Cash Bail

Within Santa Clara County, the Superior Court extended an emergency \$0 bail schedule on June 23, 2021 in a continued effort to ensure the health and safety of everyone working and incarcerated in the County jails.⁴⁴ This extended the \$0 bail to all misdemeanor and low-level felony offenses, except for offenses that include serious and violent crimes. This is the fourth time the County Superior Court has extended the \$0 bail schedule since the State shifted this discretion to counties after its statewide \$0 bail order at the start of the pandemic.

Argument to Expand the PARR Team

Given the known extensive social and economic harms of pre-trial detention, the wealth disparities affecting access to pre-arrest representation, and the racial disparities of pre-trial release, expanding the availability of pre-trial services would directly benefit defendants. It would also help the PDO further its mission of providing “representation to vulnerable populations with sensitivity to issues of sociology, economics and ethnicity and distribute its resources equitably”.⁴⁵ Furthermore, expanding these services would be in-line with the legislative and judicial context which is pushing to eliminate bail and to reduce the incarcerated population within the State. The PARR Team has already shown signs of success, even during a pandemic. Building on the collaboration with the District Attorney Office and Pre-Trial Services, the PARR Team could continue to reduce the County’s Jail population, avoiding County costs. The Management Audit of the County of Santa Clara Sheriff’s Custody Operations calculated that each inmate costs the County \$3,245 a year, or \$8.89 per person per day.⁴⁶

Adding two FTE attorney positions, and one FTE investigator, paralegal, and social worker to the PARR Team

One of the attorney positions recommended would replace the Burns Institute fellowship attorney, who is no longer with the PARR Team. These additions will help the PARR Team expand its pre-trial services to more in-custody defendants. After assessing current attorney workloads (see Section 1, starting on page 21 for further discussion) the PDO should consider either shifting staff from its other teams, or requesting that the Board of Supervisors allocate these additional positions for the PDO’s PARR Team.

44 Salonga, Robert. (2021, June 23). Santa Clara County Courts Extend \$0 Bail Order Until 2022. Bay Area News Group.

45 Board of Supervisors Agenda Packet, May 21, 2019. Molly O’Neal (Public Defender). Retrieved June 23, 2021, from <http://sccgov.ig2.com/Citizens/FileOpen.aspx?Type=1&ID=10522&Inline=True>.

46 Management Audit of the County of Santa Clara Sheriff’s Custody Operations. 2021, February 22. Retrieved April 28, 2021, from <https://www.sccgov.org/sites/bos/Management%20Audit/Documents/mngmnt-aud-shrffs-cust-oper-bureau-2-22-21.pdf>.

Studies Underway of the Santa Clara County PARR Program

There are two studies of Santa Clara County's Pre-Arrest and Review program that are already underway:

- Abdul Latif Jameel Poverty Action Lab (J-PAL), MIT: "Santa Clara Pre-Arrest Representation and Review (PARR) Evaluation"⁴⁷
- California Policy Lab: "Evaluating Santa Clara's Pre-Arrest Representation & Review (PARR) Team".⁴⁸

It will be useful for the PDO to monitor these studies and to report the results to the Board of Supervisors to help the program continue to develop most effectively.

CONCLUSION

Given the known extensive social and economic harms of pre-trial detention, the wealth disparities affecting access to pre-arrest representation, and the racial disparities of pre-trial release, expanding the availability of pre-arrest services would directly benefit defendants. It would also help the PDO further its mission of providing "representation to vulnerable populations with sensitivity to issues of sociology, economics and ethnicity and distribute its resources equitably".⁴⁹ Furthermore, expanding these services would be in-line with the legislative and judicial context which is pushing to eliminate bail and to reduce the incarcerated population within the State. The PARR Team has already shown signs of success, even during a pandemic. Despite its limited size, the PDO PARR Team has been effectively providing much-needed pre-trial services to defendants. These services stand to positively affect the economic and social harms suffered by defendants who are held in pre-trial custody. By expanding this Team, and building on their collaborations with the District Attorney Office and Pre-Trial Services, the PARR Team could increase the availability of these services to defendants and continue to reduce the County's Jail population.

47 Abdul Latif Jameel Poverty Action Lab (J-PAL), MIT: "Santa Clara Pre-Arrest Representation and Review (PARR) Evaluation". Retrieved June 23, 2021, from <https://www.povertyactionlab.org/initiative-project/santa-clara-pre-arrest-representation-and-review-parr-evaluation>.

48 California Policy Lab: "Evaluating Santa Clara's Pre-Arrest Representation & Review (PARR) Team". Retrieved June 23, 2021, from <https://www.capolicylab.org/topics/criminal-justice/pre-arrest-representation-and-review-parr-in-santa-clara-county/>.

49 Board of Supervisors Agenda Packet, May 21, 2019. Molly O'Neal (Public Defender). Retrieved June 23, 2021, from <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=10522&Inline=True>.

RECOMMENDATIONS

The Santa Clara County Public Defender Office should:

- 3.1 Review the workload of attorneys, paralegals, and investigators and, depending on the results, either shift one FTE paralegal and investigator and two FTE attorneys to the PARR Team, or request that the Board of Supervisors allocate one FTE paralegal and investigator and two FTE attorneys to the PARR Team. (Priority 1)
- 3.2 Request that the Board of Supervisors allocate one FTE social worker to the PARR Team. (Priority 1)
- 3.3 Monitor the ongoing J-PAL and California Policy Lab evaluations of the PARR Team and report the results to the Board of Supervisors to support the continued development of this pre-trial program if the results show continued program success. (Priority 2)

The Santa Clara County Board of Supervisors should:

- 3.4 Upon receiving a workload update from the Public Defender Office for attorneys, paralegals, and investigators, and a request for additional PARR Team staff, allocate up to one FTE paralegal, investigator, and social worker and two FTE attorneys to the PDO PARR Team to increase pre-trial representation and advocacy. (Priority 1)

SAVINGS, BENEFITS, AND COSTS

Expanding the availability of pre-arrest services would directly benefit defendants by helping to mitigate the social and economic harms of pre-trial detention, the wealth disparities affecting access to pre-arrest representation, and the racial disparities of pre-trial release. Furthermore, this action would be in-line with the State legislative and judicial context which is pushing to eliminate bail and to reduce the incarcerated population within the State.

Increasing the availability of pre-arrest representation and release practices for defendants could also continue to reduce the County's Jail population. The Management Audit of the County of Santa Clara Sheriff's Custody Operations calculated that each inmate costs the County \$3,245 a year, or \$8.89 per person per day.⁵⁰ The County could therefore avoid costs as it enhances these practices and reduces the number of people incarcerated and the length of their incarceration. According to a March 2018 report on the Santa Clara County Jail System by GAR, Inc. Criminal Consulting, roughly 43,000 people were being booked annually into Santa Clara County jail as of 2018.⁵¹ Figure 3.2 on page 59 illustrates the annual cost avoidance if an average of 179 to 717 people a month (5% to 20% of monthly bookings in 2018) were released pre-trial. The grey shading indicates an annual cost avoidance which would not meet the maximum cost estimate for the new PARR Team positions. No shading indicates that the cost avoidance would exceed the costs of the recommended additional PARR Team staff. As can be seen, releasing 10% or more

50 Management Audit of the County of Santa Clara Sheriff's Custody Operations. 2021, February 22. Retrieved April 28, 2021, from <https://www.sccgov.org/sites/bos/Management%20Audit/Documents/mngmnt-aud-shrffs-cust-oper-bureau-2-22-21.pdf>.

51 The Santa Clara County Jail System: History and Status of the Sheriff's Reforms. March 2018. GAR, Inc. Criminal Justice Consulting. Retrieved July 9, 2021, from <https://countysheriff.sccgov.org/sites/g/files/exjcpb406/files/GAR%20SCCS%20Report.pdf>.

of incarcerated defendants and shortening their days of incarceration by 30 days or more would exceed the estimated potential maximum costs of expanding the program of \$896,850 annually by \$250,013 (\$1,146,863 - \$896,850). To the extent a higher percentage of defendants are released per month and/or the number of days of incarceration avoided for them increases, the cost avoidance for the County would be even more.

Figure 3.2: Annual Cost Avoidance Based on the Average Number of Defendants Released Early per Month and the Number of Days By Which Their Incarceration Was Shortened⁽¹⁾

Average Days Incarceration Shortened	Average Defendants Released a Month			
	179 (5% of People Booked)	358 (10% of People Booked)	538 (15% of People Booked)	717 (20% of People Booked)
30	\$573,432	\$1,146,863	\$1,720,295	\$2,293,726
60	\$1,146,863	\$2,293,726	\$3,440,589	\$4,587,452
90	\$1,720,295	\$3,440,589	\$5,160,884	\$6,881,178
120	\$2,293,726	\$4,587,452	\$6,881,178	\$9,174,904
150	\$2,867,158	\$5,734,315	\$8,601,473	\$11,468,630
180	\$3,440,589	\$6,881,178	\$10,321,767	\$13,762,356
210	\$4,014,021	\$8,028,041	\$12,042,062	\$16,056,082
240	\$4,587,452	\$9,174,904	\$13,762,356	\$18,349,808

Source: Management Audit Division calculation based on the daily County cost of an inmate, according to the 2021 Management Audit of the County of Santa Clara Sheriff's Custody Operations and the average length of stay of an unsentenced inmate according to the Office of the Sheriff Department of Correction's Daily Jail Population Statistics, July 7, 2021.

Note: (1) The cost avoidance calculation is based on an average inmate cost of \$8.89 per person per day. The grey shading indicates an annual cost avoidance below the maximum cost estimate for the new PARR Team positions (\$896,950).

The "average length of stay" of an unsentenced inmate is 239 days, according to the Office of the Sheriff Department of Correction's Daily Jail Population Statistics, July 7, 2021. With this in mind, pre-trial release would likely shorten incarceration by a much greater average than 30 days. Consequently, the pre-trial release cost avoidance would likely be greater than the maximum cost of new PARR Team staff, even if only 179 people (5% of 2018 monthly bookings) were released because of increased pre-arrest services. The cost of adding the new proposed positions to the PARR Team will be between \$174,886 and \$896,950 annually depending on how many positions the Department can shift from current teams after assessing staff workloads (see Figure 3.3 on page 60). For example, although the Department has only gained 3 FTE attorney positions from January 2016 to April 2021 (going from 130 attorneys to 133), the number of case referrals to both the PDO and ADO has been decreasing (see Introduction, starting on page 9, for monthly case referrals FY 2016–2020), which indicates a potential capacity to shift attorney positions to the PARR Team.

Figure 3.3: Cost of New Classifications for the PARR Team

Classification	Minimum New FTEs	Maximum New FTEs	Cost per FTE	Minimum Total Cost	Maximum Total Cost
Attorney I	0	2	\$199,700	\$-	\$399,400
Paralegal	0	1	\$136,135	\$-	\$136,135
Investigator I	0	1	\$186,529	\$-	\$186,529
Social Worker III	1	1	\$174,886	\$174,886	\$174,886
Total Cost Range:				\$174,886	\$896,950

Source: Position Detail Report provided by the Employee Services Agency.

It is possible that by increasing the capacity of the PARR Team the cost savings effects of pre-trial release will result in a net zero-cost, or even net savings, to the County, depending on the number of defendants who are granted pre-trial release and the extent to which their incarceration was shortened. Minimally though, the cost to the County will be less than the cost of the proposed classifications, because of the pre-release savings. The positive impact on the lives of defendants and their families will be immeasurable.

Section 4: Automated Receipt of Case Management Data

Background

When a case is referred to the Public Defender Office, which includes the Alternate Defender Office, (PDO, ADO, “the Department”) by the Santa Clara County Superior Court, a legal clerk must open a case in the Department’s Case Management System (JustWare). This two-part process involves 1) completing a tab with the client’s personal and demographic attributes and 2) creating a case record with a docket number (the official case identification number assigned by the court), charges, and other case information. Certain JustWare fields pertaining to court dates and events auto-populate through a data feed from the County’s automated criminal justice information control system (CIJC). Once the electronic case file has been created, assigned attorneys and other staff can add documents, tasks, and reminders, as well as assign investigators and other team members.

Problem, Cause, and Adverse Effect

Although a portion of case fields auto-populate through CIJC, the majority of client and case attributes, such as arrest and filing dates, sentencing outcomes, and custody and bail status, must be entered manually into JustWare by the Department’s legal clerks and other staff, despite this information also being held in CJIC. To compare, Stanislaus and Ventura counties have case management systems that auto-populate with at least a subset of this data from their countywide criminal justice systems. PDO management estimated that it takes approximately 15–30 minutes to create a new case file with this manual entry process, while 8 of 17 surveyed legal clerks from the Department (47.06%) reported this process taking 30–60 minutes. These estimates translate to 8,444–16,888 staff hours spent opening the 25,718 cases referred during Fiscal Year 2019–20, or approximately 5–10 full-time equivalent (FTE) staff in the PDO (which has 24 legal clerks total), plus roughly 0.5 FTE in the ADO (which has two legal clerks total). The additional time spent on manual entry may contribute to a case-opening backlog, which negatively affected case work, according to reports from PDO and ADO staff.

Recommendations

The Department should work with the County’s Technology Services and Solutions Department (TSS), Superior Court information technology (IT) staff, and the District Attorney’s Office—which has management control over CJIC—to propose a data feed that auto-populates client and case information fields within JustWare. To note, the County’s Public Safety & Justice Systems Program has proposed a project to decommission CJIC, and JustWare’s parent company has introduced a new product that may potentially replace JustWare in the future. As such, PDO, Court IT, and TSS should monitor the compatibility of any newly proposed systems and ensure that this degree of interfacing is maintained with any replacements. The Department should request a new Application Developer position to build its technical capacity for these efforts.

Savings, Benefits, and Costs

The new IT position will cost approximately \$221,000 annually. Meanwhile, the Department estimated that automating the completion of case and client fields would cut down creation of new case files to 5–15 minutes. This represents a time savings of 4,958–13,401 hours annually, or approximately 3–8 FTEs (\$342,177–\$912,472 in annual avoided personnel costs based on auditor’s estimated average compensation of \$114,00 for each legal clerk), for a net benefit of \$121,177–\$691,472 annually.

FINDING

Case Openings Within the Case Management System, JustWare

When a case is referred by the Santa Clara County Superior Court to the Public Defender Office, which includes the Alternate Defender (PDO, ADO, “the Department”), a legal clerk must open a case in the Department’s case management system (JustWare). The first step in this process is to search for an existing name record of the client. PDO and ADO legal clerks conduct a search within JustWare to verify that the client and/or case is not already registered within the system. If neither exists, legal clerks create a new name record by completing multiple tabs with the client’s personal attributes and client’s contact information. There are multiple fields for each tab, which can make this a lengthy process depending on the amount of information available at the time the file is opened (e.g., the personal attribute tab alone has 23 different fields regarding citizenship and immigration status, ethnicity, gender, gang affiliations, interpreter needs, etc.).⁵² While certain personal attributes may be added as they are discovered by Department staff, gender and ethnicity are required fields for all clients on a case record, even if the information entered in the field is “no data” when these required data elements are not provided upon case opening.

The second step of opening a case within JustWare is to generate a new case record by entering the case type, status and associated date, and referral date. To this record, legal clerks manually add case information such as the case docket number (i.e., the official case identification number assigned by the court), involved police agency, charges, witnesses, and assigned attorney. Once a case record is saved, JustWare links the name and case records and attorneys and other staff assigned to the case can add documents, tasks, reminders, and other team members to the case.

Manual Versus Automated JustWare Fields During Case Opening

During case opening, several fields pertaining to upcoming court dates and court events (e.g., hearing date, time, location, etc.) auto-populate in JustWare through a data feed from the County’s automated criminal justice information control system (CJIC), which is governed by the District Attorney’s Office (DA)—the agency with management control over this system. For all other fields, Department legal clerks use a combination of pretrial reports, police reports, complaints, and initial attorney notes to manually enter information pertaining to a case.

However, many of the manually entered client and case attributes are also available in CJIC. The system itself contains information, and PDO staff reported that CJIC operators also manually enter data into CJIC from Odyssey, the Court’s data system. Data points within CJIC include, but are not limited to, the following:

- Demographic characteristics
- Arrest and filing dates
- Charge disposition
- Sentencing outcomes
- Probation information
- Custody and bail status.

⁵² Only a subset of this information is completed for most clients.

See Attachment K on page 207 for a full list of the CJIC fields legal clerks manually retype in JustWare. The PDO and ADO already have access to all these data elements in CJIC, and staff may look up this information at any time within this system. As such, the issue is not a matter of restricted and unrestricted CJIC data, but more so that some fields do not populate automatically into JustWare from CJIC.

Rather than logging into CJIC to research and enter information that does not auto-populate within JustWare (which the Department reported would prolong case opening; can be error-prone; and may contain outdated information), legal clerks rely on preliminary discovery materials provided by the District Attorney's Office to finish opening a new case. When transferring initial discovery materials to JustWare—a necessary step in the Department's case workflow—legal clerks use information contained within initial complaints, police reports, and criminal history sheets to manually complete the JustWare fields described above.

Although preliminary discovery documents are an accessible source of case opening information, manual entry of this information still yields inefficiencies. PDO management estimated that it takes approximately 15–30 minutes to create a new case file with the existing level of manual entry, while 8 of 17 surveyed legal clerks from the Department (47%) reported this process taking 30–60 minutes.

Between the PDO and ADO, which respectively have a total of 24 and two legal clerks total, these estimates translate to a total of 8,444–16,888 staff hours spent on opening the 25,718 cases (24,637 PDO cases and 1,081 ADO cases) during Fiscal Year 2019–20, to approximately 5–10 full-time equivalent (FTEs) staff in the PDO and in addition to roughly 0.5 FTE in the ADO. Because the PDO and ADO are staffed separately, and cases are kept completely separate to avoid conflict of interest, this time is being calculated separately for the two offices within the Department (see Introduction, starting on page 9, for further staffing discussion). See Figure 4.1 on page 64 for a full breakdown of hours and FTE equivalent.

Figure 4.1: Estimated Time to Open Cases Manually in JustWare, FY 2019–20⁽¹⁾

	Hours to Open PDO Cases	PDO FTEs	Hours to Open ADO Cases	ADO FTEs
Minimum⁽²⁾	7,916	4.8 FTEs	528	0.32 FTEs
Maximum⁽³⁾	15,833	9.5 FTEs	1,055	0.63 FTEs

Source: Management Audit Division Analysis of PDO and ADO Caseload Data.

Notes:

- (1) This chart represents a rough time cost estimate based solely on caseload. Actual hours may deviate based on case type, as felonies and misdemeanors are not evenly distributed between the PDO and ADO, and the Department reported that case openings for felonies represent a larger time commitment. However, while the ADO's caseload has a higher share of felonies, PDO's overall caseload is much larger, which may translate to a significant number of felony cases despite the comparatively lower prevalence of this case type within the PDO. Given these factors impeding our ability to accurately weight time costs by office, the Management Audit Division relied on raw case counts.
- (2) Minimum was calculated based on an estimated 15 minutes to open a misdemeanor case and 30 minutes to open a felony case, multiplied by the number of each case type. For the ADO, there were 48 confirmed misdemeanors and 952 confirmed felonies, based on case type. Meanwhile, 81 cases had a case type that could be either be misdemeanor or felony. For the PDO, there were 14,935 confirmed misdemeanors, 474 confirmed civil cases, and 6,126 confirmed felonies, based on case type. Meanwhile, 3,102 cases had a case type that could be either.
- (3) Maximum was calculated based on an estimated 30 minutes to open a misdemeanor case and 60 minutes to open a felony case, multiplied by the number of each case type.

The Department has estimated that automating the completion of the 36 case and client fields from CJIC to JustWare would decrease the time it takes to open new case files to 5–15 minutes. This would represent a total time savings of 4,958–13,401 hours annually for the Department, or approximately 3–8 FTEs across both offices (which has 26 legal clerks total) (see Figure 4.2 below). These time savings translate to staff costs of about \$342,177–\$912,472, annually.

Figure 4.2: Estimated Time to Open Cases with New Auto-Population in JustWare and Time and Legal Clerk FTEs Saved, FY 2019–20

	Hours to Open PDO Cases	PDO FTEs	Associated Personnel Costs ⁽²⁾	Hours to Open ADO Cases	ADO FTEs	Associated Personnel Costs
With Auto-Populating Fields⁽¹⁾	3,224	1.9 FTEs	\$216,712	262	0.16 FTEs	\$18,249
Minimum Saved	4,692	2.8 FTEs	\$319,365	266	0.16 FTEs	\$18,249
Maximum Saved	12,608	7.6 FTEs	\$866,848	793	0.48 FTEs	\$54,748

Source: Management Audit Division Analysis of PDO and ADO Caseload Data.

Notes:

- (1) New estimated time to open cases with auto-populating fields in JustWare were calculated based on Department estimates of 5–15 minutes to open a case. The Management Audit Division applied the 5-minute minimum to all misdemeanor cases and 15-minute maximum to all felony cases.
- (2) Based on an estimated total legal clerk annual compensation of \$114,059.

To note, these estimates have several limitations. For instance, the Department reported that witness information must be entered manually regardless of improved interfacing capabilities, so the above time savings may be overstated in cases containing large numbers of witnesses. In addition, the Department reported that there are some fields, such as client ethnicity and gender, that they would prefer to verify and enter manually, even with improved automation. The above calculations also primarily capture the time costs of case openings, which are mainly conducted by legal clerks (see Section 1, starting on page 21, for further discussion of case openings by non-legal clerks). However, other staff such as attorneys or paralegals may enter additional information into JustWare throughout the life of a case. The Department reported that some of this information entry could potentially be automated as well, although PDO management stated that it would be too difficult to parse out the specific time and staff costs related to these tasks. Therefore, while some aspects of auditors' calculations may overstate savings due to PDO's business need for some continued manual entry, these overages may be partially offset by additional savings related to the automation of JustWare entry by non-legal clerk staff following case opening.

Inefficiencies Can Lead to Backlogs in Opening Electronic Case Files

Left unaddressed, inefficiencies caused by manual entry of information during case opening may lend themselves to case opening backlogs. The Management Audit Division found evidence of backlogs from *at least* FY 2018–19 through FY 2019–20, which are discussed in more detail in Section 1, starting on page 21, of this audit report. Such backlogs impact departmental workload and may increase case timelines. In a departmental survey the Management Audit Division conducted for this audit, attorneys, paralegals, and investigators reported that case opening backlogs negatively impacted their workflow/workload in several ways (see overview of responses in Figure 4.3 below).

Figure 4.3: Internal Survey Respondents Who Reported Workflow/Workload Issues Related to the Backlog

Attorneys	% of Responding Attorneys	Paralegals	% of Responding Paralegals	Investigators	% of Responding Investigators
62	76.54%	14	60.87%	16	76.19%

Source: Management Audit Division Analysis of Departmental Survey Responses.

The five most common impacts of the backlog reported by attorney, paralegal, and investigator respondents to this survey are provided in Figure 4.4 below.

Figure 4.4: Proportion of Internal Survey Respondents Who Reported Workflow/Workload Issues Related to the Backlog and the Top Five Issues They Reported

Top Five Issues Linked to Backlog	% of Responding Attorneys	% of Responding Paralegals	% of Responding Investigators	% of Total Respondents
The lack of full information in JustWare increased my workload	46.91%	43.48%	47.62%	46.40%
There was a lack of case information within the file upon case assignment	40.74%	39.13%	42.86%	40.80%
I could not work on a case until it has been fully opened in JustWare	44.44%	17.39%	38.10%	38.40%
It took longer to identify conflicts of interest	43.21%	21.74%	28.57%	36.80%
It took longer to identify witnesses	29.63%	X	38.10%	25.60%

Source: Management Audit Division Analysis of Departmental Survey Responses.

Note: (1) Respondents were asked to “select all that apply” and therefore may have selected more than one answer.

Other negative impacts of the current data entry processes reported in the survey include but are not limited to: lengthening the time needed to perform client intakes, delaying discovery requests, and sometimes causing errors in attorney case assignments.⁵³

The PDO reported that these case opening backlogs were primarily caused by the transition from the department’s old case management system (SCALES) to JustWare, during which no new cases could be entered. However, the Management Audit Division found that this backlog predated the implementation of JustWare on March 25, 2019. While the case opening backlog significantly decreased throughout FY 2019–20, this may be attributed to significantly reduced case referrals during the COVID-19 pandemic. If caseloads begin increasing to pre-pandemic levels, the time to complete manual case openings may contribute to future case opening backlogs.

Auto-Population of JustWare Fields

To reduce inefficient entry of information already held within an automated system, the Management Audit Division recommends that the PDO work with the County’s Technology Services and Solutions Department (TSS), Superior Court information technology staff, and the District Attorney’s Office (which much approve all CJIC changes per a management control agreement between the DA and TSS) to configure a data feed that auto-populates as many client and case information fields from CJIC

⁵³ A minority of respondents reported that case opening backlogs have no impact on their work. This may be due to a provisional system of “shell openings” that the Department implemented to reduce backlogs after initial JustWare implementation. To allow the defense team to begin work on cases, PDO and ADO staff will sometimes open a “shell” case with an “Intake” status containing basic information such as the client name, assigned attorney, and initial discovery. Later, legal clerks would complete the case file with remaining information, at which point the case status would be changed to “Open.” See Section 1, starting on page 21, for a full discussion of “shell opening” practices.

and other databases into JustWare as possible. This will align the County's practices with those of several other California counties. In a peer survey the Management Audit Division issued for this audit four of seven jurisdictions reported that fields such as client name, initial charges, case number, and witness information auto-populate in their case management systems. Two of these counties—Ventura and Stanislaus—specified that this information populates from their countywide criminal justice information systems (see Attachment E on page 155 for full survey).

PDO management expressed a desire for this automation and reported that developing these feeds into JustWare has been an ongoing effort on the part of the Department. However, Department staff reported that it has been difficult to gain traction from other stakeholders to complete this project despite numerous conversations concerning the matter. To reiterate, the proposed feed would not provide the Department with any new criminal justice information, as the PDO and ADO already have the ability to access these data elements manually through CJIC or other resources. This integration would merely automate the process of populating certain data fields in JustWare without Department staff having to look up this same information in other systems and hard-copy documents. Furthermore, the Department reported that it has collaborated with the District Attorney's Office on developing a Digital Evidence Management system to automate information-sharing through a cloud-based case file "environment".⁵⁴ Incorporating automated feeds into JustWare would be aligned with these existing data exchange efforts.

The level of integration with this data feed should be maintained throughout any system changes. The County maintains its goal of decommissioning CJIC, and several of the projects necessary to achieve this goal are currently in progress, including the procurement of a new Jail Management System that will replace several of CJIC's law enforcement and jail management functions. In addition, JustWare's parent company has introduced a new case management product, although the company has committed to supporting the County's JustWare system until the transition to the new eDefender case management system is complete, anticipated to be roughly two to three years. As such, the PDO, Court IT, and TSS should monitor the compatibility of any newly proposed systems and ensure that this degree of interfacing is maintained with any replacements or system upgrades.

While creating automated data feeds between systems that are being decommissioned may seem inefficient, transitions to new criminal justice systems have been delayed *years* beyond their original project timelines. The County's FY 2018-2020 Three-Year Technology Plan shows that the process of replacing CJIC began in July 2013 and was slated for completion in February 2019. However, this new system was not in place as of November 2021. Similarly, an initial contract with the Sheriff's Office's original Jail Management System vendor was approved in September 2017, and the system had a projected go-live date of April 2019. Yet, a September 2021 update to the Board of Supervisors noted that Administration had determined (with support from the Sheriff) that another solicitation was in the best interest of the County—necessitating another Request for Proposals for a new jail management technology. Considering the extended timelines of these technology replacement projects, auditors maintain that the PDO, ADO, TSS, and other stakeholders should begin work on developing automated feeds between the County's existing systems.

⁵⁴ This project is part of a larger, Countywide project for a digital evidence solution that was included in the County's FY 2016-18 Three-Year Technology Plan.

Finally, given that the Department only has one IT staff member to assist with creating these automated feeds, the PDO reported that it would likely need at least one additional Application Developer position to design, test, maintain, and provide ongoing support for this interfacing project. This Application Developer would be required for the full life of the various interfaces and would be required for support upgrades, issue resolutions, and other maintenance responsibilities. The Management Audit Division thus recommends that the Department request a new Application Developer position to assist with these efforts since automation of these processes would more than pay for itself in staff time cost avoidances as detailed above.

Legality of Proposed Automated Data Feed

Several laws and code sections govern automated data feeds between criminal justice agencies and non-criminal justice agencies. State administrative code asserts that, "Non-criminal justice agencies shall not receive criminal offender record information (CORI) directly from an automated criminal justice system."⁵⁵ CJIC has been explicitly referred to as an "integrated criminal justice information system," and California Penal Code definitions indicate that the PDO and ADO may not constitute a "criminal justice agency." This definition reads:

"As used in this chapter, "criminal justice agencies" are those agencies at all levels of government which perform as their principal functions, activities which either: (a) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or (b) Relate to the collection, storage, dissemination or usage of criminal offender record information."⁵⁶

The PDO and ADO are not criminal justice agencies under the statutory definition because they are not involved in the apprehension, adjudication, and incarceration of criminal offenders, nor do they act as administrators of criminal records as principal functions. Further, as compared to the County's law enforcement departments and its District Attorney's Office, the PDO and ADO are restricted from accessing databases such as the National Crime Information Center and California Law Enforcement Telecommunications System.

⁵⁵ California Code of Regulations Title 11 § 707.

⁵⁶ CA Penal Code §13101

However, the Management Audit Division believes that there is some ambiguity surrounding what constitutes “criminal offender record information” (CORI). California Penal Code gives the following definition of CORI compiled by local criminal justice agencies⁵⁷:

[C]riminal offender record information’ means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto. It shall be understood to include, where appropriate, such items for each person arrested as the following:

- (a) Personal identification.
- (b) The fact, date, and arrest charge; whether the individual was subsequently released and, if so, by what authority and upon what terms.
- (c) The fact, date, and results of any pretrial proceedings.
- (d) The fact, date, and results of any trial or proceeding, including any sentence or penalty.
- (e) The fact, date, and results of any direct or collateral review of that trial or proceeding; the period and place of any confinement, including admission, release; and, where appropriate, readmission and rerelease dates.
- (f) The fact, date, and results of any release proceedings.
- (g) The fact, date, and authority of any act of pardon or clemency.
- (h) The fact and date of any formal termination to the criminal justice process as to that charge or conviction.
- (i) The fact, date, and results of any proceeding revoking probation or parole.

The above CORI definition thus indicates that many of the fields proposed for automation in Attachment K on page 207 may not be transmitted via CJIC per State requirements. However, the fact that other counties in California such as Ventura and Stanislaus are allowing auto-populating of their public defender systems from their countywide criminal justice systems indicates that interpretations have been made elsewhere that the information doesn’t qualify as CORI.

⁵⁷ CA Penal Code §13102. Section 13125 also lists specific CORI data elements.

Additionally, as noted at the beginning of this section, several JustWare data fields pertaining to court events already auto-populate from CJIC, and PDO staff reported that some of these fields directly relate to subsections (c) and (d) of the CORI definition given above. The fact that the Department receives some CORI data elements through a CJIC feed but not others suggests that there is some gray area in the interpretation of what can and cannot be automatically transmitted into JustWare. Consequently, the Management Audit Division maintains its recommendation to configure a more robust data feed from CJIC to JustWare, with the caveat that some pieces of information classified as "CORI" might be legally restricted from this feed. Further, the Management Audit Division recommends that the Office of the County Counsel discuss CORI transmission issues with the legal counsel of other jurisdictions to help clarify the ambiguous legal requirements around the automated transmission of CORI data. They should report the results of these discussions to the PDO and ADO.

CONCLUSION

PDO and ADO legal clerks open cases in JustWare by inputting required client and case information. Once the case has been opened, assigned staff can add documents, tasks, reminders, and complete other case management activities. However, while some information auto-populates from other County systems into JustWare, many data points held within these same systems do not. This leads to inefficiencies in which Department staff are required to manually input case information into JustWare that could potentially be automated from other sources. These inefficiencies are especially concerning given the history of case opening backlogs within the PDO and ADO, and the negative impact on workload and case timelines that have been reported as a result.

RECOMMENDATIONS

The Santa Clara County Public Defender Office should:

- 4.1 Work with the County's Technology Services and Solutions Department, the Superior Court information technology staff, and the District Attorney's Office (which has management control over CJIC) to configure a data feed from CJIC and other information systems that auto-populates additional client and case information fields within JustWare. (Priority 2)
- 4.2 Upon adoption of Recommendation 4.1, work with the Superior Court information technology and TSS to monitor the compatibility of any newly proposed case management and criminal justice systems to ensure that this degree of interfacing is maintained with any systems that are acquired in the future. (Priority 2)
- 4.3 If Recommendations 4.1 and 4.2 are adopted, request a new Application Developer position to assist with the implementation of these recommendations. (Priority 2)

The Santa Clara County Technology Services and Solutions Department should:

- 4.4 Work with the Public Defender Office and Superior Court information technology staff to configure a data feed from CJIC in accordance with Recommendation 4.1. (Priority 2)

The Office of the County Counsel should:

- 4.5 Discuss criminal offender record information (CORI) transmission issues with the legal counsel of other jurisdictions to help clarify the ambiguous legal requirements around the automated transmission of CORI data. They should report the results of these discussions to the Public Defender Office. (Priority 2)

SAVINGS, BENEFITS, AND COSTS

A new Application Developer position will result in ongoing costs of approximately \$221,000 annually. Meanwhile, the Department estimated that automating the completion of case and client fields would cut down creation of new case files to 5–15 minutes. This represents a time savings of 4,958–13,401 hours annually, or approximately 3–8 FTEs (about \$342,177–\$912,472 in annual avoided personnel costs).⁵⁸ The net benefit of auditor recommendations would therefore be approximately \$121,177–\$691,472 annually.

To note, stakeholders may not be able to prioritize this project until pandemic-related responsibilities have decreased for all parties and the new proposed position is filled.

⁵⁸ Note that complete automation of cases may not be possible, given that some information such as witness details are held in systems outside of CJIC and Odyssey. In addition, client demographic information may have to be edited following intake interviews, although our recommendations address the initial, automated population of these fields.

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Section 5: Connecting High-Risk Clients with Services

Background

Santa Clara County, with help from State 2011 Public Safety Realignment funding, is dedicated to reducing recidivism by providing resources and rehabilitation services for people who enter the criminal justice system with mental health conditions. To address this County goal, the Public Defender Office, which includes the Alternate Defender Office (PDO and ADO, “the Department”), has paralegals screen clients for a history of mental health conditions during client intake, along with other intake questions. Paralegals upload documented client responses to JustWare, the PDO/ADO case management system. Attorneys also evaluate their clients’ mental health conditions and decide if a social worker can provide services to help in clients’ defense or release planning, such as safe and successful release from incarceration to mental health and substance abuse treatment programs, or alternatives to incarceration that attorneys can propose in court. If clients have MediCal they are referred to the Behavioral Health Services Department.

Problem, Cause, and Adverse Effect

Though social workers are staffed in the Department to evaluate and connect clients to community resources, per classification description, not all clients who need mental health services are connected with social workers as clients, or, as applicable, when transitioning out of incarceration. Regardless of paralegal screenings, attorneys must request social worker assistance for their clients. Social workers do not otherwise contact clients identified as having mental health conditions during intake. Of 101 clients with more than 25 cases with the Department, 80 went to treatment court where they received social worker services from the Superior Court. Of the remaining 21 clients, 12 were never seen by a Department social worker. Only 9 of the 101 high-volume clients met with a PDO social worker, despite their role in evaluating and connecting clients to community resources. Recidivating Department clients with a mental health condition are less likely to access needed mental health and related services without social worker support, which may increase their risk of recidivating.

Recommendations

The Department should add social worker responsibilities to their Policy and Procedure manual. The mental health supervisor and social worker team should create a standardized mental health advisement/checklist with steps for attorneys working with misdemeanor clients to serve mental health needs. JustWare, should automatically flag and notify attorneys to conduct the mental health advisement/checklist if an assigned misdemeanor client meets the following criteria: 1) JustWare Mental Health attribute, 2) case type designated for clients with mental health conditions, 3) client’s competence is in legal doubt, or 4) case diverted from criminal justice system for mental health reasons. The management analyst team should create a JustWare, or any future case management system, attribute to track recidivism, with recidivism reports social workers can run. They should also monitor for unconscious bias by bi-annually comparing racial and gender proportions of all clients with those who have cases with tasks completed by social workers, and report results to Department management and the Board of Supervisors.

Savings, Benefits, and Costs

Implementing these JustWare changes would have a minimal cost but would take time for staff to work with the JustWare vendor to implement changes and for staff to run and analyze new system reports. Potential savings could accumulate in a lower rate of recidivism, which incurs costs to the County. Clients with mental health conditions would benefit from greater access to County resources that could help them address mental health conditions and mitigate negative impacts of the criminal justice system.

FINDING

Background

Santa Clara County has committed itself to reducing recidivism by providing resources and rehabilitation services to people in the criminal justice system. Its Adult Reentry Strategic Plan, as well as its Whole Person Care approach, are aimed at supporting high-risk and vulnerable individuals and reducing the recidivism rate in the County.^{59;60} The Public Defender Office, which includes the Alternate Defender Office (PDO and ADO, “the Department”) works with other Public Safety and Justice partners through the County’s Reentry Network to implement policy and procedure changes to reduce entry into the prison system and assist successful reentry for formerly incarcerated individuals. Social worker staff determine if clients have health insurance or not and if they need services. Social worker staff refer clients who have MediCal to the Behavioral Health Services Department (BHSD) MediCal hotline. For clients without insurance or with private insurance, social worker staff will make efforts to connect them with supportive services (housing, mental health treatment, and substance abuse treatment), and create alternative plans to incarceration or create plans for release to reentry programs for the client. While these efforts can all help, there are impediments to ensuring that all these services reach the right defendants. Department social workers do not have a guiding Policy and Procedure manual covering social worker responsibilities and expectations, including the referral process.

Client Assessments

A file is created by the PDO/ADO for every client accepted. The Department’s paralegals conduct intake interviews with each new client that includes a mental health screening. The client is asked and may self-report a mental health diagnosis and any prior hospitalizations during this paralegal interview. The paralegal will also note any comments from Correctional Staff or observations from the interview that may indicate the client has a mental health condition. The PDO and ADO have a paralegal intake form which allows for the documentation of the client’s history of mental health conditions, number of times they were committed, places of confinement, length of confinement, and last release date (see Attachment L on page 209).

Attorneys are responsible for determining if their client has any mental health conditions and to assist them in potentially avoiding incarceration by instead obtaining needed services for the benefit of the client and the case. There are a few sources attorneys reference when making this determination, including: the paralegal intake interview, self-report of a mental health condition by the client, noted behavioral indicators of a mental health condition, and reports from Correctional Staff of behavior which could reflect a mental health condition. Sometimes the family of the client will reach out to the attorney or the office to give notice of the client’s mental health condition.

59 County of Santa Clara Adult Reentry Strategic Three Year Implementation Plan, Fiscal Year 2020-2022. Retrieved July 7, 2021, from <https://www.sccgov.org/sites/reentry/governance/Documents/county-of-santa-clara-adult-reentry-strategic-three-year-implementation-plan-fy-2020-2022.pdf>.

60 Santa Clara Valley Medical Center Whole Person Care Overview. Retrieved July 7, 2021, from <https://www.scvmc.org/health-care-services/Whole-Person-Care/Pages/Overview.aspx>.

Social Worker Roles and Responsibilities

The PDO and ADO currently have five funded social worker positions: four positions in the PDO (two of which are vacant), and one position in the ADO. Social worker responsibilities in the County's class specifications include evaluating and arranging for clients to enter rehabilitative and reentry programs which, within the context of the criminal justice system, are meant to support high-risk and vulnerable individuals and to reduce recidivism.⁶¹

The County has 13 reentry programs and contracts with 11 community service providers and works with 38 faith-based collaborative partners to offer reentry services to individuals after incarceration. The Department's Policy and Procedure manual, however, does not cover social worker responsibilities, or the expectations of their role connecting clients with programs. Furthermore, the Policy and Procedure manual does not cover efforts the Department or individual attorneys can take, or services with which clients should be connected, to reduce recidivism. The Policy and Procedure manual does discuss an attorney assigned to the realignment supervision calendar who represents these clients and works with the Reentry Resource Center to identify and address substance abuse, mental health, employment, education, or housing issues in order to improve client outcomes. By not outlining the responsibilities for social workers based on their class specifications the Department is losing the opportunity to harness the expertise of social workers to support clients and reduce the recidivism rate. Furthermore, whether clients were connected with a program, or which program they were connected with, is not tracked in JustWare.

Department attorneys report they request social worker assistance with de-escalation for a client in crisis, motivational interviewing to help the client come to their court hearing, coordinating with Jail Custody Health staff to assess the needs of the client, Parole Board case preparation to coordinate housing, connecting with substance abuse programs and other services to help the client transition into parole. Staff did not identify finding services for clients with mental health conditions while their case is being processed as a task performed by PDO and ADO social workers, though such efforts would be consistent with County practices.

As of December 2020, social worker tasks can now be recorded and tracked in the PDO/ADO case management system, JustWare. This new feature in JustWare allows for tracking of case type, task type, and task status. In addition to tasks requested by attorneys, enumerated above, the most common tasks social workers have stated they perform are identifying housing options for clients' release plans, interviewing clients to determine mental health needs, connecting clients with services, and creating safety plans for clients. Some of these tasks can be requested by the attorney, but social workers report that some tasks they perform proactively go above and beyond attorney requests with the goal of connecting clients with services. Clients reportedly follow up with social workers with additional questions regarding next steps after they have been released. Attorneys also reach out to Department social workers with questions even though they do not always assign them to work on the pertinent case.

⁶¹ According to Santa Clara County's classification descriptions for Social Worker IIIs, social workers are meant to be responsible for evaluating client problems; developing complete treatment plans; following each case through to solution; developing case plans, court reports, and associated legal documents; interpreting rules, regulations, policies, and programs to clients and the public; acting as a resource specialist; maintaining a listing of community resources; and assisting clients in utilizing community resources.

With the implementation of the social worker task tab in JustWare, social workers should be able to track, self-assign, and record all tasks they perform for PDO and ADO clients regardless of who assigns them. This would help management track social worker productivity to determine if too much or too little work is being done on a client by client basis.

Tracking Client Recidivism and Mental Health Conditions

The Department does not track client recidivism, even though their case management system, JustWare, is able to generate reports showing the number of cases associated with individual clients. Department management also does not effectively track whether clients have a mental health condition even though that information is collected through intake and from other sources, or if the staff social workers attempted to and/or obtained services for such clients while they were being served by the Offices. There is a Mental Health attribute in JustWare, which is used to indicate when a client may have a mental health condition. Attorneys, paralegals, and social workers assigned to a case have access to add the Mental Health attribute in JustWare, but there are no protocols for who should add the note and when or why, or who is responsible for following up on such client conditions.

Marking a client case with the Mental Health attribute is an extra step beyond the client assessment or paralegal intake. Attorney notes and the intake form are uploaded to JustWare as documents, but the case itself will not have a Mental Health attribute to notify staff unless someone marks the case as such. Not tracking either of these client attributes means there are missed opportunities to intervene and connect clients with resources which may positively affect their lives and their tendency to recidivate. The Mental Health Supervisor and Social Worker Team should create a mental health advisement and checklist covering steps an attorney should take when working with a misdemeanor client in serving their mental health needs. This should include marking the mental health attribute in JustWare for applicable clients. In addition, the Department's Management Analyst Team should create recidivism reports that can be run by social workers, and monitor for unconscious bias in service referral and delivery by bi-annually comparing the racial and gender proportions of all clients with those who have cases with tasks completed by social workers. The results of the bi-annual unconscious bias analysis should be reported to Department Management and the Board of Supervisors.

Identifying High-Volume Clients

To assess the Department's performance in connecting repeat clients with mental health conditions with social workers the Management Audit Division asked the Department to identify the 200 clients with the highest number of cases during Fiscal Years 2015–16 through 2019–20 ("high-volume clients"). The Department identified 203 clients with 25 or more cases each during that five-year period and provided the case information to the Management Audit Division. These 203 clients were represented in 6,353 cases during this five-year period, or an average of 31.3 cases each. These cases represent 3.29% of the 192,892 total cases referred to the Department during Fiscal Years 2015–16 through 2019–20 (see Figure 5.1 on page 78 for a breakdown of total high volume client cases by fiscal year by mental health status).

Identifying Clients with Mental Health Conditions Based on Indicators in Client Files

Five indicators that a client has a mental health condition were then identified, in cooperation with the PDO, based on information that was available within their case management system (JustWare):

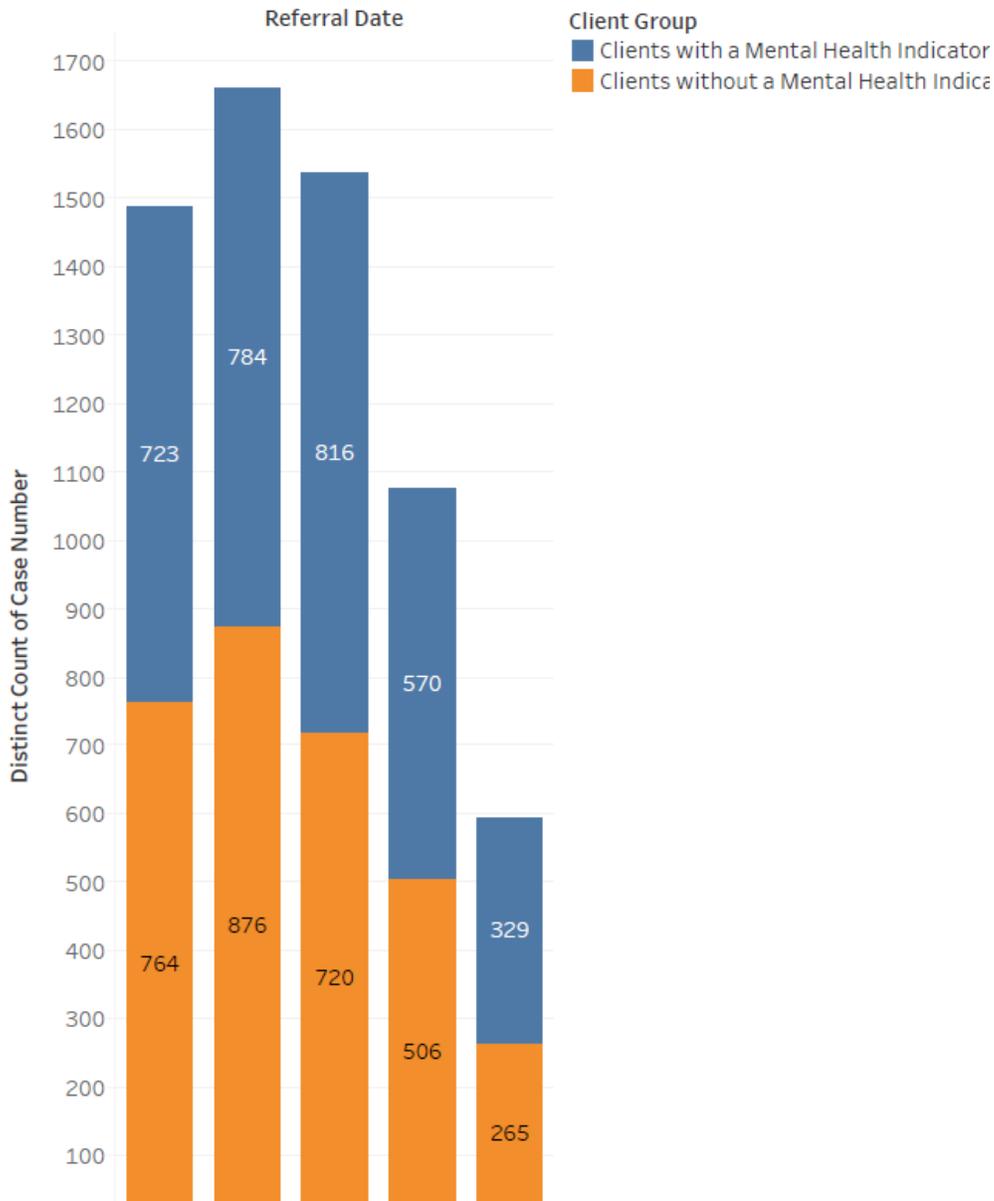
1. a case belonging to the client has at least one treatment court hearing;
2. the client has a Mental Health attribute in JustWare (a special note used by the Department to indicate when a client may have a mental health condition);
3. the client has at least one case type that is specifically designated for clients with mental health conditions;⁶²
4. there has been legal doubt declared as to the client's competence (Penal Code 1368); and
5. the client has had a case diverted from the criminal justice system due to mental health reasons.

No single indicator would capture all clients with mental health conditions. The protocols for who should add a mental health attribute such as the five listed above to clients' JustWare files, or when, are not well established. However, the Department reports that the mental health attribute (Indicator 2) is often, but not always, input by paralegals as part of the client intake process, by social workers if they work with the client, or by the client's attorney. Attorneys make the decision as to whether or not treatment court is an option and clients receive services through the Superior Court if they go to treatment court (Indicator 1), whether the case should be defended as a Mental Health case (Indicator 3), and determine the competency of the client to participate in case decisions (Indicator 4). Judges determine if a case is diverted from the criminal justice system due to mental health reasons (Indicator 5).

The Department and the Management Audit Division felt that the combination of all five indicators would capture, as accurately as possible, clients likely to have mental health conditions. Given the lack of a systematic approach in the Department to identify and record these indicators, there are likely additional clients with mental health conditions for whom these or other indicators have not been captured in client case files in JustWare. The Management Audit Division found that of the 203 high-volume clients 49.75% (101 clients) have a mental health condition, based on the presence of one or more of the mental health indicators in their case files. These 101 clients had 3,131 total cases during Fiscal Years 2015–20 represented by the PDO and ADO, 1.62% of total cases referred to the Department and 49.28% of the high-volume client cases (see Figure 5.1 on page 78).

⁶² E.g. Probate, Conservatorship, Lanterman Petris Short Conservatorship, Mentally Disordered Offender, Sexually Violent Predator, and Not Guilty by reason of Insanity.

Figure 5.1: Distribution of 6,353 High-Volume Cases Representing 203 Clients, Fiscal Years 2015-16 through 2019-20



Source: Data provided by the Public Defender Office to the Management Audit Division.

Note: FY 2019-20 case referrals to the Public Defender were significantly lower due to impacts of COVID-19 and court closures during the last third of the fiscal year.

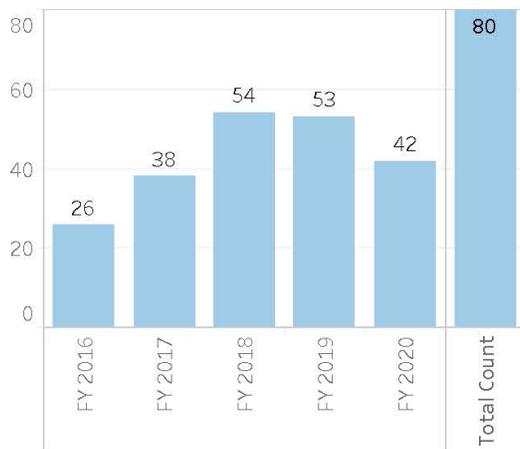
None of the 203 high-volume clients had a case diverted from the criminal justice system due to mental health reasons in Fiscal Years 2015-16 through 2019-20 (Indicator 5), but there were many instances of the four other mental health indicators being recorded amongst these clients within JustWare (see Figure 5.2 on page 79). Figure 5.2 shows the prevalence of the remaining four indicators amongst the high-volume clients, and the number of clients with one or more of the indicators. Because of the high recidivism rate amongst these clients, the counts for each fiscal year are distinct, and they cannot be added together. The 'Total Count' represents a distinct total count of clients.

As can be seen in Figure 5.2 below, being represented by the PDO/ADO in treatment court (Indicator 1) was the most prevalent indicator, applicable to 80 out of 101 high-volume clients, or 79.2%. Whereas having the mental health attribute flagged in JustWare (Indicator 2) was applicable to 52 of the high-volume clients, or 51.48%, only 28 of the high-volume clients, 27.72%, had a mental competence inquiry (Indicator 4) and 6 high-volume clients, 5.94%, had a mental health case (Indicator 3). In spite of these recorded indicators, no high-volume mental health clients between FY 2016 and FY 2020 had a case diverted from the criminal justice system due to mental health reasons, which is ultimately decided by the court (Indicator 5).

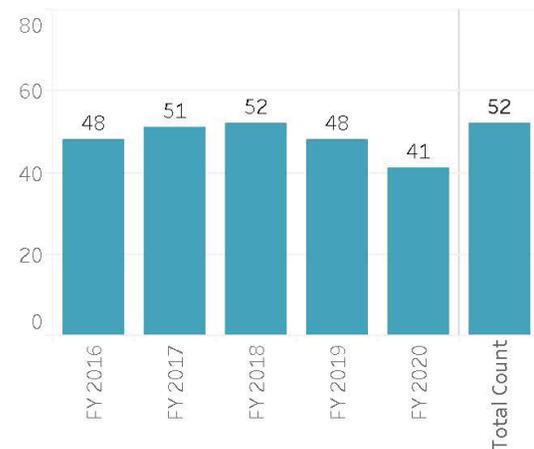
Figure 5.2: Distribution of 101 High-Volume Clients by Mental Health Indicator and Year, Fiscal Years 2016–2020

High-Volume Clients with the Following Mental Health Indicators

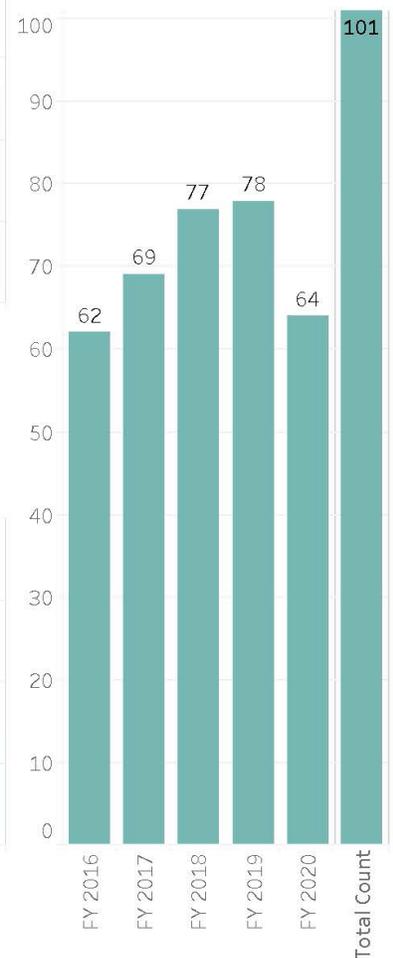
Indicator 1: Represented by the PDO in Treatment Court



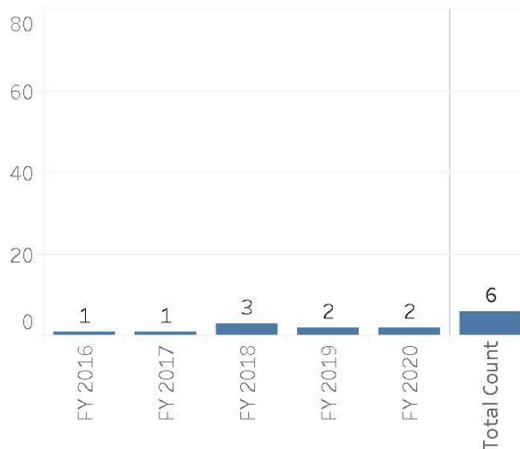
Indicator 2: Mental Health Attribute Flagged in JustWare by the PDO



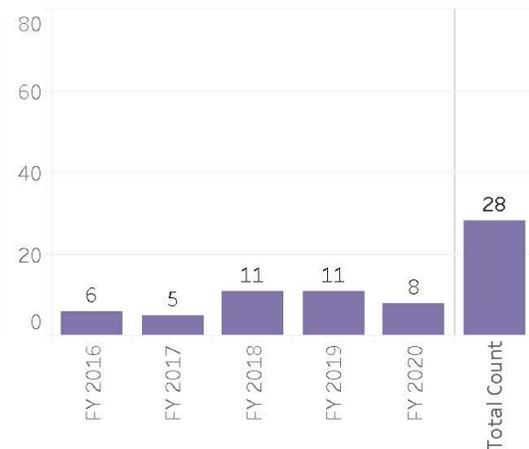
High-Volume Clients With One or More Mental Health Indicators



Indicator 3: Represented by the PDO for a Mental Health Case



Indicator 4: Penal Code 1368 Mental Competence Inquiry



Source: Data provided by the Public Defender Office to the Management Audit Division.

Note: FY 2019-20 case referrals to the Public Defender were significantly lower due to impacts of COVID-19 and court closures during the last third of the fiscal year.

High-Volume Mental Health Clients Not Being Connected with Social Workers

The Management Audit Division provided the list of 101 high-volume clients with mental health conditions to Public Defender and Alternate Defender staff who compared the list to individual social worker records⁶³ to identify which clients had been connected with a Department social worker within the last five years. One social worker's client records could not be recovered for this period. Of these 101 high-volume clients with mental health conditions, 79.21% (80 clients) were served at least once in mental health treatment court. Of the 21 remaining high-volume clients with mental health conditions only nine clients (42.86%), were confirmed to have met with a PDO social worker at least once while being served by the Office. Three of the 101 clients had a case referred to the Alternate Defender Office, and none of them appear to have been connected with a social worker in that office. This is concerning given the County's class specifications and responsibilities of social workers and the way in which this class is meant to fit into the County's Whole Person Care approach. However, there is potential for error because social workers tracked their clients outside of JustWare in spreadsheets and notebooks because JustWare did not have a social worker task tab until December 12, 2020.

The Department's social workers work on many cases with many clients, but the Department's tracking of this has been limited. Before the social worker task tab was added to JustWare on December 12, 2020, social workers would receive email, phone call, and verbal requests from attorneys and kept track of their client assignments and tasks in Excel and notebooks for their own records (see Section 1, starting on page 21). The Department social workers could not confirm the dates the nine clients met with social workers, which programs they had been referred to, or whether these referrals may have impacted their being incarcerated or compare the recidivism rate of those who met with social workers to those who did not for the Management Audit Division.

Risk of Unconscious Bias When Referring Clients to Social Workers

Attorneys must request a task of a social worker for a client to be connected with one in the Department. However, there are no procedures for attorneys to determine when they should seek the support of a social worker and there are no social worker responsibilities or expectations in the Department's Policy and Procedure manual. Consequentially, there is a potential for unconscious bias to influence whether tasks for clients or cases are assigned to social workers. Biases can easily occur through working relationships. If a client is easier to connect with, or work with, that client may receive more services than others.

High volume clients who are most at risk for recidivating often return with misdemeanor cases. The Department generally assigns attorneys newer to criminal defense to the misdemeanor team, and they may therefore be unaware of some of the signs which may indicate they should connect their client with a Department social worker. The Department's client management system, JustWare, should automatically notify the attorney of any assigned misdemeanor clients meeting the following criteria to conduct a standardized mental health advisement and checklist: 1) a Mental Health attribute in the case management system, 2) a case type designated for clients with

⁶³ This information was not in JustWare because during the five-year review period social worker notes and records were not in the system. As of December 2020, client files in JustWare now include social worker task assignments. The individual social worker records were kept in Excel workbooks and notebooks prior to December 2020.

mental health conditions, 3) legal doubt declared as to the client's competence, or 4) a case diverted from the criminal justice system for mental health reasons. As efforts are made to increase the proportion of clients with mental health conditions that are connected with social workers in the Department this potential for bias should be monitored and procedures should be put in place that will help mitigate unconscious bias. One would expect the racial proportions of clients seen by a social worker to be representative of the racial proportions of clients in the overall group of high-volume clients with mental health indicators. The Department's Management Analyst Team should monitor for unconscious bias in service referral and delivery, by bi-annually comparing the racial and gender proportions of all clients with those who have cases with tasks completed by social workers, and report these results to Department Management and the Board of Supervisors.

CONCLUSION

The Department does not track recidivism of clients or have an effective process for flagging clients with mental health conditions and ensuring that they are receiving assistance from Department social workers to obtain needed services. By management not tracking these client attributes there are likely missed opportunities to connect clients with resources which may positively affect their lives, possibly avoiding incarceration, and their tendency to recidivate. Currently, attorneys must request a social worker to connect with clients and assist them in obtaining needed mental health or other services. However, the Department Policy and Procedure manual does not outline how attorneys should determine when they should seek the support of a social worker and there are no clear social worker responsibilities or expectations in the Department's Policy and Procedure manual in this regard. Consequentially, it appears that all clients needing mental health or other services to have the best outcomes and to avoid recidivism are not receiving such services.

Department management should establish and track results for a system within JustWare which tracks client recidivism, helps staff identify clients with mental health conditions based on the five indicators stored in JustWare (and others that the Department may identify), and notifies social workers when a client is referred to the PDO or ADO with a mental health condition, or with a high recidivism rate. This should systematically result in misdemeanor attorneys connecting social workers with clients who are at high risk of recidivating, or who have mental health conditions, to assist them in connecting with appropriate programs and services for support and possible avoidance of incarceration. The Department should also allow social workers to independently assign tasks in JustWare based on needs they identify for clients with whom they have been connected. This would allow social workers to connect with clients without increasing the workload of attorneys by requiring that they enter the task for the social worker in JustWare. These changes would improve access to County services for clients and could have a positive impact on the lives of these clients as well as the recidivism rate in the County, which is in line with the County's Adult Reentry Strategic Plan and Whole Person Care approach. As these efforts are made to increase the proportion of high-volume clients, and clients with mental health conditions, who are connected with social workers in the Department, procedures should also be put in place that will help mitigate unconscious bias.

RECOMMENDATIONS

It is recommended that the Santa Clara County Public Defender Office should:

- 5.1** Add social worker responsibilities and expectations to the Department Policy and Procedure manual. (Priority 2)
- 5.2** Assign the Management Analyst Team to create an attribute in JustWare, or any future Department case management system, which tracks recidivism and recidivism reports that can be run by social workers. (Priority 1)
- 5.3** Assign the Mental Health Supervisor and Social Worker Team to create a mental health advisement and checklist covering steps an attorney should take when working with a misdemeanor client in serving their mental health needs. (Priority 2)
- 5.4** Assuming adoption of Recommendation 5.3, use JustWare, or any future case management system, to flag and notify the attorney of any assigned misdemeanor clients meeting the following criteria to conduct a standardized mental health advisement and checklist: 1) a Mental Health attribute in the case management system, 2) a case type designated for clients with mental health conditions, 3) legal doubt declared as to the client's competence, or 4) a case diverted from the criminal justice system for mental health reasons. (Priority 2)
- 5.5** Allow social workers to assign tasks to themselves in JustWare based on the identified needs of clients when responding to case referrals and/or when a client has at least one of the aforementioned mental health indicators listed in Recommendation 5.3. (Priority 2)
- 5.6** Direct the Department's Management Analyst Team to monitor for unconscious bias in service referral and delivery, by bi-annually comparing the racial and gender proportions of all clients with those who have cases with tasks completed by social workers, and report these results to Department Management and the Board of Supervisors. (Priority 2)

SAVINGS, BENEFITS, AND COSTS

Implementing these recommendations along with continuing to evaluate social worker workload can reduce recidivism for clients with mental health conditions who continue to enter the justice system. This could reduce County spending on the incarceration of defendants minimally as more clients are connected with and choose to enter programs or receive services that help their symptoms and reduce the chance that they re-enter the justice system (see Section 1, starting on page 21, regarding tracking staff workload). It will take time for the Department to make changes in JustWare and work with the system vendor to implement the changes to the software. Allowing social workers to assign their own tasks based on the needs of clients with mental health indicators would allow for the full capture of their workload without increasing the workload of attorneys by requiring them to assign tasks to social workers when needed. Furthermore, this allows for social workers to identify opportunities for programs or services for clients, which can positively impact the quality of life for these individuals. Finally, monitoring for unconscious bias in service referral and delivery and sharing results within the Department and with the Board of Supervisors would help check the effectiveness of new procedures and whether these services are reaching clients equally.

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Section 6: Appropriate Use and Oversight of Investigation Technology

Background

The primary goal of the Investigation Units in the Public Defender Office, which includes the Alternate Defender Office (PDO, ADO, “the Department”), is to obtain and develop information and evidence to aid attorneys in making informed decisions regarding defense strategies for their clients. Typical tasks of investigators include interviewing witnesses, assembling and examining physical or documentary evidence, inspecting and documenting crime scenes, and taking statements. To accomplish these tasks, investigators rely on resources such as skip tracing software and databases, social media profiles, Department of Motor Vehicle (DMV) records, audiovisual recording devices, digital data extraction hardware and software, and criminal justice databases, among other systems.

Problem, Cause, and Adverse Effect

The Department does not adhere to local or State guidelines in its use of multiple investigation resources. Per the County Executive’s Social Media Application (SMA) Policy, all County departments that use SMAs to conduct County business must submit a SMA Business Plan to the County Executive’s designee. However, the PDO has not completed a plan that outlines which SMAs it uses for investigations and the agency goals of these tools. Furthermore, California Title 13 requires requestors of DMV records to maintain a log of these inquiries, but PDO investigators use an outdated form for these logs that does not align with State records retention requirements. In addition, the PDO does not employ appropriate oversight to ensure that all technology resources are used appropriately by investigators. For instance, the Department reported that there is no established procedure for reviewing or auditing DMV query logs kept by investigators. In addition, the Department did not provide records of when the random audits of County criminal justice database queries occurred. Lack of controls around investigator technology raises the risk of these tools being inappropriately used to infringe on data unrelated to PDO cases, such as when a Wyoming County, New York, public defender employee accessed DMV records for personal use.

Recommendations

To comply with local and State requirements, the Department should immediately complete a SMA Business Plan and switch its DMV log to the most recent one provided on the DMV website. In addition, the Department should create a documented procedure for monitoring and auditing use of Investigation technologies and resources and retain records of these audits. This procedure should incorporate all existing requirements contained in County policies, such as the annual audit provisions in PDO and ADO surveillance use policies.

Savings, Benefits, and Costs

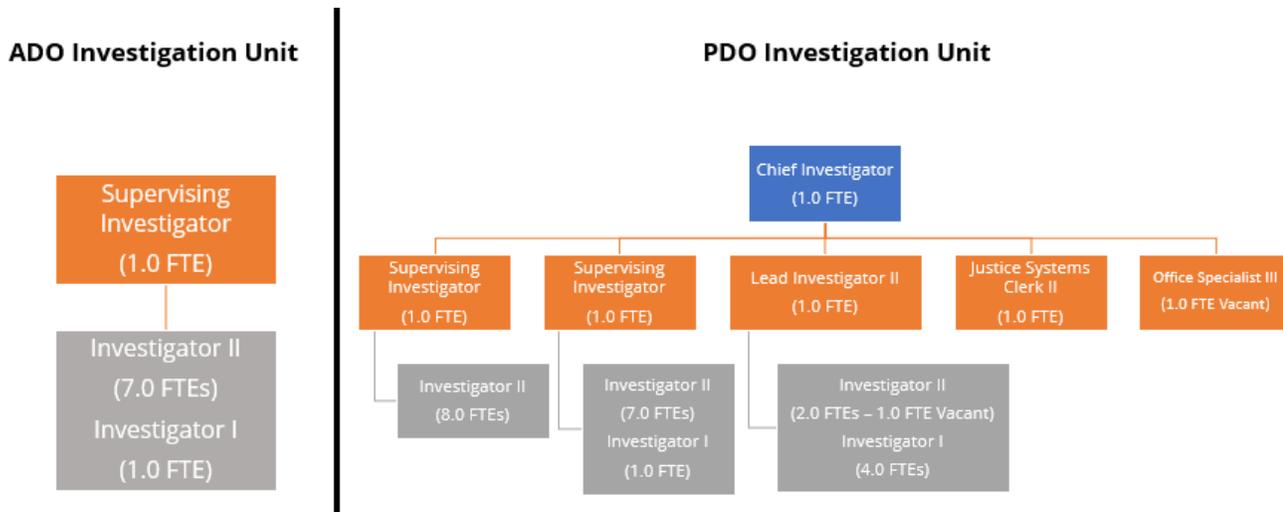
Implementing these recommendations will bring the Department into compliance with local and State guidelines governing its investigator resources. Additionally, a documented oversight procedure for investigator technology and resources will better shield against unauthorized use of these tools, thereby protecting the extensive personal information contained in these systems and shielding the County from legal liability. This is especially critical for State-protected information (e.g., DMV records and criminal justice information) for which requesting data under false pretenses is illegal.

FINDING

Defense Investigator Roles and Responsibilities

In a criminal case, defense investigators obtain and develop information and evidence to aid attorneys in making informed decisions around defense strategies for their clients. The Public Defender Office, which includes the Alternate Defender Office (PDO, ADO, “the Department”) each have Investigation Units overseen by either a supervising or chief investigator. The PDO Investigation Unit additionally contains two support staff positions, one of which was vacant as of March 2021 (see Figure 6.1 below for organization charts).

Figure 6.1: Public Defender and Alternate Defender Investigation Units



Source: Management Audit recreation of organization charts sent by the PDO and ADO.

When attorneys submit a Request for Investigation, a chief or supervising investigator reviews the request to ensure that the investigation task and its timing will not ultimately harm the case. Once the request has been vetted, the chief or supervising investigator prioritizes and assigns the request to an investigator within their unit (see Section 1, starting on page 21).

Typical tasks of investigators include interviewing witnesses, assembling and examining physical or documentary evidence, inspecting and documenting crime scenes, and taking statements. To accomplish these tasks, investigators rely on a combination of in-person fieldwork, electronic databases, and surveillance technologies. Investigator tools include skip tracing software and databases, voter registration records, mapping and diagramming software, an online portal for body worn camera footage, social media profiles, Department of Motor Vehicle (DMV) records, audiovisual recording devices, digital data extraction hardware and software, and criminal justice databases, among other systems.

Non-Compliance with Local or State Guidelines for Certain Investigation Tools

The investigation tools described above allow PDO and ADO investigators to access extensive personal information of parties involved in cases. Datapoints accessible through these systems and technologies include addresses, Social Security and driver's license numbers, criminal histories, computer based and cellular data (e.g., emails, social media posts, text messages, pictures, videos, and GPS information). Use of these tools is governed by the following: 1) the County's Social Media Application Policy and general information technology (IT) policies; 2) State code; 3) County PDO and ADO surveillance use policies;⁶⁴ and 4) PDO and ADO user agreements and policy manuals. However, the Department does not adhere to local or State guidelines for several of its investigation resources.

County's Social Media Application Policy

Under the County's Social Media Application (SMA) Policy, all County departments and employees using SMAs to conduct County business must submit a SMA Business Plan that is approved by the County Executive or their designee.⁶⁵ In these Business Plans, County departments report which SMA platforms they use, for what purpose, and the agency goals of these tools (see Attachment M on page 211 for a copy of this SMA Business Plan form). A Department's SMA Business Plan must be approved *prior* to using or implementing SMA activities. Yet, despite using SMAs for investigation purposes, the Department reported that it has not submitted a SMA Business Plan in accordance with County policy. Failure to comply with this policy creates a risk of the following: 1) staff time and County equipment being used for personal social media activities and 2) unauthorized profiles being created on behalf of the County, creating messaging issues and potential litigation concerns.

While the Department has internal social media policies and procedures, including a Handbook on Conducting Research on Social-Networking Websites (provided to auditors in October 2021), the Department has not had its usage approved by County administration as required by County policy, given that the PDO and ADO's SMA resources are used to perform County business. The Management Audit Division recommends that the Department immediately prepare and submit a SMA Business Plan for approval By County administration.

At our audit exit conference, the Department reported that the PDO was in the process of implementing our recommendation to have their SMA Business Plan approved by County administration. The Department provided auditors with an email exchange between the PDO and the Office of the County Executive indicating that the PDO would begin drafting its SMA Business Plan. To this end, the Department also sent auditors a web link to a SMA survey issued to the Investigations Unit in October 2021 around staff members' active SMA accounts, usernames, and URLs.

⁶⁴ For surveillance technologies.

⁶⁵ The County Executive's designee for this responsibility is the County Enterprise Content Management – Center of Excellence.

California Code Regarding Retaining DMV Information Requests

State Code requires the requester of all confidential DMV information to maintain monthly records of all requests for information and to retain those records for a period of two years from the date of the request.⁶⁶ Records must contain the following:

...the request, the requester code of the person making the request to the department, the type of information requested (vehicle or vessel registration, drivers license, financial responsibility, or occupational licensing), points of identification used for the request (e.g., license number and date of birth), and the purpose of the request, in that order.

A template request log that follows these guidelines can be downloaded from DMV's website (see Attachment N on page 217). In contrast, the Department uses an outdated template to record its DMV queries that does not contain many required fields in the order required by State Code (see Attachment O on page 219). Figure 6.2 below lists the fields on the current DMV template request log and whether those fields are present on the Department's form.

Figure 6.2: Comparison Between DMV and Department Information Requester Log

DMV Requestor Log Field	Field Present in PDO/ADO Form?	Notes
Requestor Code	No.	Department can reportedly account for requestor code based on investigator office assignment.
Employee's Name	Yes.	Not in correct order.
Date of Request	Yes.	Log also has a "Time" field.
Name of Subject	Yes.	
Information Requested (e.g., driver license number, vehicle identification number, hull identification number, vehicle or vessel plate number)	Partial.	"License plate queried" field.
Vehicles or Vessel Registration/Driver License/Occupational Licensing/Financial Responsibility	No.	No.
Purpose of Request	Partial.	"Case name or number" field. Not in correct order.
Cross-Reference to Supporting Documents	No.	

Source: Management Audit comparison of DMV and PDO/ADO record retention logs.

As can be seen, the Department's form lacks information around the requestor code, type and purpose of information requested, and cross-reference to supporting documents, which are required by the State. In the event that PDO or ADO staff request an item that is not a license plate, there are no fields that allow investigators

⁶⁶ 13 CCR § 350.48 – California Code of Regulations on retention of records for information requests to the DMV.

to record which types of alternate records were obtained. Further, substituting a case name and number for the “purpose of the request” field does not give the reviewer any specific insight into why DMV records may have been accessed for a particular case. This raises the risk of an investigator obtaining unrelated records for personal use and simply inputting one of their assigned cases into the “Case name or number field.” Finally, in noncompliance with State code, multiple fields such as “Purpose of Request” are not in the correct order.

The Department reported that it received the template it currently uses when it first obtained DMV online access 15–20 years ago. At a 2019 DMV training, the Department was provided with the new request log but was informed that their old query log was acceptable. However, given that the outdated log does not include all information required in State Code guidelines, we recommend that the Department use the DMV website’s updated log for keeping monthly records of these requests.

At our October 4, 2021 exit conference with the Department, PDO staff reported that they were also in the process of implementing this recommendation and subsequently provided internal meeting minutes and messages showing that staff had been instructed to use the template provided by the DMV.

Inconsistent Managerial Oversight for Various Investigation Resources

Three PDO and ADO surveillance use policies were adopted by the Board of Supervisors in November 2018 and January 2019 on the following technologies:

1. Data Extraction and Examination Equipment
2. Digital Cameras
3. Digital Audio Recorders

The Department drafted these policies to comply with the County’s Surveillance-Technology and Community-Safety Ordinance, which has been in effect since July 2016. Technologies covered under this Ordinance include all devices and systems that collect, retain, process, or share audio, electronic, visual, location, thermal, olfactory, or similar information associated with an individual or group.

In addition to these surveillance use policies, PDO and ADO investigators are required by Department management and a 1995 mandate from the Board of Supervisors around County networks and information systems to sign user agreements confirming that the various databases, information systems, and technologies available to Department staff will be used for business purposes only. Prohibited activities include making personal inquiries, processing records of friends and relatives, or using these tools to locate individuals unrelated to cases.

Annual audit provisions are included in the County PDO and ADO surveillance use policy for the Department's cell extraction, camera, and audio recorder technologies. For instance, the policy for data extraction and examination equipment states that a log will be maintained to verify proper access of these tools by staff. These logs should contain "employee names, device name, relevant case information/business purpose, and date when the device or data was accessed" and be audited annually.⁶⁷ In October 2021, the Department informed its staff that there would be a new requirement that all staff members sign an acknowledgment that they reviewed, understood the terms of, and are in compliance with all surveillance use policies.

Similar requirements are in the surveillance use Policies for digital cameras and audio recorders. Annual audit provisions are additionally included in the Department's user agreements for skip tracing tools, which state that "use will be monitored and audited regularly."

Per the above guidelines, we received records of completed usage logs for use of skip tracing software and the Department's various surveillance technologies, as well as supervisors' confirmation that these logs had been reviewed. However, managerial oversight to ensure appropriate usage of other investigator resources not explicitly subject to audit provisions is inconsistent. For instance, the Department reported that there is no formal audit or review procedure in place for DMV logs. Consequently, these reviews happen on a sporadic timeline, and PDO staff noted that February 2021 was the first time they could recall DMV records being collected and reviewed for the purpose of a Department audit of these records. While investigators are required to complete an annual re-certification for DMV records usage, Department supervisors should develop ways to ensure that staff are adhering to these requirements in practice.

Furthermore, although the Department performs audits of staff usage of the County criminal justice information system (CJIC), the PDO does not retain a record of when these audits occurred. CJIC contains extensive client information including, but not limited to, Social Security Numbers, current addresses, arrest dates, charges, court events, and probation conditions and violations, among other data. The Department reported that it aims to conduct audits of monthly CJIC query reports at least once every quarter.⁶⁸ For these audits, PDO management reviews CJIC searches for vague or un-descriptive reason codes and also randomly selects searches completed by each Department employee to cross-check against JustWare, the Department's case management system.⁶⁹ These checks are performed to verify that selected CJIC queries were for PDO clients and thus conducted for business purposes, only. However, the Department was unable to provide a tracker indicating that these reviews had indeed occurred on a quarterly schedule

67 County of Santa Clara Office of the Public Defender/Alternate Defender Surveillance Use Policy for Data Extraction and Examination Equipment (January 2019).

68 These query reports cover searches from all Department staff (as opposed to solely the Investigations Unit) and only include the subset of queries for which Department staff had to enter a reason code for the CJIC search because the individual was not recorded as a PDO client in the system.

69 The size of these reports vary; reports from August, October, and December 2020 and January 2021 spanned from 80-170 pages.

The Department also reported that they had no documentation regarding internal audit measures or controls for the following resources:

- Voter registration lookup
- Court system justice partner portal (Odyssey)
- SCCMap
- 2D and 3D floor mapping and diagramming hardware and software
- Body worn camera footage online portal (used by all PDO staff, not just the Investigations Unit)
- Trial versions of skip tracing software.

While tools such as the diagramming hardware/software are extremely specific in their functions and can only be used for their designated purpose, the Department's supervisors should ensure that controls exist for all investigator resources that could be used to look up personal information of County residents or contains potential evidence that could affect case outcomes if provided to outside parties. For instance, the Department reported that Department staff have the capacity to export files from the body worn camera footage online portal. Failing to track who is reviewing and/or downloading this footage raises concerns of PDO employees using this evidence platform for unauthorized purposes, such as providing videos to the media or other external agencies.

Improved oversight will better ensure compliance with Departmental and County guidelines and help prevent investigator technologies from being employed for personal use. For instance, the New York State Inspector General's Office documented a case in which a former employee at the Wyoming County, NY Public Defender's Office was a culprit in DMV workers accepting bribes to look up or alter records.⁷⁰ We recommend that the PDO and ADO Department create a documented procedure for monitoring and auditing use of all investigation technologies and resources and retain records of these audits. This procedure should incorporate all existing requirements contained in County policies, such as the annual audit provisions in the PDO and ADO surveillance use policies.

CONCLUSION

PDO and ADO investigators aid attorneys in obtaining, developing, and preparing evidence for cases. To accomplish these tasks, investigators rely on a combination of in-person fieldwork, electronic databases, and surveillance technologies. Given the privacy implications of these investigation tools, there are State, local, and departmental policies that mandate appropriate usage of these tools to prevent access of citizens' addresses, driver's license numbers, criminal histories, texts and emails, and other personal information for non-authorized use. However, the Department does not adhere to the County's social media policy and the State's DMV record retention guidelines.

⁷⁰ Orr, Steve. (2015 Mar. 17). "Is your DMV data safeguarded properly?" USA Today. Retrieved February 19, 2021, from <https://www.usatoday.com/story/news/nation/2015/03/17/dmv-data-safeguarded/24886267/>.

Furthermore, managerial audits and oversight are inadequate, inconsistent, or poorly documented for several of the Department's investigation technologies, which raises the risk of these resources being used for non-case related purposes. While we found no evidence of wrongdoing at the Department, potential risks of insufficient oversight include breaches of citizen privacy (e.g., staff looking up information of personal associates) or information being unscrupulously provided to outside parties. In some cases, leaking potential evidence such as body worn camera footage may affect the outcome of cases.

RECOMMENDATIONS

The Santa Clara County Public Defender Office should:

- 6.1 Prepare and submit a Social Media Application Business Plan for approval, per County policy immediately upon approval of this recommendation. (Priority 1)
- 6.2 Use the updated Department of Motor Vehicle (DMV) query log found on the DMV's websites for keeping record of requests for information to better fulfill record retention guidelines in State Code. (Priority 1)
- 6.3 Create documented procedures for Department monitoring and auditing of Investigation technology and resources and for retention of records of these audits. This procedure should incorporate all existing requirements contained in County policies, such as the annual audit provisions in the PDO and ADO surveillance use policies. (Priority 3)

SAVINGS, BENEFITS, AND COSTS

Implementing these recommendations will bring the Department into compliance with County requirements and State Code guidelines governing its investigator resources. Additionally, a documented oversight procedure will better shield against unauthorized or improper use of investigator tools, thereby protecting the extensive personal information contained in these systems and shielding the County from legal liability. This is especially critical for State-protected information (e.g., DMV records and criminal justice information) for which requesting data under false pretenses is illegal. As noted above, the Department has begun implementing components of these recommendations as of October 2021.

Section 7: Tracking Discovery Requests

Background

“Discovery” is information that the prosecution is required to provide, pre-trial, to the defense upon request within a certain timeframe, as per Penal Code Title 6, Chapter 10. Discovery is information obtained by the prosecution, including but not limited to: police reports, witness statements/depositions, body worn camera footage, crime lab and Medical Examiner-Coroner reports. Requests for discovery are submitted by the Public (or Alternate) Defender Office (PDO or ADO, “the Department”) to the prosecution, namely the District Attorney (DA), County Counsel, or city attorney. PDO/ ADO investigators use discovery to locate witnesses and collect additional evidence, and attorneys use it to develop defense strategies/prepare for trial.

Problem, Cause, and Adverse Effect

The Management Audit Division conducted a survey in the PDO and ADO regarding discovery request and tracking practices which found that attorneys have a range of methods to request discovery, including directing other staff to request discovery at least a third of the time. Attorneys reported, however, that they are not consistently notified when requests are made by other staff. The survey did not include the Penal Code definition of discovery though, so it is possible that some responses referred to requests for information not legally defined as discovery. The Department’s case management system, JustWare, does not have a feature to track discovery requests, elapsed time since requests were made, or where discovery is stored. Consequently, attorneys use a range of methods instead, e.g. notes or emails, but roughly a quarter of respondents either do not formally track discovery requests or believe another staff position is responsible for this task. Attorneys not knowing when requests were made makes it difficult or impossible to know if the material is late. Penal Code 1054.5(b) allows attorneys to seek a court order for discovery after 15 days have passed since a request. Requesting parties, however, must be able to demonstrate compliance with informal discovery procedure, making tracking requests critical. PDO and ADO attorneys indicated that requests for continuances are the most frequent effect of discovery delays. Delays in receiving discovery can make it more difficult to locate witnesses and slow down investigations. This negatively impacts case timelines and an attorney’s ability to provide an optimal legal defense. For clients, especially in-custody, delays mean more uncertainty and time away from family and employment.

Recommendations

The PDO should create a discovery tab in JustWare, or any future Department case management system, that includes: list of discovery requests, subject of the request and date, elapsed time since request, whether it has been received, and where the discovery is saved. Management should be able to run a case management system report that includes this new tab information, which they should use to identify delays and establish performance measures. The PDO should also update policies and procedures regarding making discovery requests, and train all staff on the new case management system discovery tracking feature.

Savings, Benefits, and Costs

Creating a discovery tab that allows staff to easily track outstanding discovery requests and locate received discovery will help streamline the discovery process, and make it easier to do timely and efficient follow-up on delayed discovery. Updating the policies and procedures to clarify the discovery process and training staff on the new JustWare tool, or any future case management system, will help make the discovery process more consistent and efficient. These recommendations will decrease the frequency of case delays, which negatively impact clients as well as staff workload.

FINDING

Background

“Discovery” is information that the prosecution is required to provide to the defense upon request within a certain timeframe, as per Penal Code Title 6 and Chapter 10.⁷¹ Discovery takes place during the pre-trial phase of a case and involves receiving evidence and information about witnesses obtained by the prosecution. Discovery documents include, but are not limited to, police reports, witness statements/depositions, body worn camera footage, crime lab reports, and Medical Examiner-Coroner reports. Requests for discovery are submitted by the Public (or Alternate) Defender Office (PDO or ADO, “the Department”) to the prosecution, namely the District Attorney (DA), County Counsel, or city attorney. Discovery documents are used by PDO/ADO investigators to locate witnesses and collect additional evidence for the defense. As discovery constitutes all evidence gathered by the prosecution, these documents are also a critical source of information for defense attorneys as they develop a defense strategy or prepare for trial.

Multiple Processes Used to Make Discovery Requests

According to the staff survey conducted by the Management Audit Division, different attorneys follow different processes to request discovery in the PDO and ADO. While the individualized workflow is not inherently problematic, it does reinforce the need to centrally track discovery and discovery tasks so that steps in the process, or delays receiving materials, do not go unnoticed. The department’s case management system, JustWare, lacks this feature.

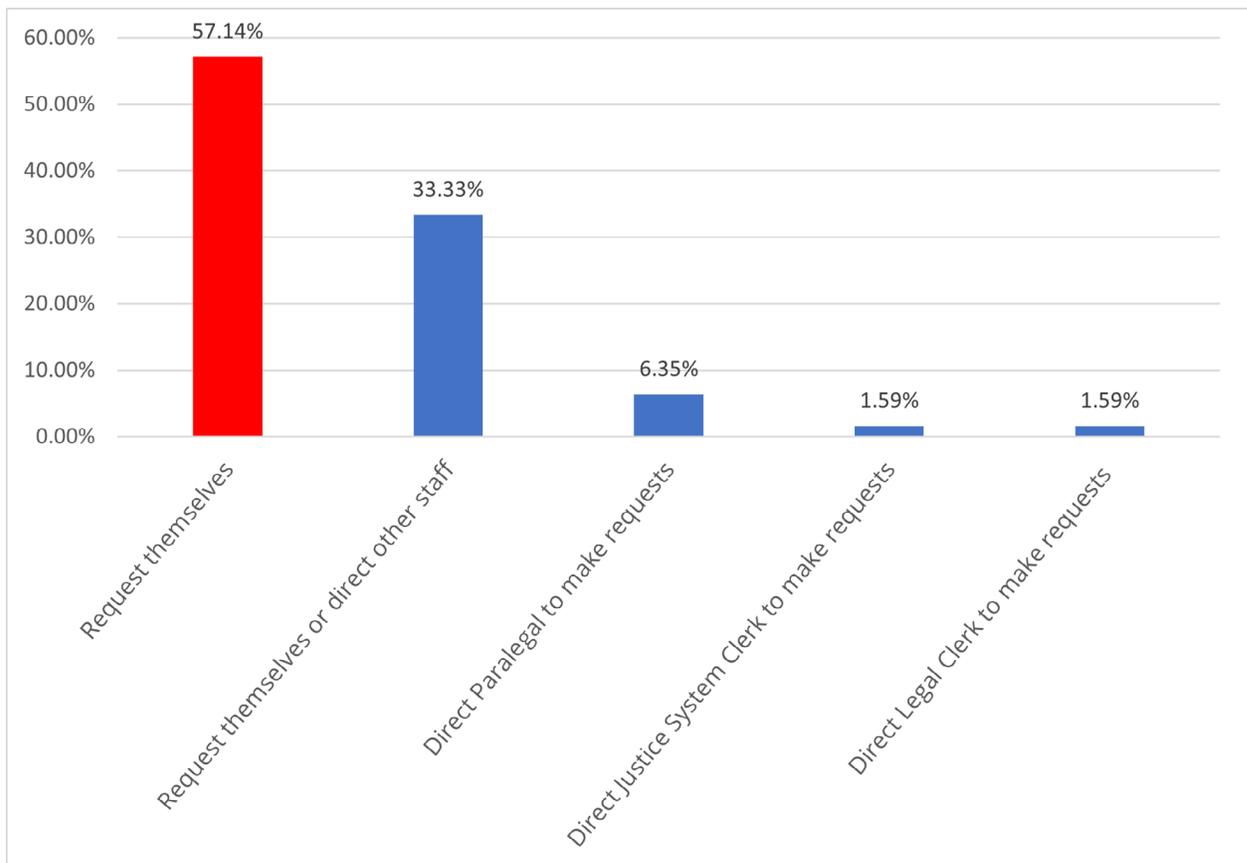
Process for Requesting Discovery in the Public Defender Office

The survey asked attorneys, “How do you make requests for discovery? (select all that apply): a) contact DA/law enforcement/lab/etc. directly; b) submit request to paralegal; c) submit request to investigator; d) submit request to justice systems clerk; e) submit request to office specialist; f) not applicable.” The results were analyzed to see whether attorneys indicated that they make their own discovery requests all the time or some of the time, and which other staff they might include in the discovery request process. During the exit conference the Department indicated that the “a) contact DA/law enforcement/lab/etc. directly” option was inaccurate, as discovery requests are only made to the prosecution, not to law enforcement or labs. However, upon review the Management Audit Division believes that since the question presents those other sources as an option, and not a requirement, that attorneys would have understood who they make discovery requests to. Furthermore, there were no emails from survey respondents asking for clarification of the discovery questions.

⁷¹ Penal Code Title 6 and Chapter 10 Discovery. Retrieved March 17, 2021, from https://leginfo.ca.gov/faces/codes_displayText.xhtml?chapter=10.&part=2.&lawCode=PEN&title=6.

Of the 63 PDO attorneys who responded to the survey question regarding methods for requesting discovery, 90.48% reported that they make these requests themselves at least some of the time (over half of all respondents, 57.14%, reported making these requests themselves and never through other staff). However, 42.86% of PDO attorneys reported directing other staff (paralegals, legal clerks, investigators, justice system clerks, and office specialists) to submit requests for discovery on their behalf, at least some of the time. A smaller minority, only 9.52% total, reported that they submit requests for discovery exclusively through other staff and do not make direct requests for discovery themselves (see Figure 7.1 below). See Attachment D on page 135 for full survey results.

Figure 7.1: Attorney Methods of Requesting Discovery in the PDO: Direct Request vs. Through Other Staff



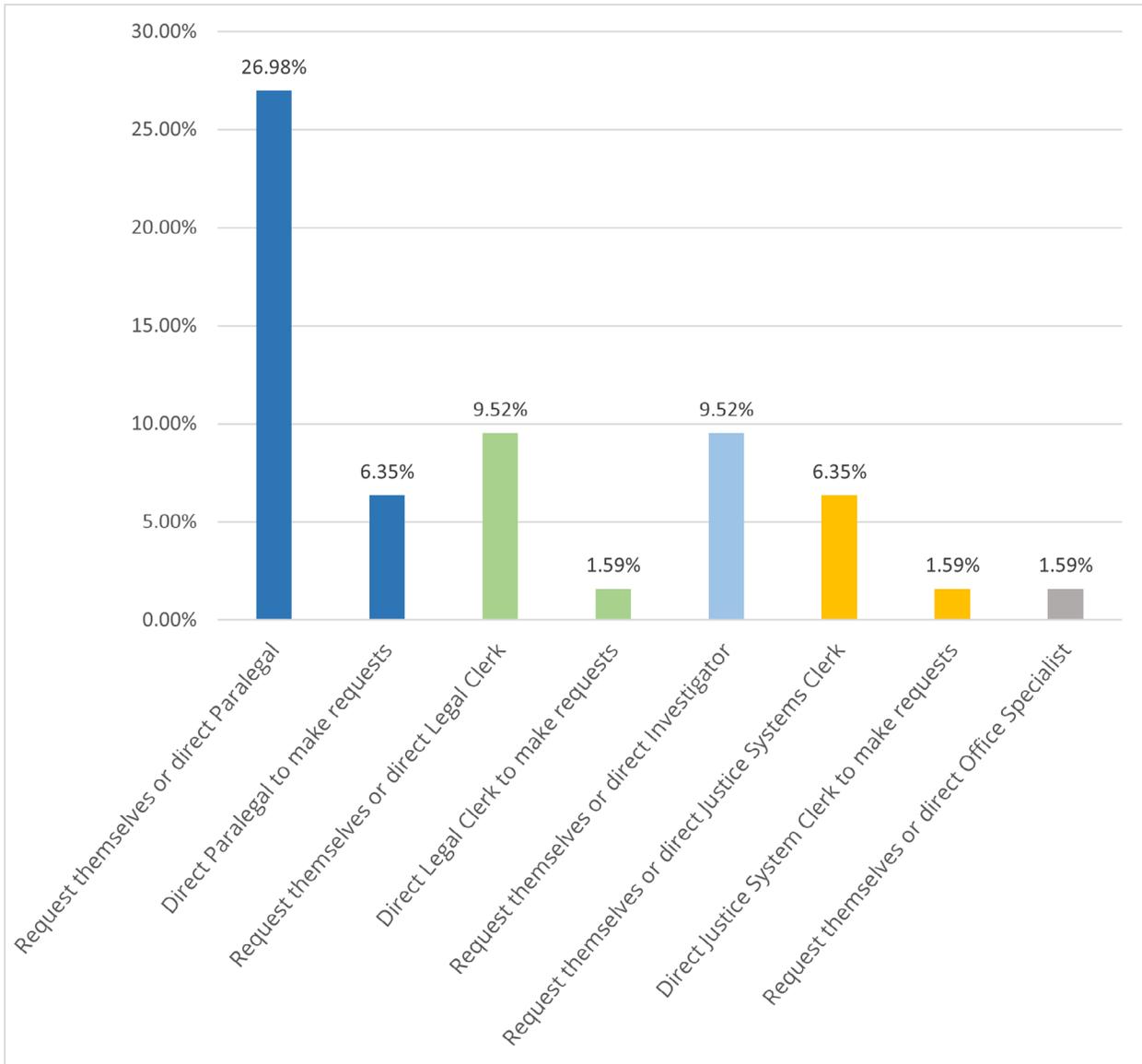
Source: Responses to survey conducted by the Management Audit Division.

Notes:

- (1) Respondents were asked to "select all that apply" and therefore may have selected more than one answer.
- (2) Percentage was calculated based on the total 63 PDO attorneys who responded to this survey question.
- (3) 'Other Staff' include paralegals, legal clerks, investigators, justice system clerks, and office specialists. See Figure 7.2 on page 96 for details of requests to these classifications.

Attorneys who make discovery requests through other staff, at least some of the time, say they most frequently do so through paralegals. However, attorneys also reported directing legal clerks, investigators, justice system clerks, and office specialists to perform this task as well (see Figure 7.2 below).

Figure 7.2: Attorney Methods of Requesting Discovery in the PDO Through Other Staff



Source: Responses to survey conducted by the Management Audit Division.

Notes:

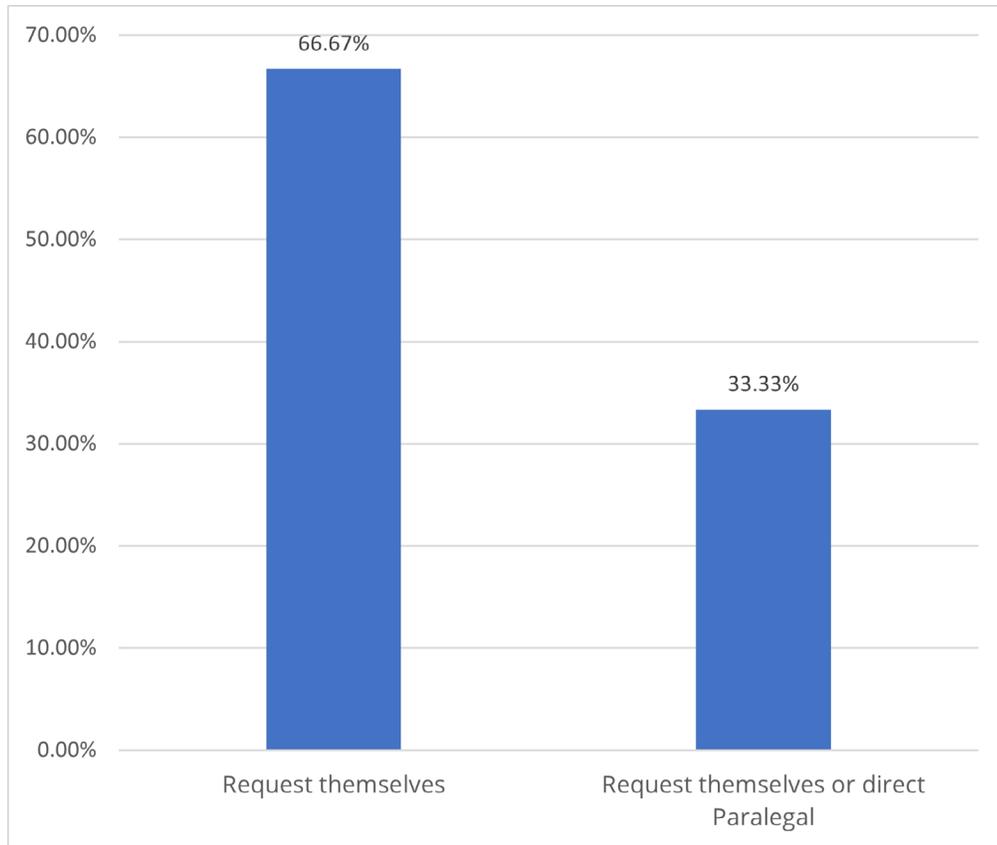
- (1) Respondents were asked to “select all that apply” and therefore may have selected more than one answer.
- (2) Percentage was calculated based on the total 63 PDO attorneys who responded to this survey question.

The range of ways attorneys say they make discovery requests may contribute to inconsistencies in tracking these requests, which increases the risk that delays will not be identified in a timely manner. This increases the need for consistent and central tracking of discovery requests that is accessible to all classifications involved in requesting, receiving, processing, and using discovery.

Process for Requesting Discovery in the Alternate Defender Office

The survey results from ADO attorneys were significantly different than those of the PDO attorneys. ADO attorneys reported that requests for discovery are only performed by attorneys and paralegals. All of the 15 responding attorneys reported that they make requests for discovery themselves at least some of the time. Most of the attorneys, 66.67%, stated that they make discovery requests without assistance from other staff, while the remaining respondents, 33.33%, reported that they either make requests for discovery themselves or they direct paralegals to submit the discovery requests (see Figure 7.3 below).

Figure 7.3: Attorney Methods of Requesting Discovery in the ADO



Source: Responses to survey conducted by the Management Audit Division.

Notes:

- (1) Respondents were asked to "select all that apply" and therefore may have selected more than one answer.
- (2) Percentage was calculated based on the total 15 ADO attorneys who responded to this survey question.

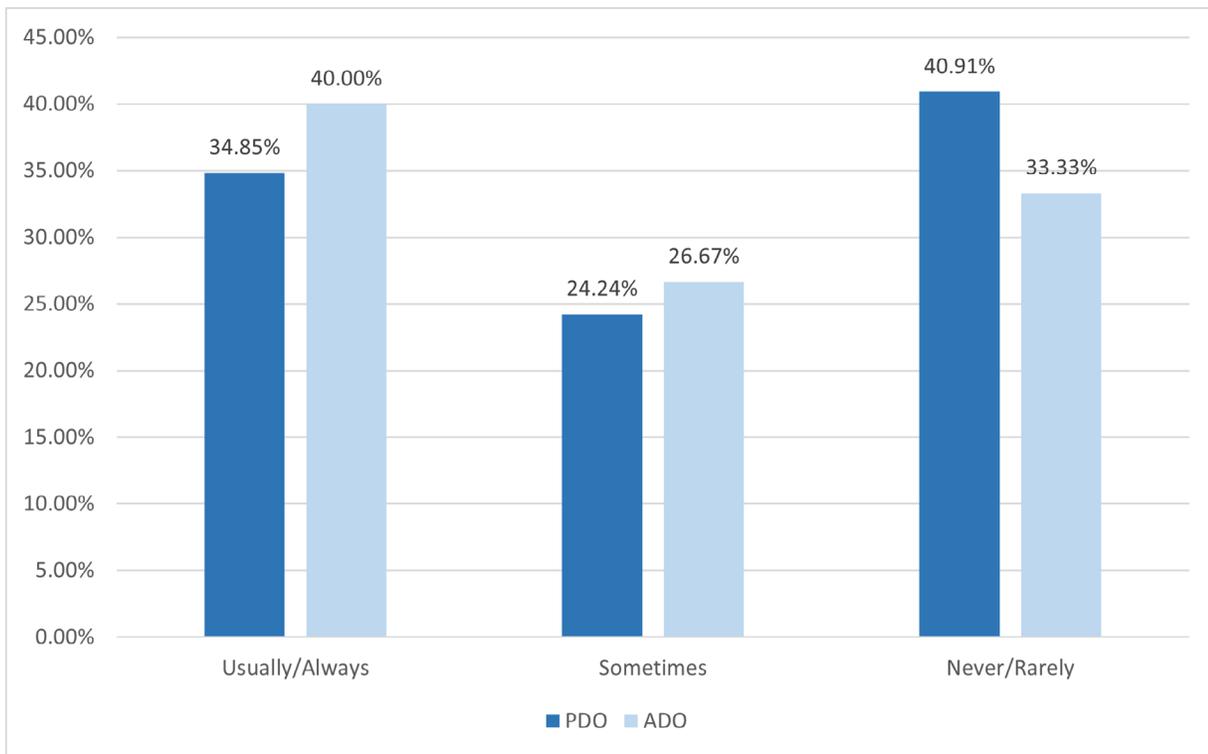
Even though the process for discovery requests in the ADO appears more consistent than in the PDO, making it easy for attorneys to track these requests through a central system is still important so that delays can be identified in a timely manner and the information is accessible to all relevant classifications.

Attorneys are Not Consistently Notified When Discovery Requests are Made in the PDO or the ADO

The Management Audit Division also asked PDO and ADO attorneys in the staff survey “When staff submit a discovery request to the DA/law enforcement/lab/etc. are you notified that your discovery request has been made?” Recall that attorneys reported directing other staff to submit requests for discovery on their behalf at least some of the time (42.86% of PDO respondents and 33.33% of ADO respondents). During the exit conference the Department indicated that the question was inaccurate, as discovery requests are only made to the prosecution, not to law enforcement or labs, and therefore attorneys may have responded regarding requests for information made to other agencies, and not strictly just discovery. There were no emails submitted by survey respondents requesting clarification regarding the discovery questions. Again, the Management Audit Division believes that since the question presents those other sources as an option, and not a requirement, and the question specifically addresses discovery, attorneys would have understood who they make discovery requests to.

Of the respondents to this question, 41.90% of PDO attorneys and 33.33% of ADO attorneys said they never or rarely are told when the request for discovery has been made. A similar proportion of attorneys, 34.85% in the PDO and 40% in the ADO, said that they are usually or always informed by other staff that their request for discovery has been made. About a quarter of attorneys in both offices said they are sometimes notified (see breakdown in Figure 7.4 below).

Figure 7.4: Attorney Notifications Regarding Discovery Requests in the PDO



Source: Responses to survey conducted by the Management Audit Division.

Notes:

- (1) Based on a total 66 respondents to this question in the PDO.
- (2) Based on a total 15 respondents to this question in the ADO.

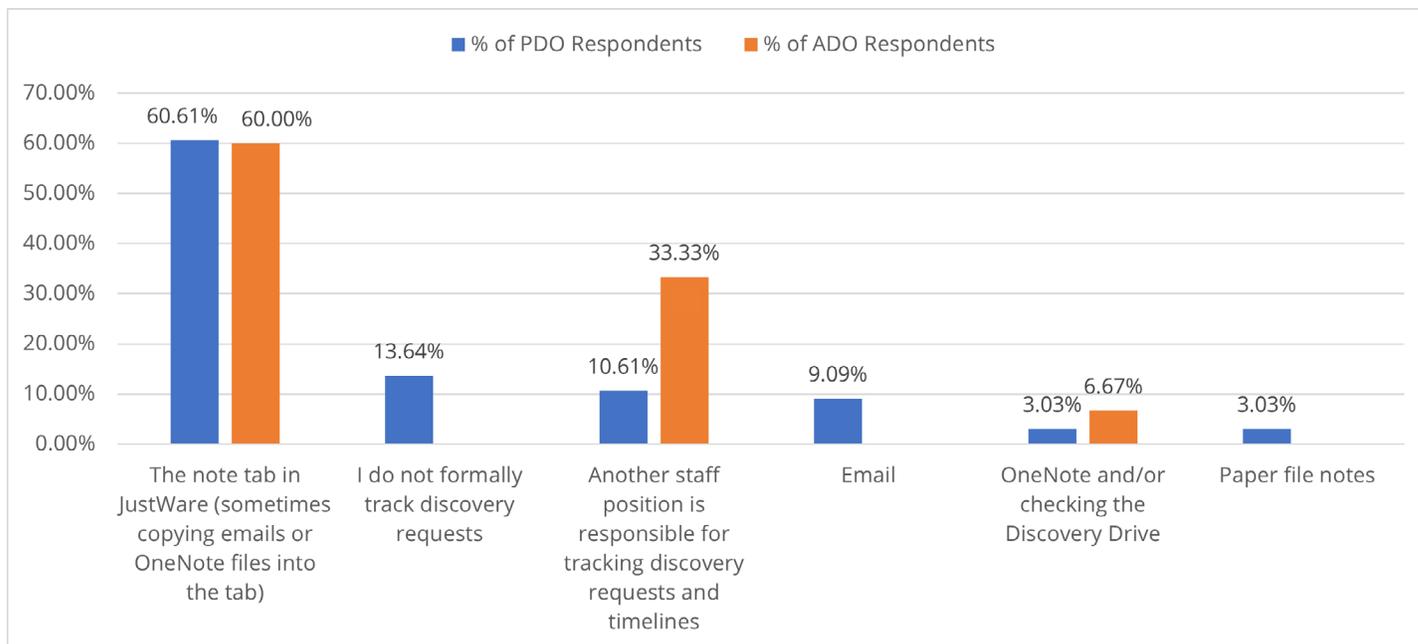
Notifying attorneys when discovery requests are made appears to be inconsistent in both the PDO and ADO. This can make it difficult or impossible for attorneys to know whether the requested material is late and they need to follow-up on the request to avoid delays to their case. Attorneys who are inconsistently, or never, notified (60% or more of attorneys in both offices), are losing an important tool to help them track case timelines. Consistent and central tracking of discovery requests in the case management system, accessible to all classifications involved with making requests, receiving discovery, and processing discovery, would be a valuable tool and help mitigate this challenge.

Lack of Tracking Tools in JustWare Contributing to Inconsistent Processes for Tracking Discovery Requests

JustWare does not have a feature that tracks discovery requests, elapsed time since discovery requests were made, or the location of discovery that has been received. Consequently, this information is kept in the form of notes and each staff member has their own method.

Attorney Methods for Tracking Discovery are Inconsistent

Roughly two-thirds of responding attorneys in both offices track discovery requests through notes in JustWare case tabs (which may include copying emails or OneNote files into the JustWare note tab). Some of the respondents, 15.15% in the PDO and 6.67% in the ADO, either track discovery requests using less centralized methods such as the date of emails, OneNote files, checking to see if files have been uploaded on the department's share drives, or notes in paper files (see Figure 7.5 on page 100). As discovery is stored in multiple locations (including but not limited to JustWare, two different share drives, and Evidence.com), discovery materials can be difficult to locate quickly, and checking in these locations repeatedly to see if requested discovery has arrived is inefficient.

Figure 7.5: Attorney Methods of Tracking Discovery Requests in the PDO and ADO

Source: Responses to survey conducted by the Management Audit Division.

Notes:

(1) Based on a total 66 respondents to this question in the PDO.

(2) Based on a total 15 respondents to this question in the ADO.

Many staff wrote responses to this question regarding tracking discovery indicating that this is a very difficult aspect of the assignment, and that they update a note tab in JustWare with information, but JustWare doesn't track the time passed since a request was made, or indicate when materials have been received. JustWare is being used less as a tracking tool and more as a folder to store notes and copies of emails. Other attorneys responded that currently there was "no good way" to track discovery, or that they "have not settled on a discovery tracking system since [the transition to] JustWare". Penal Code 1054.5(b) allows the opposing counsel 15 days to provide materials and information requested before the requesting party can seek a court order. Being able to demonstrate that the defense complied with the informal discovery procedure, providing documentation of the request for example, is necessary if an attorney decides to pursue a subpoena to receive material from the prosecution.

It is Unclear Which Staff are Responsible for Tracking Discovery

The remaining quarter of respondents in the PDO either do not formally track discovery requests at all (13.64%) or believe another staff position is responsible for this task (10.61%). In the ADO 33.33% of respondents believe another staff position is responsible for this task (see Figure 7.5 above). The 12 attorneys in the PDO and ADO who reported that another staff position was responsible for tracking discovery requests and timelines were asked a follow-up question: "Which staff position tracks requests for discovery and the timeline of those requests?"

In the PDO three attorneys thought paralegals were tracking requests, one thought the task was performed by the justice system clerks, and one attorney supervisor thought legal clerks track requests for discovery and their timelines. In the ADO only two attorneys thought another staff position was responsible for tracking requests for discovery. The staff attorney indicated that legal clerks tracked the requests, but the supervising attorney indicated that attorneys themselves were responsible for tracking requests. Though the sample size is small, the inconsistent responses are concerning when added to the ad hoc methods staff must use to track discovery requests because of the lack of tracking available in JustWare. The combination of these inconsistencies increase the risk of an inefficient workflow which can negatively impact attorneys' ability to provide optimal legal defense.

Figure 7.6 on page 102 shows an overview of survey responses from paralegals, legal clerks, and investigators regarding whether they perform discovery related tasks. Between these three classifications, paralegals and legal clerks reported performing discovery tasks most frequently in both the PDO and ADO. The discovery tasks itemized on the survey were:

- sending discovery requests to the DA/law enforcement/lab/etc.,
- requesting the court to issue subpoenas for discovery (when necessary)
- serving subpoenas for data, information, and people
- tracking elapsed time since discovery request was made
- taking possession, transfer discovery evidence to be tested by a third party/ independent lab
- receiving and processing discovery requests (e.g. scan and/or store documents).

During the exit conference the Department indicated that because the question included "law enforcement/lab/etc." it may have misled staff to think of other, non-discovery, requests for information that they might make. As mentioned above, the Management Audit Division did not receive any emails for clarification regarding these discovery questions from staff. It is possible, however, that responses to these questions may encompass requests for information which are not "discovery".⁷²

⁷² As per Penal Code Title 6 and Chapter 10, "discovery" is information that the prosecution is required to provide to the defense within a certain timeframe. Retrieved March 17, 2021, from https://leginfo.ca.gov/faces/codes_displayText.xhtml?chapter=10.&part=2.&lawCode=PEN&title=6.

Figure 7.6: Discovery Related Work by Paralegals, Legal Clerks, and Investigators in the PDO and ADO

	Paralegals		Legal Clerks		Investigators	
	% of PDO Respondents ¹	% of ADO Respondents ²	% of PDO Respondents ³	% of ADO Respondents ⁴	% of PDO Respondents ⁵	% of ADO Respondents ⁶
I perform discovery tasks	66.67%	100.00%	53.33%	50.00%	17.65%	0.00%
I direct other staff to perform discovery tasks	9.52%	0.00%	40.00%	0.00%	17.65%	25.00%
I do not perform any discovery related work	28.57%	0.00%	20.00%	50.00%	70.59%	75.00%

Source: Responses to survey conducted by the Management Audit Division.

Notes:

- (1) Based on a total 21 respondents to this question in the PDO.
- (2) Based on a total 2 respondents to this question in the ADO.
- (3) Based on a total 15 respondents to this question in the PDO.
- (4) Based on a total 2 respondents to this question in the ADO.
- (5) Based on a total 17 respondents to this question in the PDO.
- (6) Based on a total 4 respondents to this question in the ADO.

However, though most paralegals and legal clerks reported performing discovery related tasks, a significantly smaller proportion of respondents (half or fewer of those performing discovery tasks) reported tracking the elapsed time since a discovery request was made (see Figure 7.7 below).

Figure 7.7: Tracking Discovery Requests by Paralegals, Legal Clerks, and Investigators in the PDO and ADO

	Paralegals		Legal Clerks		Investigators	
	% of PDO Respondents ¹	% of ADO Respondents ²	% of PDO Respondents ³	% of ADO Respondents ⁴	% of PDO Respondents ⁵	% of ADO Respondents ⁶
I track the elapsed time since a discovery request was made	19.05%	50.00%	20.00%	0.00%	0.00%	0.00%

Source: Responses to survey conducted by the Management Audit Division.

Notes:

- (1) Based on a total 21 respondents to this question in the PDO.
- (2) Based on a total 2 respondents to this question in the ADO.
- (3) Based on a total 15 respondents to this question in the PDO.
- (4) Based on a total 2 respondents to this question in the ADO.
- (5) Based on a total 17 respondents to this question in the PDO.
- (6) Based on a total 4 respondents to this question in the ADO.

It is likely that the specific challenges detailed by attorneys regarding the lack of discovery tracking functions in JustWare are directly affecting the ability of paralegals and legal clerks to perform this task as well. Not tracking when a discovery request was made can make it difficult or impossible for attorneys to know whether the requested material is late and they need to follow-up to avoid delays to the case. The Department should introduce a tool in JustWare, or any future case management system, accessible to all classifications involved with making requests, receiving discovery, and processing discovery, that would make it possible to track the timelines of requested information.

Impacts of Delayed Discovery

Delays receiving discovery for a case can have varying effects on workflow, especially for investigators and attorneys. Investigators use discovery documents to locate and contact witnesses and collect additional evidence, which means delays in receiving these documents can make it more difficult to locate witnesses and slow down this process. Discovery documents are also critical for attorneys as they develop defense strategies, so delays can not only negatively impact the case timeline but can negatively impact an attorney's ability to provide an optimal legal defense for the client. PDO and ADO attorneys responding to the Management Audit Division survey reported that the most frequent effect of discovery delays was a request for continuance from the court to postpone a hearing or other matter with a legal deadline. Delays in identifying conflicts, loss of access to witnesses, and delays in identifying witnesses sometimes occur as well roughly 50% of the time according to survey responses by PDO and ADO attorneys. The least frequent effect of discovery delays, according to attorneys in both offices, was a request that the court issue a subpoena for the requested discovery. See Figure 7.8 below for a breakdown of the impacts of delayed discovery and the frequency with which attorneys stated they occur when discovery is delayed.

Figure 7.8: Impacts of Discovery Delays According to Attorneys in Both the PDO and ADO

How often do delays in receiving discovery from the DA/law enforcement/lab/etc. result in the following outcomes:		Request That the Court Issue a Subpoena	Delay in Identifying Witnesses	Loss of Access to Witnesses	Delay in Identifying Conflicts	Request for a Continuance
PDO ¹	Always/Usually	4.55%	28.79%	10.61%	25.76%	48.48%
	Sometimes	22.73%	48.48%	51.52%	43.94%	31.82%
	Rarely/Never	59.09%	12.12%	27.27%	18.18%	12.12%
ADO ²	Always/Usually	6.67%	33.33%	20.00%	33.33%	73.33%
	Sometimes	26.67%	53.33%	53.33%	66.67%	26.67%
	Rarely/Never	46.67%	6.67%	26.67%	0.00%	0.00%

Source: Responses to survey conducted by the Management Audit Division.

Notes:

(1) Based on 66 respondents to this question in the PDO.

(2) Based on 15 respondents to this question in the ADO.

Consistent and central tracking of discovery requests in JustWare, or any future case management system, accessible to all classifications involved with making requests, receiving discovery, and processing discovery, would be a valuable tool and help mitigate this challenge and its impacts on cases. Case continuances increase the length of cases, delay case closure, and may negatively affect the attorney's ability to provide optimal defense by delaying investigations. For clients, especially those who are in-custody, these delays mean more uncertainty, and more time spent away from family and employment. For attorneys, longer cases translate to heavier caseloads as additional cases are assigned monthly on top of cases carrying over from previous months (see Section 1, starting on page 21, regarding staff workload).

Management needs to monitor the discovery process to ensure cases are moving along efficiently and to identify recurrent sources of delay which could be addressed to further streamline the process. Tracking discovery requests in JustWare, or any future case management system, will also enable management to establish performance measures related to the discovery process.

CONCLUSION

JustWare, does not have a feature that tracks discovery requests, elapsed time since requests were made, or where discovery is stored. Consequently, attorneys use a range of methods to track discovery requests, including notes or emails, but roughly a quarter of survey respondents either do not formally track discovery requests at all or believe another staff position is responsible for this task. Not knowing when discovery requests were made makes it difficult or impossible for attorneys to know if the requested material is late. Penal Code 1054.5(b) allows an attorney to seek a court order after 15 days have passed since requesting discovery materials. The requesting party, however, must be able to demonstrate that they complied with the informal discovery procedure, making tracking discovery requests critical.

Both PDO and ADO attorneys indicated that requests for continuances are the most frequent effect of discovery delays. Delays in receiving discovery can make it more difficult to locate witnesses and slow down investigations. This not only negatively impacts case timelines but can negatively impact an attorney's ability to provide an optimal legal defense. For clients, especially those who are in-custody, these delays mean more uncertainty and more time spent away from family and employment.

To address this issue, the Santa Clara County Public Defender Office should develop a discovery tab in JustWare, or any future Department case management system, that includes: a list of discovery requests, the subject of the request, the date of the request, the elapsed time since the request was made, whether discovery has been received, and where the discovery is being stored. Management should be able to run a report from the case management system that includes this new tab information, which they should use to identify delays and establish performance measures. The Public Defender Office should also update policies and procedures regarding how discovery requests are supposed to be made and train all staff on the new case management system discovery tracking feature.

RECOMMENDATIONS

The Santa Clara County Public Defender Office should:

- 7.1 Develop a discovery tab in JustWare, or any future Department case management system, that includes a way to list discovery requests, including the subject of the request, the date of the request, the elapsed time since the request was made, whether discovery has been received, and where the discovery is being stored. (Priority 2)
- 7.2 Update policies and procedures regarding how discovery requests are supposed to be made by staff, tracked in the case management system, processed, and stored. (Priority 2)
- 7.3 Assuming Recommendation 7.1 is adopted, provide training for all staff on the new discovery tab to promote the availability and consistent use of the tool. (Priority 2)
- 7.4 Assuming Recommendation 7.1 is adopted, develop a discovery report with all the information in the new discovery tab which can be run from the case management system by management and used to identify delays and establish performance measures. (Priority 2)

SAVINGS, BENEFITS, AND COSTS

Creating a discovery tab that allows staff to track discovery requests, the elapsed time since the requests were made, whether the material has been received, and where the discovery is stored will help to streamline the discovery process. Furthermore, updating the policies and procedures to clarify the discovery process and incorporate the new tool in JustWare, or any future Department case management system, will help make the discovery process more consistent and efficient. These recommendations will make discovery information easier to track, especially for attorneys and investigators, and will ensure that attorneys have the required information easily available if they seek a court order for discovery. Tracking the discovery process will likely decrease the frequency of case delays, which can negatively impact case investigations, the quality of defense, and staff workload, and add to the hardships experienced by the defendants and their families.

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Section 8: Increasing the Frequency of Staff Evaluations

Background

To facilitate employee development, the County and many labor organizations have negotiated performance appraisal programs for County staff. The labor agreement for County attorneys does not dictate an appraisal timeline, but a public defense guide published by the American Bar Association (ABA) states that defense counsel should be “systematically reviewed for quality and efficiency according to nationally and locally adopted standards.” Within the Public Defender Office (PDO, “the Department”), which includes the Alternate Defender Office (ADO), a supervising attorney is responsible for formally evaluating the performance of subordinate attorneys. Several non-attorney PDO and ADO job classifications are entitled to an annual or probationary evaluation per their respective labor union agreements. Non-attorney evaluations in the PDO are completed by supervisory staff in their respective units (e.g., Investigations, the Paralegal Unit, and Administrative Support).

Problem, Cause, and Adverse Effect

The PDO and ADO do not have a documented procedure for completing performance appraisals. In the absence of such a procedure, Department staff have noted inconsistent evaluation timelines. For instance, in an internal survey conducted for this audit report, 72.73% of PDO attorneys and 46.67% of ADO attorneys responded that they had not been issued a performance evaluation in over a year. Further, 16 of 93 non-attorney respondents (16.13%) had not been issued evaluations according to timelines required by their unions. The Department was also unable to provide complete records of these evaluations. Upon request, the ADO only provided two of 15 attorney evaluations from 2017 and seven “timeliness” worksheets for investigators during calendar years 2020 and 2021 (these worksheets did not use standard appraisal templates provided by the County’s Employee Services Agency). The ADO reported that several attorney, clerical, and legal evaluations were lost or destroyed during the Office’s relocation in August 2020. Meanwhile, the PDO did not provide any of its evaluations due to confidentiality concerns, only providing logs of when appraisals were last completed. These logs corroborated the inconsistent evaluation schedules noted in staff survey responses. Failing to periodically review staff performance impedes employee growth, creates unclear expectations, and may ultimately impact the quality of the Department’s service delivery.

Recommendations

The Department should create a documented procedure for performance appraisals, which is a practice employed by other County departments such as the Public Health Department. This procedure should be consistent with appraisal timelines stated in County labor agreements and should also determine a standard (e.g., annually) for “systematic review” of attorney performance, per ABA guidelines. In addition, the Department should develop a tracking and retention system for its appraisals to ensure that managers are meeting the evaluation requirements in this new procedure.

Savings, Benefits, and Costs

These recommendations would better ensure compliance with the County’s labor agreements, create an avenue for employees to understand their strengths and weaknesses, and may potentially translate to better defense delivery for the Department’s clients. Keeping a more comprehensive record of evaluations might also help the County defend against potential employment-related litigation.

FINDING

Performance Appraisal Timelines Per Santa Clara County Labor Agreements and the American Bar Association

To facilitate employee development and provide quality services to its citizens the County of Santa Clara has negotiated employee performance appraisal programs with many labor organizations. Within the Public Defender Office (PDO or “the Department”), which includes the Alternate Defender Office (ADO), executive management staff belong to the Executive Leaders Group; attorney staff belong to the Government Attorneys Association (GAA); and non-attorney staff belong to either the Service Employees International Union (SEIU) Local 521 or the County Employees Management Association (CEMA). Required timelines for performance appraisals are noted in each of these labor organizations’ respective labor agreements with the County (see Figure 8.1 below for detailed timelines).

Figure 8.1: Employee Performance Appraisal Timelines for Labor Agreements Governing PDO and ADO Staff

Labor Organization	Description	Appraisal Timelines
Executive Leaders	Executive management staff	Annual
GAA	Non-executive attorney staff	None defined
CEMA	Non-attorney APT and clerical supervisors and information technology (IT) staff	Annual
SEIU Local 521 Clerical	Clerical staff	After new employee probationary period
SEIU Local 521 Social Services	Social workers	Annual
SEIU Local 521 Administrative, Professional, and Technical (APT)	APT staff	After new employee probationary period
SEIU Local 521 Blue Collar	Trades staff	After new employee probationary period

Source: Chart from Employee Services Agency (ESA) Labor Relations.

In addition to labor agreement provisions, some County entities, such as the Public Health Department, have documented performance appraisal procedures that dictate evaluation timelines and outline action steps from responsible staff within the Department (see Attachment P on page 221 for Public Health Department procedure). The PDO and ADO reported that they do not have such a procedure or timeline expectations for staff evaluations. In the absence of written guidelines, the Department formally evaluates its staff inconsistently and infrequently.

While the above figure shows that GAA’s labor agreement does not require regular appraisals for non-executive attorney staff, a public defense guide published by the American Bar Association (ABA) states that defense counsel should be “systematically reviewed for quality and efficiency according to nationally and locally adopted standards.”

Within the Department, attorney supervisors are responsible for evaluating the performance of subordinate attorneys. PDO management reported that non-attorney evaluations in this office are completed by supervisory staff in their respective units (e.g., Investigations, the Paralegal Unit, and Administrative Support Services).

No Procedure for Formal Employee Evaluations and Inconsistent Appraisal Timelines

*Non-Executive Attorney Staff*⁷³

The Department has developed a detailed formal evaluation template for attorneys, which includes an outline of best practices and expectations. This nine-page document covers competencies such as advocacy and communication skills, case analysis and preparation skills, and experience and leadership (see Attachment Q on page 225).

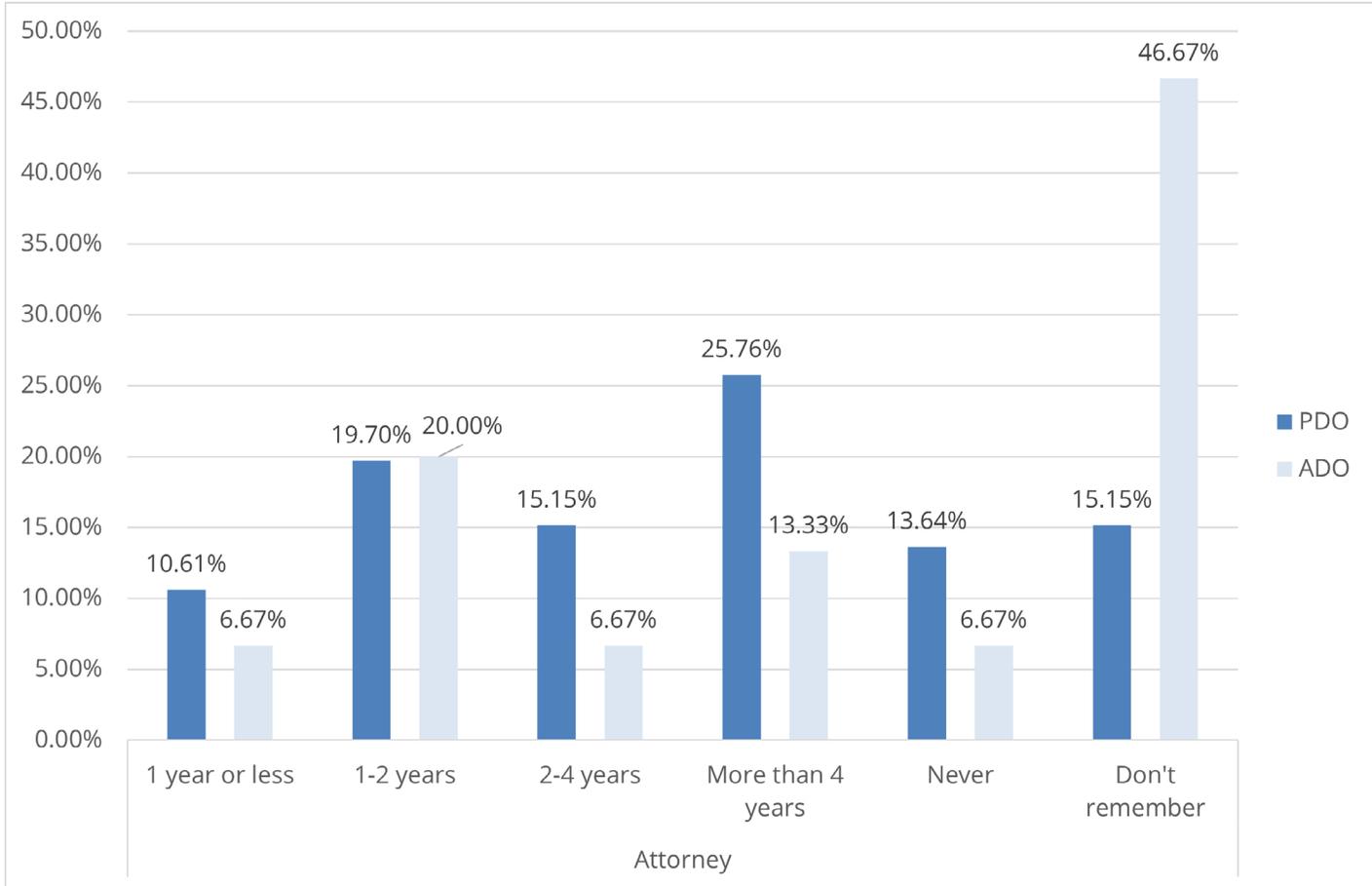
In addition to these formal written evaluations, PDO management reported that the Department provides informal feedback to attorneys while staffing cases, reviewing case statuses, and transition planning for assignment changes. These interactions allow senior staff to assess attorneys' strategic understanding of cases and their general skill level. Supervisors also offer comments following direct observations of trial and motion work. Finally, in September 2021 the Department launched a new mentorship program that matches new attorneys with experienced mentors to provide regular interaction, support, and feedback.

However, despite these numerous channels for routine informal assessment, formal evaluations for attorneys occur infrequently. Out of the 125 attorneys in the Department, a total of 81 attorneys, 66 in the PDO and 15 in the ADO, responded to an internal survey conducted by the Management Audit Division in October 2020. Most of these respondents stated that they had not had a performance evaluation in over a year (74.24% in the PDO and 46.67% in the ADO). For 54.55% of PDO attorneys, and 26.67% of ADO attorneys, it has been two or more years since an evaluation. Nearly half the ADO attorneys and 15.15% of PDO attorneys stated that they did not remember when they last had a performance evaluation. Of the 9 attorneys in the Department who reported *never* having received an evaluation, five have been with the Department for over 5 years. See Figure 8.2 on page 110 for a complete breakdown of attorney evaluation timelines.⁷⁴

⁷³ Executive staff complete performance evaluations annually. This process typically includes establishing 12-month goals as well as assessing to what extent the prior year's goals were met.

⁷⁴ A portion of these respondents had been with the Department for fewer than two years. It is thus possible that several of these staff were too new to the County to have received an evaluation.

Figure 8.2: Non-Executive Attorneys: Years Since Last Staff Evaluation in the PDO and ADO (Percentages and Counts)



Time Elapsed Since Last Evaluation	PDO Count	ADO Count	Total
1 year or less	7	1	8
1-2 years	13	3	16
2-4 years	10	1	11
More than 4 years	17	2	19
Never	9	1	10
Don't remember	10	7	17
Total:	66	15	81

Source: Responses to internal survey conducted by the Management Audit Division in October 2020.

Note: Proportion calculated based on 66 PDO attorney respondents and 15 ADO attorney respondents to this question.

This issue of performance reviews was also raised in an attorney survey issued for the Management Audit Division’s 2007 audit of the Public Defender Office, in which 30.8% of attorney respondents reported that they did not regularly receive useful guidance from their supervisors.

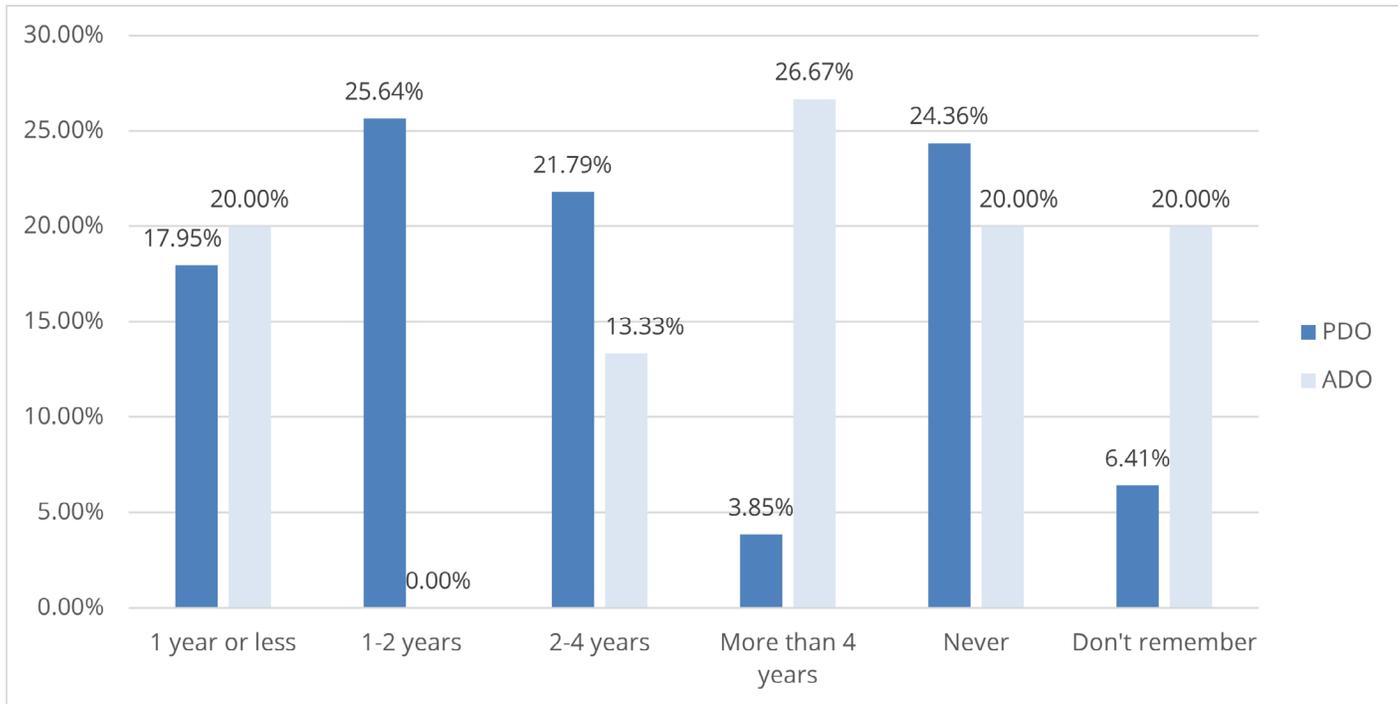
Documentation provided by Department management corroborated these staff responses. A PDO attorney evaluation log showed that only 10 of 74 attorneys receiving performance appraisals between 2014 and 2020 (13.51%) had been evaluated more than once during this seven-year period. Further, the ADO was able to provide only two of 15 attorney evaluations—both from 2017—and no other records or logs indicating prior or later evaluations.

The Department reported that formal PDO and ADO attorney evaluations are typically triggered when an attorney changes assignments or at the time of promotion eligibility. This practice, along with a lack of required schedules within the GAA labor agreement, likely contribute to the infrequency of attorney performance appraisals. While the Department is not formally required to conduct these appraisals on a set schedule, allowing more than five years to elapse between attorney evaluations likely does not meet the “systematic” reviews of defense counsel quality and efficiency best practice recommended by the ABA.

Non-Attorney Staff

Staff survey responses and Department records show that formal non-attorney staff appraisals, like attorney evaluations, also occur sporadically. Among non-attorney staff, 68 of 93 respondents to our October 2020 survey stated that they had not had a performance evaluation in over a year (75.64% of all PDO respondents and 60.00% of all ADO respondents), and 29 of these staff (28.21% in the PDO and 46.67% in the ADO) had not been given a performance appraisal in over four years (see Figure 8.3 on page 112 for a breakdown of the reported time elapsed since last staff evaluations for non-attorney staff).

Figure 8.3: Non-Attorney Staff: Years Since Last Staff Evaluation in the PDO and ADO (Percentages and Counts)



Time Elapsed Since Last Evaluation	PDO Count	ADO Count	Total
1 year or less	14	3	17
1-2 years	20	0	20
2-4 years	17	2	19
More than 4 years	3	4	7
Never	19	3	22
Don't remember	5	3	8
Total:	78	15	93

Source: Responses to internal survey conducted by the Management Audit Division in October 2020.

Note: Proportion calculated based on 78 PDO non-attorney respondents and 15 ADO non-attorney respondents to this question.

Further, 16 of these 93 respondents (16.13%) had not been evaluated on timelines dictated by CEMA and various SEIU Local 521 labor agreements. This group included the following:

- seven of the 12 CEMA members had not been evaluated in over a year despite annual appraisal requirements
- an additional nine staff belonging to SEIU Local 521 unions had *never* been evaluated despite having been at the County for over two years.⁷⁵

PDO evaluation logs supported these staff responses, showing multiple clerical and investigations staff that had no appraisals on file despite annual appraisal requirements and working at the PDO for over a year. Meanwhile, the only appraisal documentation provided by the ADO for non-attorney staff were “case timeliness” worksheets for the Investigations Unit during calendar years 2020 and 2021. These worksheets solely notate whether investigations assignments were completed on time and do not follow holistic employee appraisal templates maintained by the County’s Employee Services Agency (ESA). PDO staff reported that, similar to the informal evaluation channels for attorneys, investigators have frequent communications with supervising staff, and that feedback on performance is given during case preparation activities. However, the Department acknowledged that formal evaluations are not regularly conducted.

Employee appraisals are a key tool in facilitating professional development. In addition to ensuring alignment with labor agreement and best practice guidelines, conducting these reviews regularly can help Department staff identify their strengths, potential areas of improvement, goals, and training needs. This, in turn, may translate to improved services for the Department’s defense clients. The Management Audit Division thus recommends that the PDO and ADO create and enforce a documented procedure for performance appraisals that includes appraisal timelines and responsible parties. This procedure should be consistent with appraisal schedules stated in County labor agreements and should also determine a standard for systematic reviews of attorney performance.

Incomplete Recordkeeping of Evaluations

The PDO and ADO do not comprehensively retain or track evaluations to confirm that staff performance appraisals are documented and occur on a consistent schedule. As noted above, the ADO provided extremely limited records of its prior staff performance appraisals. ADO management reported that this lack of documentation can be attributed to several attorney, clerical, and legal evaluations being lost or destroyed during the Office’s relocation to another building in August 2020.

While the PDO did not provide any completed evaluations due to confidentiality concerns, the Office’s appraisal tracking logs for clerical staff had multiple blank appraisal date fields. In addition, a note for one staff member read, “In folder but not sure if discussed, no signed copy.” By not having a clear tracking system that shows when staff were evaluated, there is no way for the Department to verify that its performance reviews are completed in accordance with labor agreement requirements and best practices.

⁷⁵ The probationary period for new employees means the first six months or any period not to exceed 18 months of continuous service from hire.

Failing to retain documented staff evaluations also carries a legal risk. An article published by the Society for Human Resource Management, a professional association of human resources and business executive members, discusses how, “without a history of ‘consistent, objective, well-crafted’ evaluations, employers may have a tough time defending themselves” in employment-related disputes.⁷⁶ For instance, if a PDO or ADO staff member is terminated for poor performance but has no evaluations on file suggesting that the employee has been notified of these issues, this may complicate the County’s defense against a wrongful termination lawsuit filed by this employee.

To safeguard against potential employment-related litigation and also ensure that Department staff are evaluated timely, the PDO and ADO should develop a tracking and retention system for its appraisals in accordance with evaluation requirements in the new procedure recommended above.

At the Management Audit Division’s October 2021 exit conference with the auditee, the Department reported that implementation of these recommendations is already underway. To this end, two administrative assistants have been tasked with coordinating meetings between supervisors and employees, logging the completion of evaluations, and ensuring collection of completed records. The PDO and ADO reported that all evaluation records will be stored by a designated executive manager (at this time, the Chief Assistant Public Defender) and the manager’s administrative assistant.

Further, the Department stated that PDO management has committed to establishing timelines, schedules, and a maximum period between all evaluations. To support these statements, the Department furnished the Management Audit Division with an attorney evaluation tracker and evaluation scheduling emails from the first week of October 2021.

CONCLUSION

The County and many labor organizations governing County staff have negotiated performance appraisal requirements to foster employee development and continuously improve County services. However, the PDO and ADO do not have a documented performance appraisal procedure that dictates how and when these appraisals must be conducted. In the absence of such a policy, staff evaluations for both the Department’s attorney and non-attorney staff have occurred on a sporadic schedule. Additionally, multiple non-attorney staff have not received performance appraisals in accordance with applicable CEMA and SEIU Local 521 labor agreement specifications. While the PDO and ADO provided examples of informal employee review channels, this approach is insufficient to meet best practices.

The Department does not comprehensively track or retain records of its evaluations, making it unclear when staff should be receiving their next evaluations. This lack of recordkeeping also leaves the County vulnerable to employment-related lawsuits. The Department should aim to conduct and track employee appraisals on a regular timeline and retain documentation of these evaluations. Statements and evidence provided by the Department in October 2021 indicate that the PDO and ADO are in the process of implementing these recommendations.

⁷⁶ Vranjes, T. (2016, Feb. 19). *Reduce the Legal Risks of Performance Reviews*. SHRM. Retrieved April 21, 2021, from <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/reduce-the-legal-risks-of-performance-reviews.aspx>.

RECOMMENDATIONS

The Santa Clara County Public Defender Office should:

- 8.1 Create and enforce a documented procedure for performance appraisals that includes appraisal timelines and responsible parties. This procedure should be consistent with appraisal schedules stated in County labor agreements and should also determine a standard for systematic reviews of attorney performance (e.g., annually). (Priority 2)
- 8.2 Develop a tracking and retention system for its appraisals to be provided to both managers and staff to ensure that managers are meeting the evaluation requirements in this new procedure. (Priority 2)

SAVINGS, BENEFITS, AND COSTS

These recommendations would better ensure compliance with the County's labor agreements, create an avenue for employees to understand their strengths and weaknesses, and may potentially translate to better delivery of legal defense for the Department's clients. Keeping a more comprehensive record of evaluations might also help the County defend against potential employment-related litigation.

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Molly O'Neal
 Public Defender

DATE: December 21, 2021

TO: Board of Supervisor's Management Audit Division

FROM: Molly O'Neal *Molly O'Neal*
 Public Defender

SUBJECT: Response to the Management Audit of the Office of the Public Defender

This memo is in response to the recommendations pertaining to the Office of the Public Defender in the management audit conducted by the Board of Supervisor's Management Audit Division.

Section 1: Tracking Staff Workload

Section 1 has proved a challenging section to respond to. Despite the audit team's diligent efforts to understand and evaluate how the Public and Alternate Defender Offices (hereafter PDO) tracks staff workload, the report evidences numerous misunderstandings about how we assign and monitor work and what JustWare can and does track. Rather than respond to each fact or conclusion we think is incorrect, PDO makes the following general observations.

First, due to concerns about violating the attorney-client privilege, PDO was not able to provide the audit team unfettered access to JustWare. We endeavored to provide sanitized data as it was requested, but could not provide access to the database itself, thereby limiting the audit team's ability to explore JustWare and run reports for themselves. This may have impacted the team's ability to fully understand the system and its capabilities. Most of the data the report recommends should be recorded and/or tracked in JustWare can be, and is, tracked in JustWare. Still, we agree there are reports—notably more specific reports for tracking attorney caseload and social worker tasks—that should be developed.

Second, tracking attorney workload is a complex issue generally, and at the PDO specifically. There is widespread agreement that the factors needed to analyze attorney workloads vary by jurisdiction and require consideration of staffing ratios, collateral consequence resources (like immigration attorneys and social workers) and the charging and sentencing practices of prosecutors and judges. In California, AB 625 (Arambula) recently passed which will sponsor a workload study for defense practitioners and seek to produce a new model by which to actually and meaningfully track public defender workloads.

Internally, a meaningful understanding of attorney workload cannot be reached by dividing the total number of PDO or ADO cases by the total number attorneys for an average number of cases per attorney. Some attorneys carry large caseloads, some very small. The attorney's experience level, the type and complexity of each case they are handling, the volume of discovery in the cases, whether they are handling a calendar or trial assignment, and other factors must be considered when evaluating workload.

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Attorney supervisors are in constant communication with members of their teams about the cases they are carrying. They can, and do, adjust caseloads as needed. Additionally, administration tracks caseloads and may add attorneys to individual teams as needed, in consultation with supervisors.

For more complex cases, such as felony trials and homicides, each case is individually evaluated before it is assigned to an attorney, and the attorney's caseload is tracked using a uniform point system. These caseloads are tracked and updated weekly in an Access database, which we hope to transition to JustWare soon. To date, PDO has not had the resources to replicate the complexity of the Access reports used in JustWare. This same weighting process is neither practical nor helpful for misdemeanor caseloads (see response to recommendation 1.4 below for more information about differences in how various case types are assigned). Misdemeanor attorneys will invariably carry larger caseloads than felony attorneys given the relative simplicity and shorter lifespan of misdemeanors compared to felonies. Also overlooked in the report is the fact that a significant percentage of misdemeanor cases (and thus, our overall annual case count) settle at arraignment. Attorneys appear with these clients for a single court appearance, and no further work on the case is needed. These cases, however, are included to reach the averages reported.

Finally, the report surmises that non-attorney workload is tracked in terms of cases, rather than tasks. Unlike attorneys, most paralegals are not assigned to cases. Multiple paralegals may conduct tasks on a single case (e.g., one paralegal may be responsible for intake interview, another for ordering records, another for preparing petitions or draft motions), as their work is task-based, not case-based. Furthermore, while one investigator may be assigned to a case, the investigator may be assigned multiple tasks on a case. Therefore, the best way to understand the workload of non-attorney groups is to understand the number of tasks they actively carry at a time, which can be done using existing reports in JustWare. All paralegal and investigator tasks, as well as legal clerk tasks, are tracked in JustWare. Contrary to what was conveyed in the report, available JustWare reports to track team member tasks are not limited by when the task was assigned or whether it is active or complete. Team supervisors can set the parameters for each report and can run reports for individual team members, select team members or the entire team. The reports allow supervisors to assess the number of active tasks team members are carrying at any given time (not limited to tasks assigned in the last month), compare the workloads of individuals on their team, review the number of tasks completed by team members in a given time frame to ascertain productivity, and can manipulate report parameters in other ways to understand workloads of their staffs. The report correctly notes that social worker reports do not presently exist in JustWare and need to be created.

Despite what PDO perceives as erroneous data and analysis in Section 1 of the report, we ultimately take no issue with the final recommendations, and in large part, are already implementing them. A more detailed response to each recommendation follows.

Recommendation 1.1: Annually assess attorney to supervisor and attorney to investigator ratios in each office and report supervisor and investigator staffing increases needed to meet national guidelines to the Board of Supervisors based on clear trends of significant deficiencies over a multi-year period such as three years. (Priority 1)

PDO Response: Agree

Since April 19, 2021, PDO has added one attorney supervisor to oversee the post-conviction team. In addition, PDO is in the process of interviewing for a second misdemeanor supervisor. PDO will have 12 attorney supervisors as of the submission of this report, not nine. Additionally, ADO has two attorney

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supervisors, not one, as suggested in the report. Because additional supervisor positions are being filled by line attorneys, PDO may need to request additional positions to replace those attorneys.

Recommendation 1.2: Require staff to use the assignment active date field when updating attorney assignments in JustWare or set it up to automatically generate the assignment active date field when the attorney's name is added to the case. (Priority 1)

PDO Response: Agree

When a new attorney is added to a case, JustWare *automatically* adds the active date for that attorney and *automatically* selects that attorney as the active attorney on the case. Manual entry of an active date is not required. This has been the case since JustWare's inception, and since 2002 when the office began using the legacy system, Scales. We provided five years of data to the audit team, and we found no instance of a missing attorney assignment date.

Recommendation 1.3: Require attorney staff or their supervisors to update the assignment inactive date when the case is closed or assigned to another attorney. (Priority 1)

PDO Response: Agree

PDO/ADO staff members have been required to manually update the assignment inactive date since JustWare's inception, and this continues to be the policy of the Department. Additionally, staff members are required to manually deselect the previous attorney as active, ensuring the case has only one active attorney (the newly assigned attorney). PDO concurs that staff has occasionally neglected to make the updates, though even when this has happened, there is enough data to track when an attorney became inactive. PDO can explore whether there is a way to automate these updates to eliminate instances in which they are missed.

Recommendation 1.4: Assign the Management Analyst Team to create workload reports in JustWare that capture the total number of active cases assigned to attorneys, regardless of case type or team, as previously adopted by the Board of Supervisors in 2007. (Priority 1)

PDO Response: Agree

JustWare currently has several reports that allow supervisors to assess attorney caseloads, and the attorney's own Name Record contains a list of active cases the attorney is carrying. Admittedly it would be beneficial to build reports more specifically tailored to the needs of supervisors so they can sort information by case type, assigned date, or whatever parameters they need to assess and compare team members' relative workloads. Equally or more important than the data available in JustWare, is the qualitative information gleaned by attorney supervisors through regular communication with their team members. Attorney supervisors routinely confer with attorneys on their teams to discuss their caseloads, staff individual cases, assess workload and attorney stress levels, and make needed adjustments.

In the context of felony trials and homicides, supervisors keep caseload reports outside of JustWare, with weighted point counts, to ensure even distribution of work and manageable caseloads. The reports are reviewed when assigning case and updated weekly. When attorneys keep cases from prior assignments, supervisors are informed and factor this in when assigning new cases. Misdemeanor cases are generally not complex, and therefore all carry approximately the same weight and are evenly divided among members of the misdemeanor team. Felony and homicide cases, by contrast, can vary greatly in their

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complexity. These cases are assigned points based on their relative complexity, to ensure no attorney's caseload is too large.

The report's conclusion that attorneys change teams frequently and are assigned cases from multiple supervisors at one time is understandable but inaccurate. Most attorneys remain on an assignment (and team) for 1-2 years (longer during the pandemic due to trial backlogs). Sometimes attorneys move within teams, however. For example, a member of the misdemeanor team may move after six months from handling general misdemeanors to domestic violence misdemeanors. The supervisor does not change, but the data may appear to suggest that the attorney has changed teams.

Because PDO follows a holistic model of client representation, we endeavor, when possible, to have a single attorney to handle all of a client's active cases, rather than having the client represented by several attorneys from different teams at once. For this reason, the attorney handling the most serious felony, for example, may also handle the client's pending misdemeanors and probation violation. It may appear from the data that the attorney is being "assigned" work from multiple supervisors based on the different case types, though this is not the case. The work is assigned by, and the attorney reports to, a single supervisor in charge of the team they are on—in this example, the felony team supervisor, even though the attorney may also be handling the client's non-felony cases.

Recommendation 1.5: Assuming the adoption of 1.4, require attorney supervisors use the reports when making new case assignments. (Priority 1)

PDO Response: Agree

In general, we agree with this recommendation. However, each assignment in the office is different and the degree to which such a report will be useful may vary. In felony and homicide assignments where cases vary in complexity, our supervisors already use detailed reports based on a point and weighting system to assign new cases. They evaluate and account for each attorney's existing caseloads and each case's complexity, among other things. The reports are updated weekly and maintained in an Access database. In other assignments, such as misdemeanors, this process would be logistically impractical and less useful. A simple case count would be more helpful. That count, however, would never tell the whole story about an attorney's caseload and a supervisor must still rely on qualitative information, which cannot easily be tracked in a database, to fully evaluate whether caseloads are appropriate.

We believe it may be possible to incorporate our current weighting-point system into JustWare and, as resources permit, will evaluate whether we should eliminate the Access database in favor of tracking these caseloads in JustWare. Paired with improved reports recommended in the previous section, we may be able to centralize and standardize our complex caseload tracking.

Recommendation 1.6: Assign the Department's Management Analyst Team to create reports that actively and independently track task load of paralegal and investigator staff using the paralegal and investigator task tab in JustWare by quantifying all tasks that have not been marked as complete as of the date the report is pulled. (Priority 1)

PDO Response: Agree

These reports exist and are being used by paralegal and investigator supervisors.

Recommendation 1.7: Assuming the adoption of 1.6, require paralegal and investigator supervisors use the reports in making assignment decisions. (Priority 1)

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PDO Response: Agree

These reports (and similar ones maintained outside of JustWare, used as a check to ensure the information is accurate) exist. They are routinely used by paralegal and investigator supervisors in monitoring workload and assigning new tasks. Over time, PDO will likely phase out the external reports in favor of JustWare reports alone.

Recommendation 1.8: Assign the Management Analyst Team to create reports that actively track task load of social workers using the social worker task tab in JustWare by quantifying tasks which have not been marked as complete or cancelled and report outputs to social worker managers. (Priority 1)

PDO Response: Agree

Social worker task assignment is a function that was added to JustWare in recent months. Previously, attorneys requested tasks of social workers by email and social workers tracked their own tasks in an ad hoc manner. Social worker task reports can and should be created in JustWare so managers can accurately see and track the social workers' workloads.

Recommendation 1.9: Track the elapsed time from the case referral date to the date the case is opened in JustWare. (Priority 1)

PDO Response: Agree

PDO's policy and practice is to open all cases in JustWare as soon as possible. In most cases, this is accomplished within a day or two. When a case is opened, staff enters the referral date and the date the case was created is automatically recorded by the system. A report can be created to monitor and track this information across cases to ensure PDO is not falling behind on case openings. PDO is not aware of any current or prior case-opening backlog, outside of the backlog created by our transition to JustWare in March 2019. This backlog was eliminated in 2020. Any backlog would make itself immediately apparent to attorneys who are expected to conduct work for our clients in JustWare. If the case is not opened in JustWare, PDO staff cannot do their jobs. Therefore, ensuring we get cases opened quickly and efficiently is a top priority of the Department.

Recommendation 1.10: Regularly report workload reports run through JustWare to PDO management and, as needed, to the Board of Supervisors to ensure staffing levels are adequate for case referrals and client services. (Priority 2)

PDO Response: Agree

PDO management receives weekly caseload reports for felony and homicide team lawyers, though not for misdemeanor or other attorney teams. Management has access to any attorney's open caseload in JustWare by viewing the attorney's Name Record and can utilize other reports to view a single attorney's caseload as well. Management does not receive weekly reports related to paralegal, clerical, investigator, or social worker task loads, though such reports, if needed, could be generated.

Section 2: Client Eligibility Criteria and Screening for PDO Services

The Santa Clara County Public Defender Office should:

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Recommendation 2.1: Update the income thresholds for financial eligibility screenings using a methodology that considers the livable wage in the County and the number of adults and children in the household. (Priority 2)

PDO Response: Agree

Recommendation 2.2: Review and update the income threshold for financial eligibility screenings annually at the start of each fiscal year. (Priority 2)

PDO Response: Agree

Recommendation 2.3: Add a date field to the Financial Affidavit Under Penalty of Perjury to Obtain Services of Public Defender form, so that financial screening forms for all in-custody and out-of-custody clients are dated and can be tied to the start or end of a case. (Priority 3)

PDO Response: Agree

Recommendation 2.4: Screen all clients during their intake interview for financial eligibility, with regularly produced reports, such as monthly, provided to management on compliance with this requirement. (Priority 1)

PDO Response: Agree

Recommendation 2.5: Assign the Management Analyst Team to improve access in JustWare or any future case management system for financial screening forms across all cases for a single client with the goal of creating reports to audit financial screening performance for clients who should be financially screened. (Priority 2)

PDO Response: Agree

Section 3: Pre-Arrest Representation and Review

Recommendation 3.1: Review the workload of attorneys, paralegals, and investigators and, depending on the results, either shift one FTE paralegal and investigator and two FTE attorneys to the PARR Team, or request that the Board of Supervisors allocate one FTE paralegal and investigator and two FTE attorneys to the PARR Team. (Priority 1)

PDO Response: Agree

The PARR team is now budgeted for two FTE attorneys (July 2021), one FTE paralegal, one FTE investigator and one FTE social worker. Due to the pandemic hiring freeze, PDO only recently interviewed and selected the FTE social worker who will start on January 10, 2022.

Recommendation 3.2: Request that the Board of Supervisors allocate one FTE social worker to the PARR Team. (Priority 1)

PDO Response: Agree

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The PARR team is budgeted for one FTE social worker. Due to the pandemic hiring freeze, PDO only recently interviewed and selected the FTE social worker who will start on January 10, 2022.

Recommendation 3.3: Monitor the ongoing J-PAL and California Policy Lab evaluations of the PARR Team and report the results to the Board of Supervisors to support the continued development of this pre-trial program if the results show continued program success. (Priority 2)

PDO Response: Agree

The Santa Clara County Board of Supervisors should:

Recommendation 3.4: Upon receiving a workload update from the Public Defender Office for attorneys, paralegals, and investigators, and a request for additional PARR Team staff, allocate up to one FTE paralegal, investigator, and social worker and two FTE attorneys to the PDO PARR Team to increase pre-trial representation and advocacy. (Priority 1)

PDO Response: Agree

The PARR team is now budgeted for two FTE attorneys (July 2021), one FTE paralegal, one FTE investigator and one FTE social worker. Due to the pandemic hiring freeze, PDO only recently interviewed and selected the FTE social worker who will start on January 10, 2022.

Section 4: Automated Receipt of Case Management Data

Recommendation 4.1: Work with the County's Technology Services and Solutions Department, the Superior Court information technology staff, and the District Attorney's Office (which has management control over CJIC) to configure a data feed from CJIC and other information systems that auto-populates additional client and case information fields within JustWare. (Priority 2)

PDO Response: Agree

Expanded interface development is a project PDO began pre-pandemic. We were working with TSS, county counsel and the Superior Court to develop adult and juvenile interfaces between Odyssey, the court's case management system, and JustWare. We were also involved in lengthy discussions about the systems that were being developed to replace CJIC as it is currently scheduled to be decommissioned. When the pandemic hit, we (and others) had to commit our resources elsewhere to implement technological solutions that supported remote work and videoconferencing with clients in the jails and courtrooms, among other things.

We also launched a project with the Stanford Computational policy lab in fall 2019 that we've continued work on through the pandemic. Together with Stanford, we've developed a system to send automated text message reminders to clients about upcoming court dates and are currently piloting a mobile app to allow for text communication between attorneys and clients. This has been an important project during the pandemic when courtrooms have shut down, court dates have been moved and vacated, and cases are routinely continued (sometimes with little or no notice).

Just prior to the pandemic we also learned that JTI, the parent company of JustWare, would no longer be supporting JustWare and we would be required to plan for a transition to JTI's sister product, eDefender.

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Finally, before and during the pandemic we began work with TSS to develop a digital evidence management system (DEM) that will allow for data storage and sharing among various law enforcement and criminal justice agencies/departments in the county. We are currently investing significant time and resources in the planning/design of the DEM. As part of that process, it has become clear we will need interfaces between the DEM and our case management system, which will provide much of the information recommended in the report to auto-populate client and case fields in eDefender. We do not intend to commit resources to further development of interfaces for JustWare given its imminent demise. As we plan for eDefender and the DEM, however, interfaces between these two systems, as well as between eDefender and other county systems, are an integral part of the plan.

The number of technology projects PDO staff—particularly PDO IT staff—is involved with right now is more than they can manage, and it is likely PDO will need to request additional positions to accomplish the planning, design and implementation of new projects (eDefender and DEM), ongoing projects (interface with Odyssey, Stanford Mobile App project, and ongoing maintenance and updates to JustWare) and future projects (CJIC decommissioning, which will include interfaces with new Jail Management System and other systems) we are, and will be, involved with.

Recommendation 4.2: Upon adoption of Recommendation 4.1, work with the Superior Court information technology and TSS to monitor the compatibility of any newly proposed case management and criminal justice systems to ensure that this degree of interfacing is maintained with any systems that are acquired in the future. (Priority 2)

PDO Response: Agree

Recommendation 4.3: If Recommendations 4.1 and 4.2 are adopted, request a new Application Developer position to assist with the implementation of these recommendations. (Priority 2)

PDO Response: Agree

Because interfaces and integration require a significant amount of business and data analysis to ensure the automation meets the business needs of the offices, the addition of an Application Developer position should be supplemented with an addition of a business and data analyst position.

The Santa Clara County Technology Services and Solutions Department should:

Recommendation 4.4: Work with the Public Defender Office and Superior Court information technology staff to configure a data feed from CJIC in accordance with Recommendation 4.1. (Priority 2)

PDO Response: Agree

We have repeatedly been told CJIC will be phased out in favor other systems, though the timeline is unclear and the CJIC sunset has been repeatedly pushed back. PDO does need data feeds from the court (Odyssey or CJIC) the jail (CJIC or new JMS) and from the DEM. Depending on timing, it may not be CJIC we need to configure interfaces with, but we certainly agree that appropriate interfaces should be developed, in cooperation with TSS and Superior Court.

The Office of the County Counsel should:

Recommendation 4.5: Discuss criminal offender record information (CORI) transmission issues with the legal counsel of other jurisdictions to help clarify the ambiguous legal requirements around the automated

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transmission of CORI data. They should report the results of these discussions to the Public Defender Office. (Priority 2)

PDO Response: Agree

These conversations with county counsel were an integral part of our interface development process prior to the pandemic and will continue to be.

Section 5: Connecting High-Risk Clients with Services

Recommendation 5.1: Add Social Worker responsibilities and expectations to the Department Policy and Procedure manual. (Priority 2)

PDO Response: Agree

Recommendation 5.2: Assign the Management Analyst Team to create an attribute in JustWare, or any future Department case management system, which tracks recidivism and recidivism reports that can be run by social workers. (Priority 1)

PDO Response: Agree

Recommendation 5.3: Assign the Mental Health Supervisor and Social Worker Team to create a mental health advisement and checklist covering steps an attorney should take when working with a misdemeanor client in serving their mental health needs. (Priority 2)

PDO Response: Agree

Recommendation 5.4: Assuming adoption of Recommendation 5.3, use JustWare, or any future case management system, to flag and notify the attorney of any assigned misdemeanor clients meeting the following criteria to conduct a standardized mental health advisement and checklist: 1) a Mental Health attribute in the case management system, 2) a case type designated for clients with mental health conditions, 3) legal doubt declared as to the client's competence, or 4) a case diverted from the criminal justice system for mental health reasons. (Priority 2)

PDO Response: Agree

Recommendation 5.5: Allow social workers to assign tasks to themselves in JustWare based on the identified needs of clients when responding to case referrals and/or when a client has at least one of the aforementioned mental health indicators listed in Recommendation 5.3. (Priority 2)

PDO Response: Agree

Recommendation 5.6: Direct the Department's Management Analyst Team to monitor for unconscious bias in service referral and delivery, by bi-annually comparing the racial and gender proportions of all clients with those who have cases with tasks completed by Social Workers, and report these results to Department Management and the Board of Supervisors. (Priority 2)

PDO Response: Agree

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Section 6: Appropriate Use and Oversight of Investigation Technology

The Santa Clara County Public Defender Office should:

Recommendation 6.1: Prepare and submit a Social Media Application Business Plan for approval, per County policy immediately upon approval of this recommendation. (Priority 1)

PDO Response: Agree

The PDO will complete a Social Media Application Business Plan and submit to the Enterprise Content Management – Center of Excellence (ECM-CoE) for approval. The office is currently in the process of updating the Social Media Handbook which provides guidance on permissible uses of social media when conducting county business/investigations. Once complete, the handbook will be utilized in conjunction with the approved Social Media Application Business Plan to instruct investigators on the proper use of social media applications in the course of their duties.

Recommendation 6.2: Use the updated Department of Motor Vehicle (DMV) query log found on the DMV's websites for keeping record of requests for information to better fulfill record retention guidelines in State Code. (Priority 1)

PDO Response: Agree

The updated Department of Motor Vehicles (DMV) INF 2115 Information Requestor Log was adopted for use on October 7th, 2021. The department implemented the recommendation almost immediately and notified the department of the change both via email communication and monthly staff meeting. DMV query logs will be maintained pursuant to DMV requirements (2 years from date of last request) and audited annually to ensure compliance and appropriate utilization.

Recommendation 6.3: Create documented procedures for Department monitoring and auditing of Investigation technology and resources and for retention of records of these audits. This procedure should incorporate all existing requirements contained in County policies, such as the annual audit provisions in the PDO and ADO surveillance use policies. (Priority 3)

PDO Response: Agree

The department will develop documented procedures for monitoring and auditing investigation technologies, resources, and retention of records of the audits. The procedures will incorporate all existing County policy requirements, including surveillance use policy requirements, where applicable.

Section 7: Recommendations and Responses:

The Santa Clara County Public Defender Office should:

Recommendation 7.1: Develop a discovery tab in JustWare, or any future Department case management system, that includes a way to list discovery requests, including the subject of the request, the date of the request, the elapsed time since the request was made, whether discovery has been received, and where the discovery is being stored. (Priority 2)

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PDO Response: Agree

It is true that discovery is requested in different ways and by different members of PDO/ADO (hereafter PDO) staff across cases. In the case of initial discovery, if it is not provided by the DA at the time of arraignment, clerical staff will generally request it by email. Supplemental discovery might be requested by the attorney on the case, or the request may be assigned by the attorney to another staff member, such as a paralegal. Most requests are made by email, and are sometimes accompanied by a letter, detailing which items of discovery are being requested and the law supporting the request. JustWare includes several template letters for different types of discovery requests.

All discovery requests should be made in writing and the letters/emails requesting discovery are saved in the JustWare filing cabinet. In addition, some staff will include notes memorializing the date of the request. If the discovery request is assigned to a paralegal or other staff member, the task itself is logged in JustWare, including the date the task was assigned and completed.

On any given case, therefore, the attorney assigned should have the ability to track (1) when the request was made and (2) by whom it was made, based on documentation in the JustWare case record. They will also have copies of the request (letter or email) saved in the case record, should it be needed as an exhibit in a motion to compel.

When discovery is received, it is typically uploaded by the PDO digital services team to JustWare and a notification (email) is sent to the attorney, though date of receipt may not be logged in the case, nor a copy of the email saved.

The recommendation that discovery be tracked more uniformly in JustWare is a good one, especially given that some discovery is stored outside of JustWare due to digital storage costs. A uniform system of discovery tracking would not necessarily change the process outlined above, but would augment it, allowing anyone looking at a case to see at glance when discovery was requested, received, and where it is stored. It would also allow the PDO to run reports across cases to see if delayed discovery is a systemic problem, and this information could be used at the county and inter-departmental level to problem-solve.

Any new infrastructure for tracking discovery requests should be designed and developed for eDefender, not JustWare, given the upcoming transition to eDefender.

Recommendation 7.2: Update policies and procedures regarding how discovery requests are supposed to be made by staff, tracked in the case management system, processed, and stored. (Priority 2)

PDO Response: Agree

Assuming the implementation of 7.1, it would be imperative that we set forth a policy to clarify how staff should track discovery requests in the case management system.

Recommendation 7.3: Assuming Recommendation 7.1 is adopted, provide training for all staff on the new discovery tab to promote the availability and consistent use of the tool. (Priority 2)

PDO Response: Agree

December 21, 2021

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Assuming the implementation of 7.1 and 7.2, it would be imperative that train staff regarding any new policies and procedures related to discovery tracking in the case management system.

Recommendation 7.4: Assuming Recommendation 7.1 is adopted, develop a discovery report with all the information in the new discovery tab which can be run from the case management system by management and used to identify delays and establish performance measures. (Priority 2)

PDO Response: Agree

It should be noted that discovery requests vary in levels of complexity. Some requests are honored in a day, while others take months and may be litigated in front of a judge. Therefore, while the offices will try to formulate ways to identify simple and complex requests on the front end, a qualitative evaluation will be needed to understand any quantitative reports that are produced with a new tracking system.

Section 8: Increasing the Frequency of Staff Evaluations

The Santa Clara County Public Defender Office should:

Recommendation 8.1: Create and enforce a documented procedure for performance appraisals that includes appraisal timelines and responsible parties. This procedure should be consistent with appraisal schedules stated in County labor agreements and should also determine a standard for systematic reviews of attorney performance (e.g., annually). (Priority 2)

PDO Response: Agree

While significant informal channels for attorney and non-attorney staff evaluations and feedback existed, the Department has already begun implementation of these recommendations to better meet best practices.

Recommendation 8.2: Develop a tracking and retention system for its appraisals to be provided to both managers and staff to ensure that managers are meeting the evaluation requirements in this new procedure. (Priority 2)

PDO Response: Agree

The Department has already begun implementation of these recommendations to better meet best practices.

SAVINGS, BENEFITS, AND COSTS

These recommendations would better ensure compliance with the County's labor agreements, create an avenue for employees to understand their strengths and weaknesses, and may potentially translate to better delivery of legal defense for the Department's clients. Keeping a more comprehensive record of evaluations might also help the County defend against potential employment-related litigation.

County of Santa Clara
Technology Services and Solutions



150 W. Tasman Drive | San Jose, California 95134

DATE: December 13, 2021
TO: Board of Supervisors
FROM: Dan Baldree, TSS-PSJ Director of IT
SUBJECT: Response to Recommendations in the Management Audit of the Office of the Public Defender

This memo contains a response to the management auditor's recommendation that the Santa Clara County Technology Services (TSS) Department:

"4.4 Work with the Public Defender Office and Superior Court information technology staff to configure a data feed from CJIC in accordance with Recommendation 4.1 (Priority 2)"

TSS agrees with this recommendation, while emphasizing the requirement that the District Attorney's office, which is the California Department of Justice approved management control agency for CJIC, approve any data elements added to the CJIC data feed received by the Office of the Public Defender to be in compliance with state law and California Department of Justice regulations. It should be noted that the Superior Court will not be involved in any enhancements to the CJIC data feed, as CJIC is wholly maintained by the County. To the extent that data elements desired by the Office of the Public Defender are sourced from the Court's Odyssey case management system, the Court will be appropriately engaged in any work.

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MEMORANDUM

TO: Management Audit Division

FROM: James R. Williams, County Counsel *JRW*

RE: Office of the County Counsel's Response to Recommendation 4.5 of the Management Audit of the County of Santa Clara Public Defender's Office

DATE: December 7, 2021

Within the Management Audit Division's 2021 audit of the Public Defender's Office ("Audit"), Recommendation 4.5 states that the Office of the County Counsel ("Office") should: "Discuss criminal offender record information (CORI) transmission issues with the legal counsel of other jurisdictions to help clarify the ambiguous legal requirements around the automated transmission of CORI data. They should report the results of these discussions to the Public Defender Office. (Priority 2)." Consistent with Board of Supervisors Policy 3.35.4(E), this memorandum provides the Office's response to that recommendation.

The Office partially agrees with Recommendation 4.5.

The Office agrees that conferring with other County Counsel offices on complex legal questions is beneficial. The Office can certainly discuss the issue of CORI transmission with legal counsel for the County of Ventura and County of Stanislaus and let the Public Defender's Office know the outcome of those discussions.

However, the Office does not believe that the laws relating to the definition of CORI, and in turn its access by agencies that do not qualify as criminal justice agencies under the Penal Code, are ambiguous or that the Office's analysis fails to account for any relevant legal considerations. In addition, finding a solution to the data access issues the Audit discusses in Section 4 does not require reinterpreting the CORI laws. The Office and the District Attorney's Office have proposed an alternative automated solution that would utilize the Digital Evidence Management system for sharing electronic criminal discovery. This solution could be

Memorandum to Management Audit Division

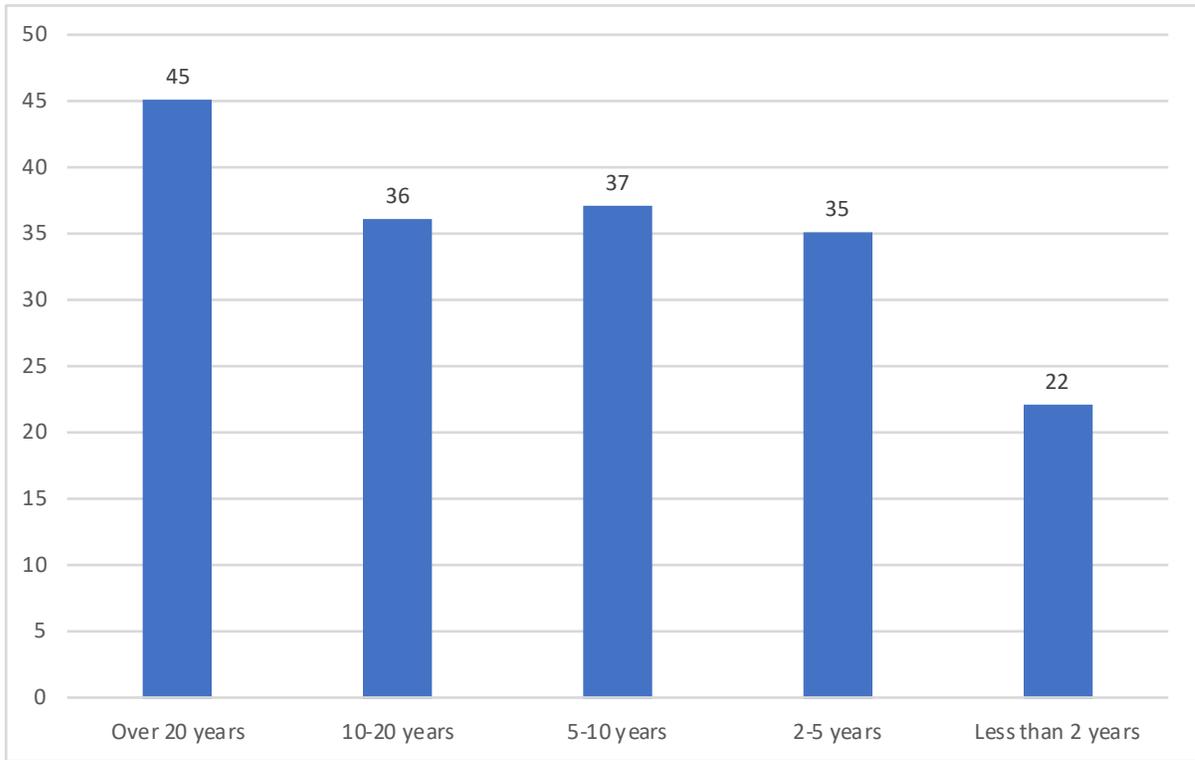
Re: Office of the County Counsel's Response to Recommendation 4.5 of the Management Audit
of the County of Santa Clara Public Defender's Office

Page 2 of 2

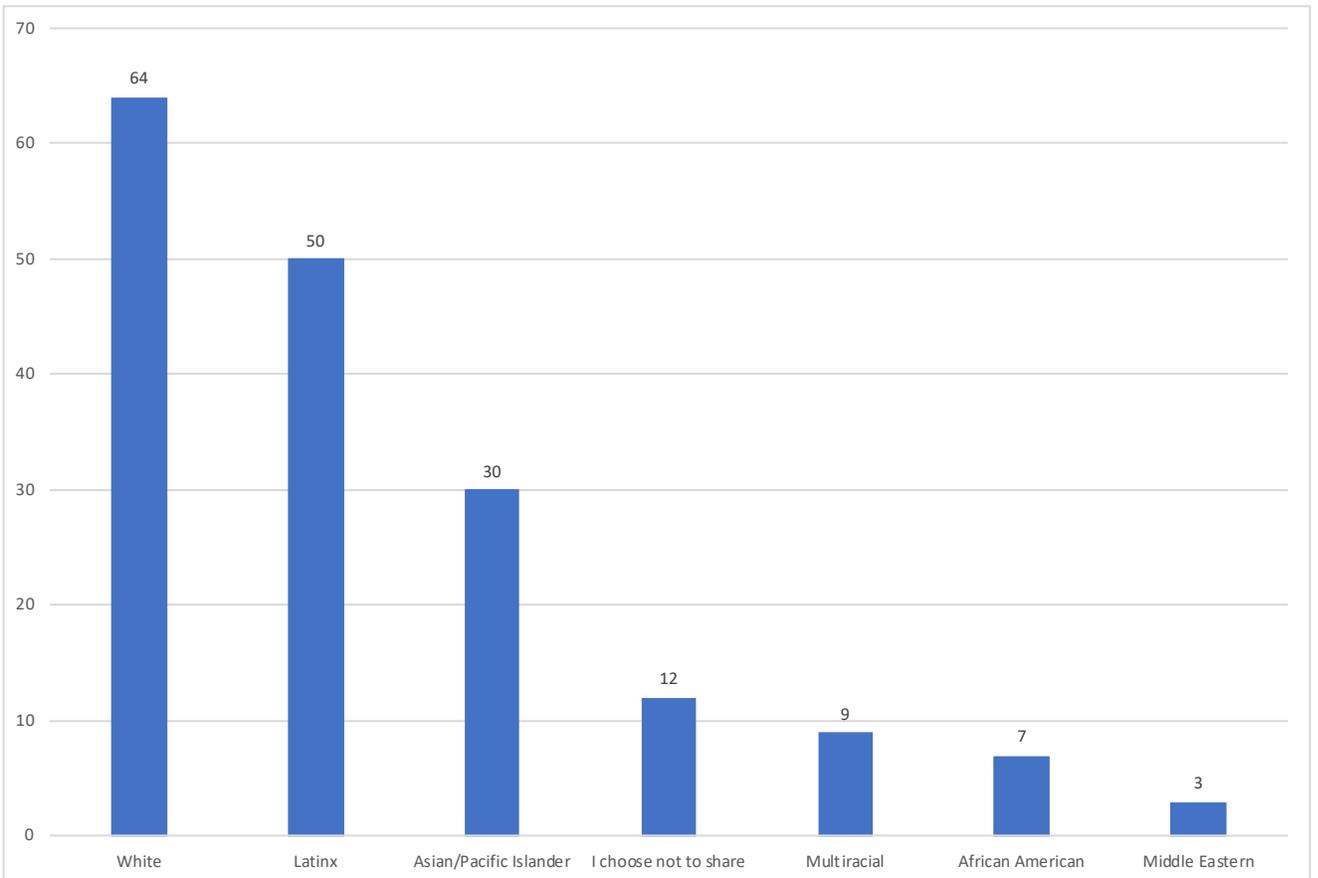
configured to avoid the CORI-related concerns that automated access from the County's Criminal Offender Record Information into the JustWare system would present, and would therefore be a legally compliant means to achieve the goals of Section 4 of the Audit.

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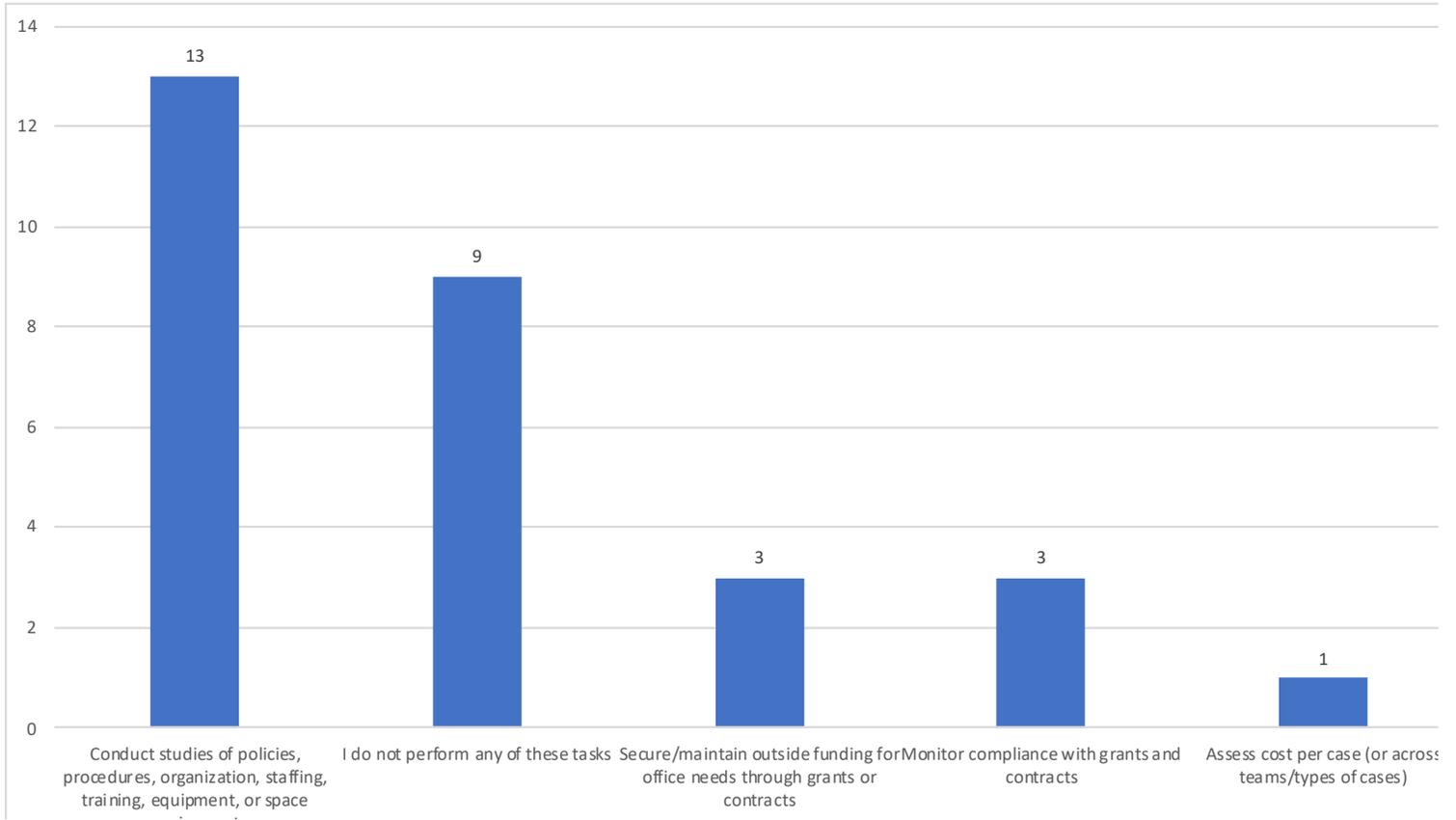
1. How long have you worked for the SCC Public Defender?



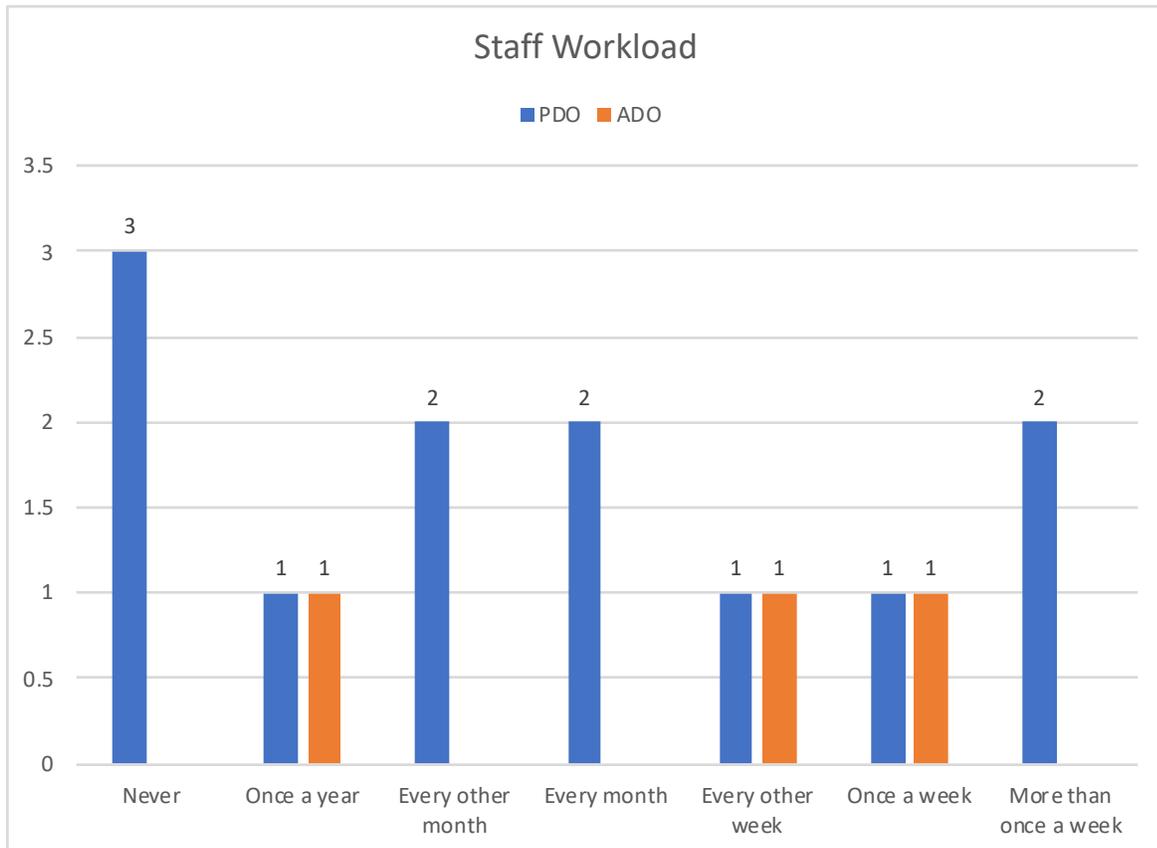
2. What is your race?



3. (As a supervisor) do you perform any of the following tasks for your office?

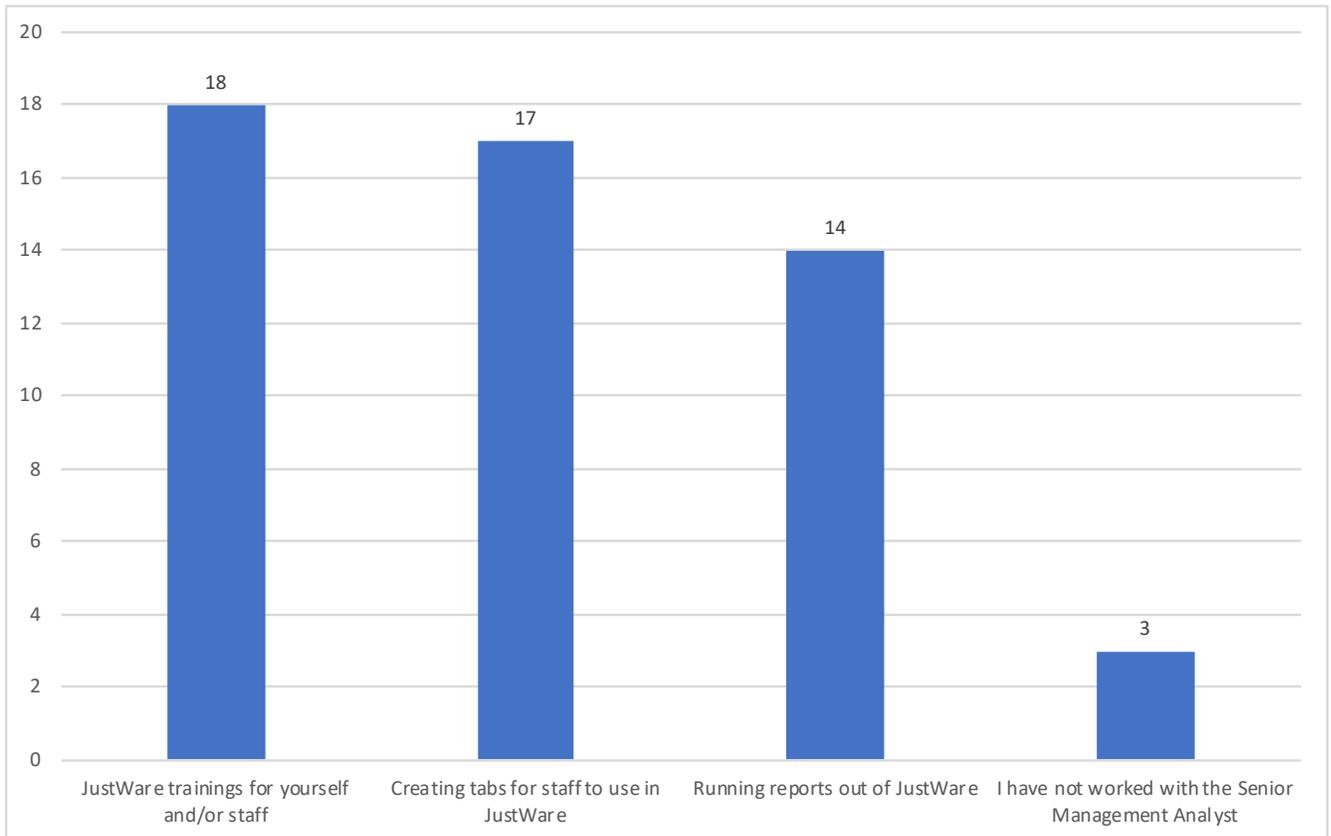


4. (As a supervisor) roughly, how frequently do you run reports in JustWare to assess staff workload or staff performance information?

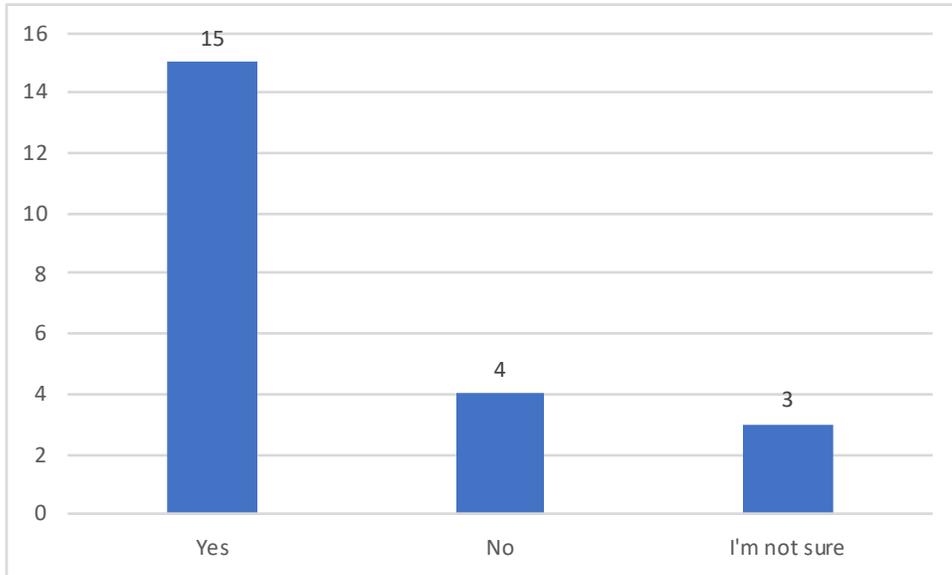




5. (As a supervisor) have you worked with the senior management analyst for any of the following purposes?



6. (As a supervisor) do you currently have the ability to run reports on staff workload or performance in JustWare yourself?

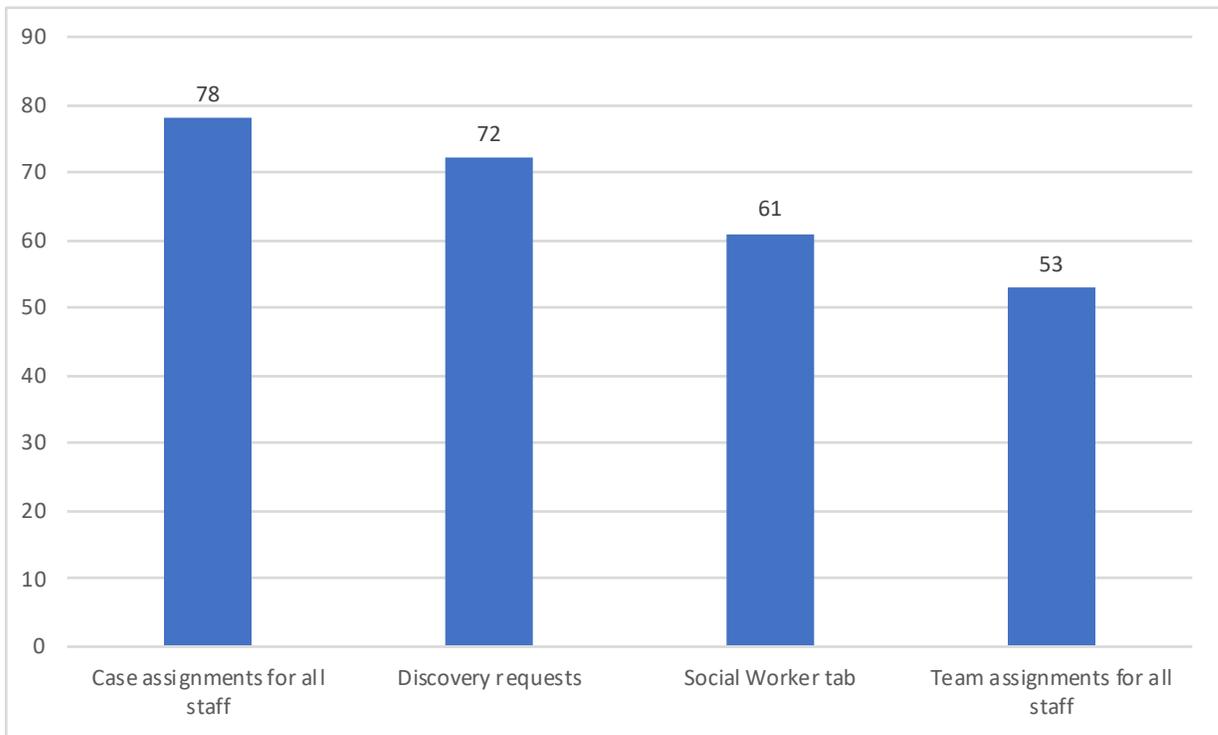


7. (As a non-supervisor) roughly, how frequently do you run reports in JustWare to assess staff workload or staff performance information?





8. Which of the following items would assist your workflow/workload if they were available in JustWare: (select all that apply)

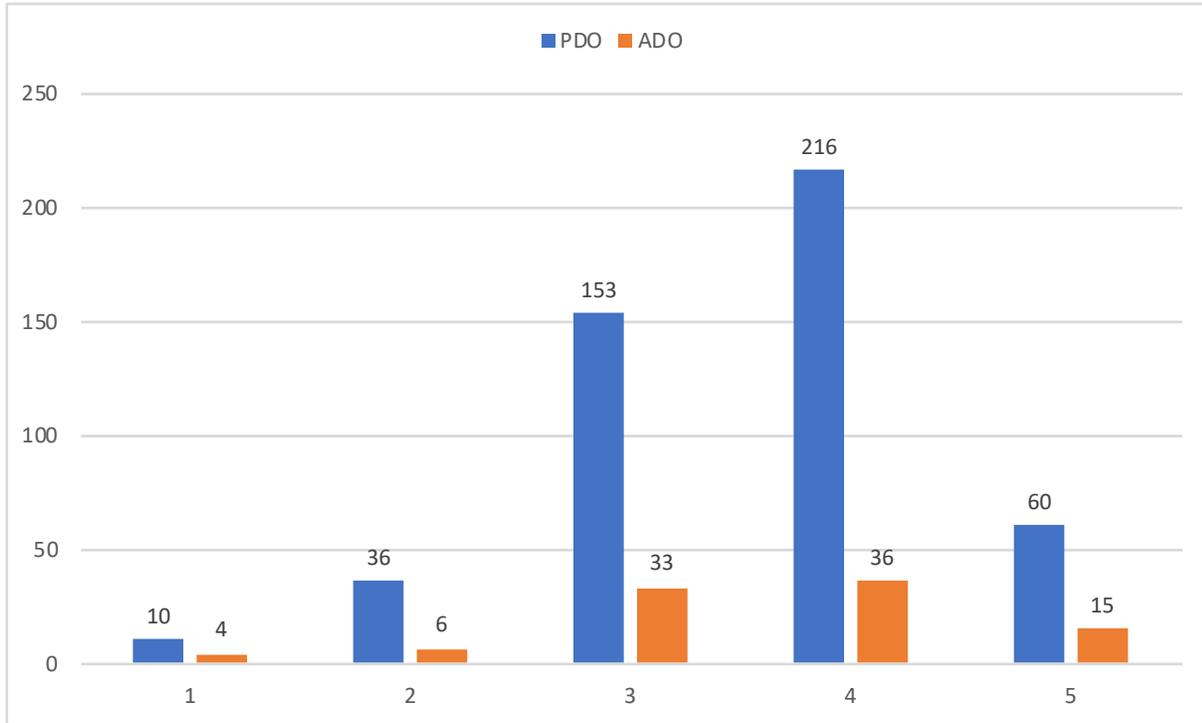


9. Which items would assist your workflow/workload if they were available in JustWare: (open response)

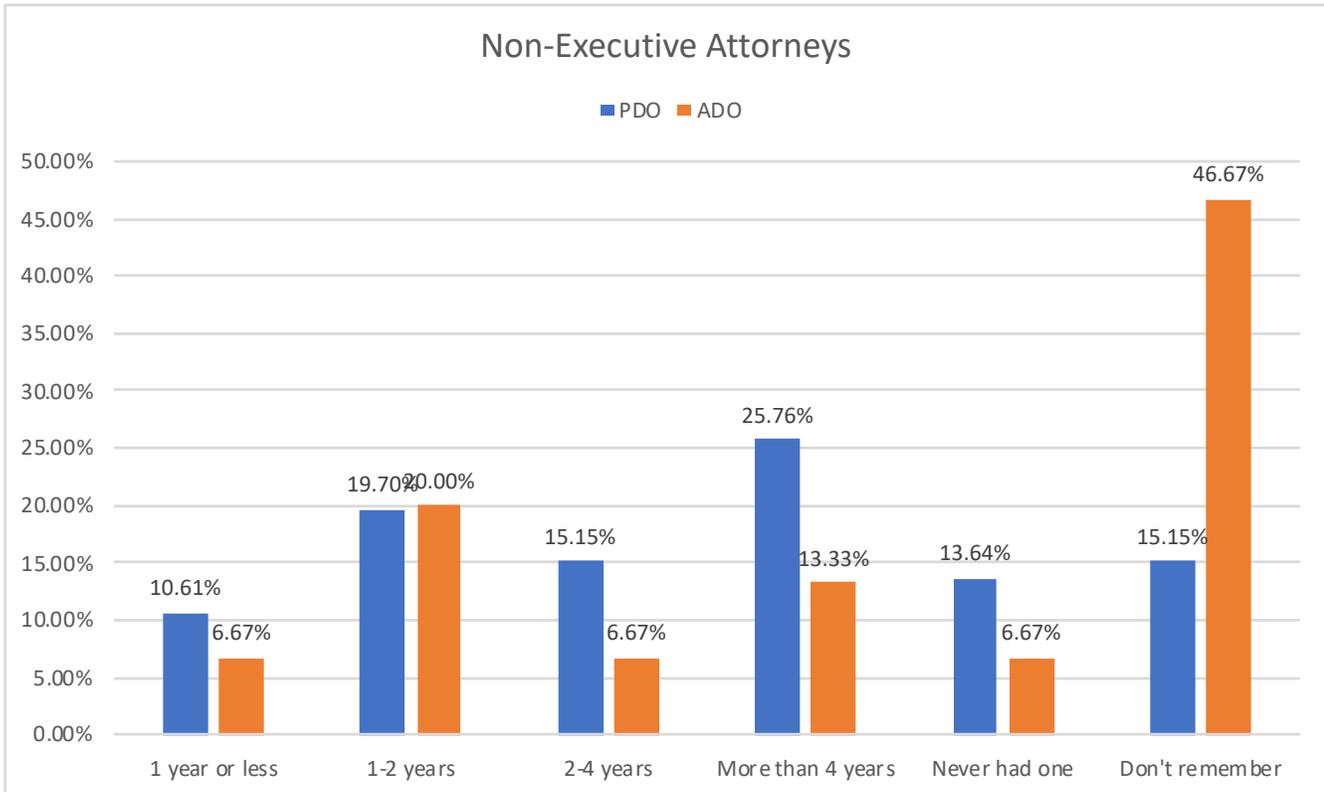
- Ability to access JustWare on my laptop in the court room
- Ability to have various windows open while being able to create new documents and saving documents. The current system does not allow for open windows.
- Access to the Body Worn Camera (BWC) footage from Evidence.com
- Accounting staff only update payment info to JW SEF tab. We are not JW heavy users.
- Alerts and functional to do lists
- All Cases PDO handles including Post Conviction cases in JW
- As client's return from a BW it would be helpful from court to send an assignment to clerical that the person is back and to re-open the case. Or to just include other notes like assign to misdo atty for trial, assign to misdo atty for motion, etc
- Automated conflict checks
- Automatic purge yes or no added based on charge
- Automatic strike attribute based on charge
- Availability of opening more dockets at one time
- Back button to go to previous page
- Being able to open more tabs
- Being able to save documents without having to close other open documents in the same case first.
- Being able to work across cases before saving documents within a case
- Better ability to quickly enter data -- check off list
- Better Mental Health capabilities
- Better task/to do area
- Case/file to check special expense and record payment
- Clean up charge search
- Clerical assignments
- Clerical for input!
- Court events/calendar/court dates
- Criminal History Request Forms
- Delete or add the correct charges.
- Developer so not needed from above
- For instance adding the disposition hearing results in the Petition event result.
- Generate requests for all departments
- I still have some difficulty learning and using all its tools.
- Identification of police officers and interface with bad cop database
- If client's contact information was visible on the JW case file page because loading time to access client's contact information blocks workflow.

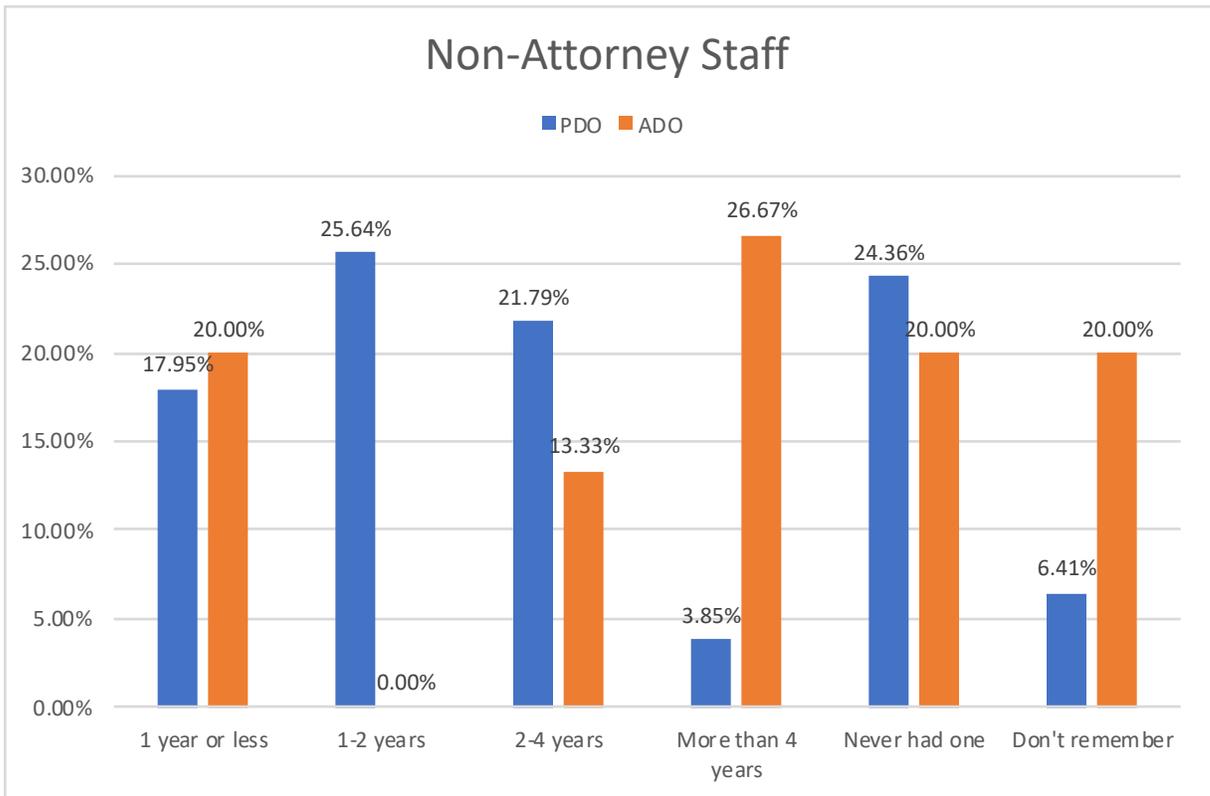
- It would really help if all discovery lived in one place. I am constantly afraid that I am missing a whole folder somewhere on some obscure drive. I also find that I go to court and am not aware of the latest discovery that has come in and been placed somewhere without my knowledge.
- Justware is not very good inefficient
- LEGAL CLERK TASK TAB
- Making the program faster would assist the most.
- More user-friendly interface for investigation requests through a tab system
- One Click Document Generation for Common Tasks/Requests
- Please do not put discovery requests in JustWare
- Police documents
- Police reports automatically populated (not digital copies of reports) in justware-including witnesses names, phone numbers, and addresses.
- Probation reports
- Quit the reports! We are overwhelmed with tasks and the JW emails are a nuisance and add stress
- Scroll list -- for case managers
- Seeing the date of uploaded documents in justware filing cabinet
- Sorting docs by date
- Special Expense Request and Payment information
- Speed, the system is too slow to be used effectively in court on a large calendar assignment. Loading up a new case case take 15 seconds, this is too long.
- Sub-section within "Notes" tab (ie: tab for Attorney Notes; Investigator Notes etc) just like the "Task" tabs to better compartmentalize/review a file with many notes
- Task windows that stay open longer than a few seconds; Ability to keep a record of completed tasks.
- The ability to leave open more than one document at a time when you have to save something
- These would not assist my position beyond knowing felony team load.
- This question is confusing- these items exist in JW except the SW tab which is in development
- To be able to have digital discovery in JW.
- Transcript tab that separates work from me and other secretary.
- Unredacted police reports
- Work performance per staff
- Would like it if AKA's would show up on the CASES, instead of just on the Name Records

10. Please rank your overall satisfaction with JustWare as a tool to perform your daily work. (1 = Very unsatisfied with this tool; 5 = Very satisfied with this tool).

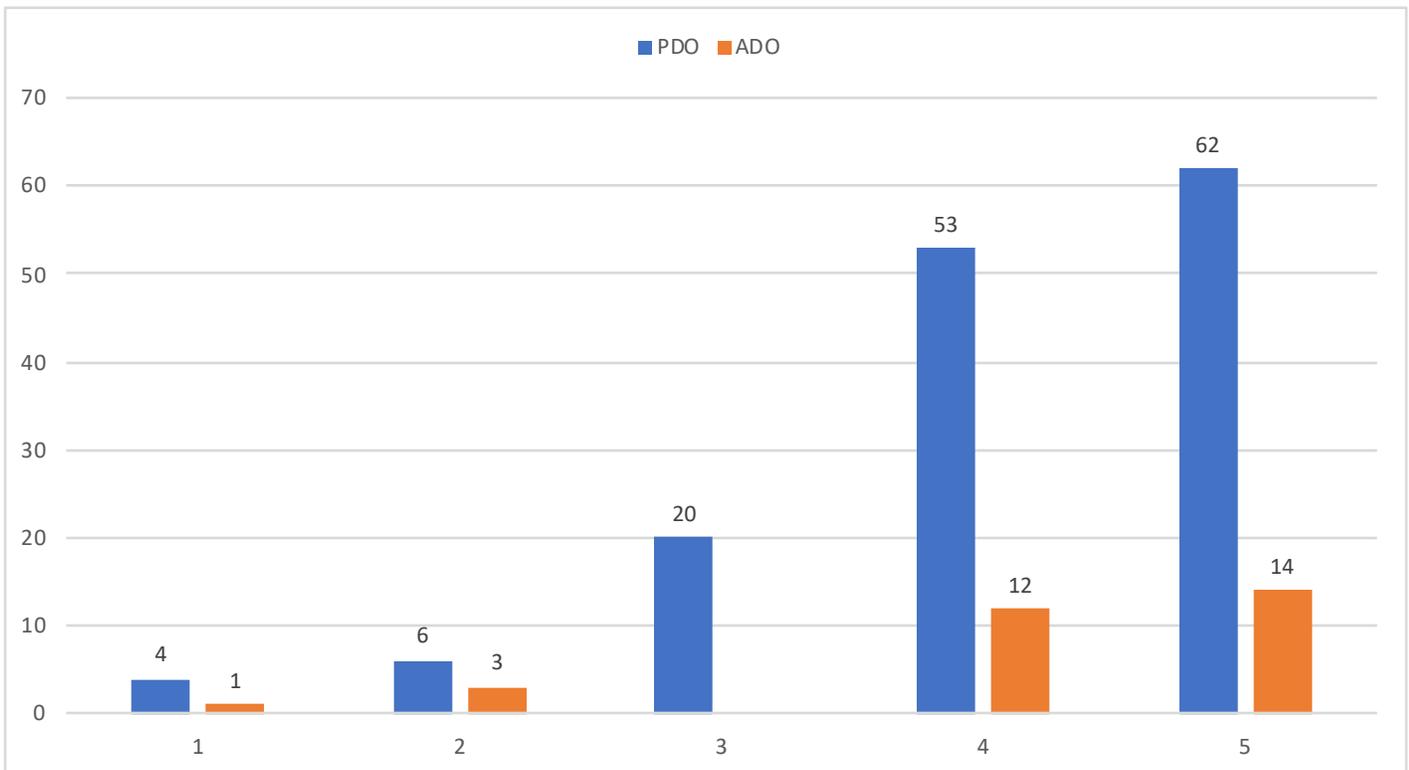


11. Roughly, how much time has passed since your last performance evaluation?

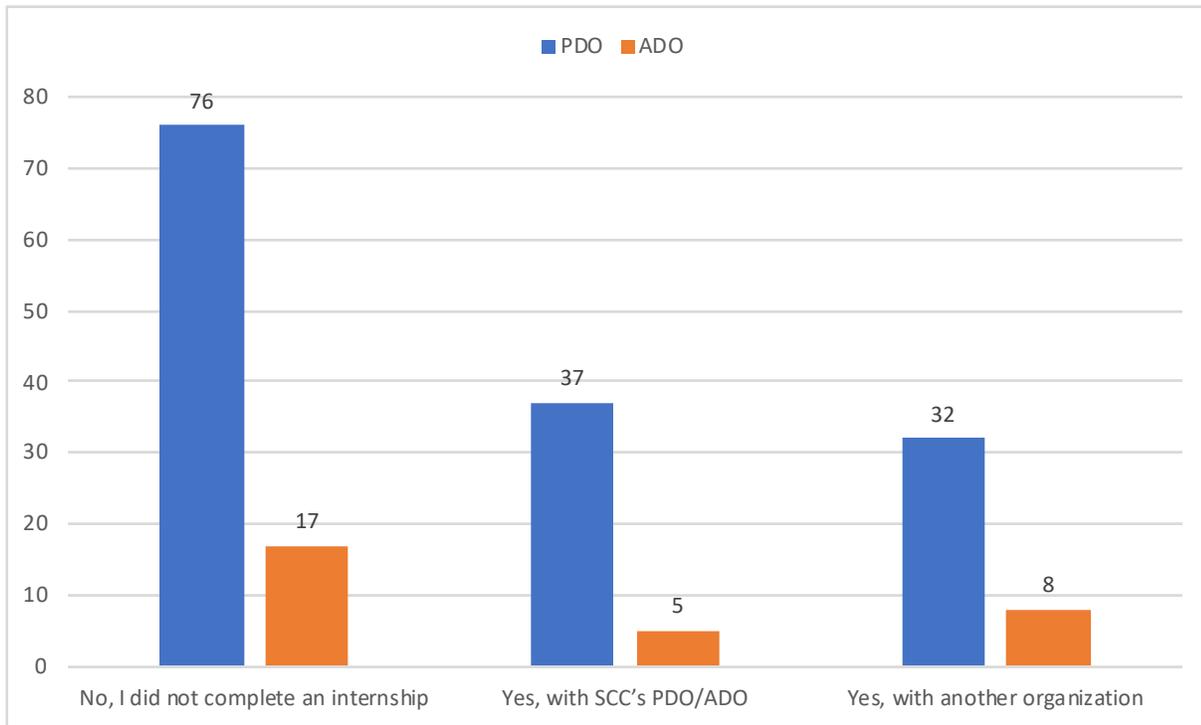




**12. How strongly do you agree with the following statement: "My role and job requirements have been clear throughout my time in my current position."
(1 = Strongly disagree; 5 = Strongly agree).**



13. Did you complete an internship prior to being hired by the SCC PDO/ADO?



14. Select all tasks you fulfill in your current position:

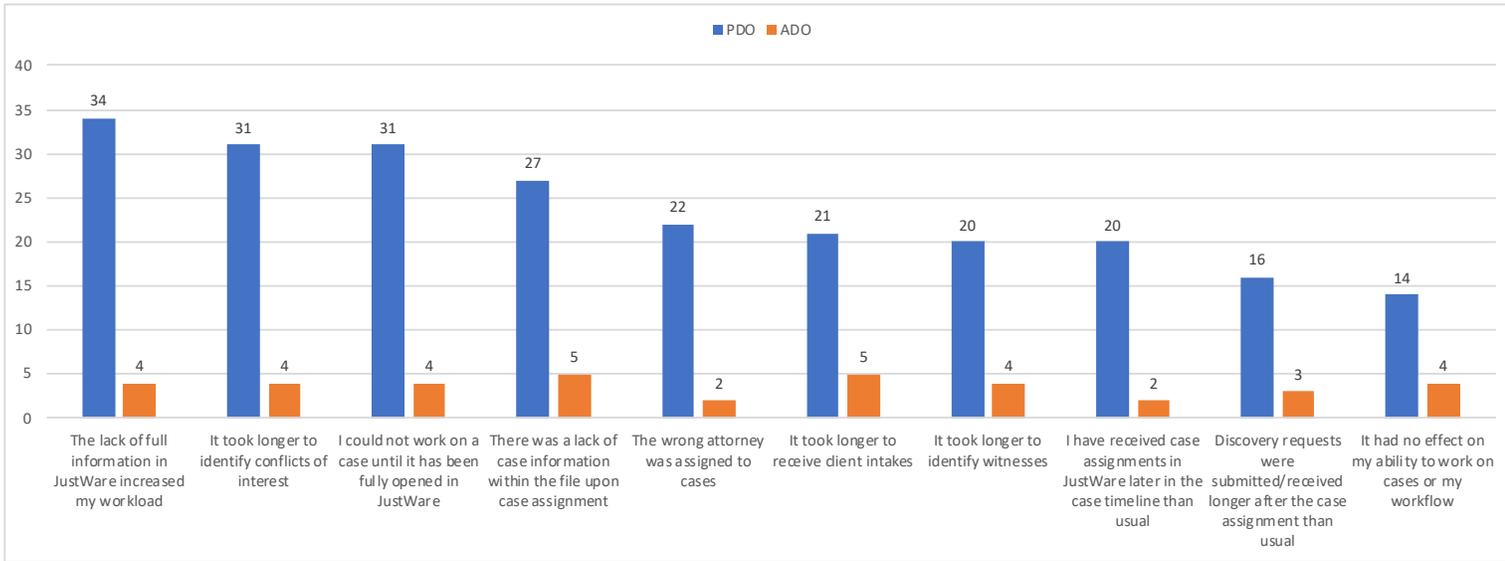
Tasks Performed (by Classification)	Count
Attorney	
Draft memos and/or writs	56
Research requests for cases	44
Arrange for clients to enter rehabilitative programs	36
Track case timelines	30
Evaluate clients for rehabilitative programs	28
Update attorney assignments to cases in JustWare	23
I do not perform any of these tasks	13
Request financial screenings of clients	13
Prepare discovery tablets for clients	9
Conduct financial screenings of clients	4
Investigator	
Draft memos and/or writs	16
Research requests for cases	7
I do not perform any of these tasks	6
Track case timelines	5
Update attorney assignments to cases in JustWare	3
Evaluate clients for rehabilitative programs	1
Arrange for clients to enter rehabilitative programs	1
Request financial screenings of clients	1

Legal Clerk	
Update attorney assignments to cases in JustWare	12
Research requests for cases	4
I do not perform any of these tasks	4
Draft memos and/or writs	1
Arrange for clients to enter rehabilitative programs	1
Evaluate clients for rehabilitative programs	1
Request financial screenings of clients	1
Other Staff	
I do not perform any of these tasks	21
Update attorney assignments to cases in JustWare	4
Research requests for cases	3
Prepare discovery tablets for clients	3
Draft memos and/or writs	2
Track case timelines	2
Arrange for clients to enter rehabilitative programs	1
Conduct financial screenings of clients	1
Paralegal	
Conduct financial screenings of clients	19
Research requests for cases	12
Draft memos and/or writs	11
Request financial screenings of clients	11
Track case timelines	7
I do not perform any of these tasks	3
Prepare discovery tablets for clients	2
Update attorney assignments to cases in JustWare	1
Arrange for clients to enter rehabilitative programs	1
Social Worker	
Draft memos and/or writs	3
Arrange for clients to enter rehabilitative programs	3
Evaluate clients for rehabilitative programs	3
Update attorney assignments to cases in JustWare	2
Request financial screenings of clients	1
Research requests for cases	1

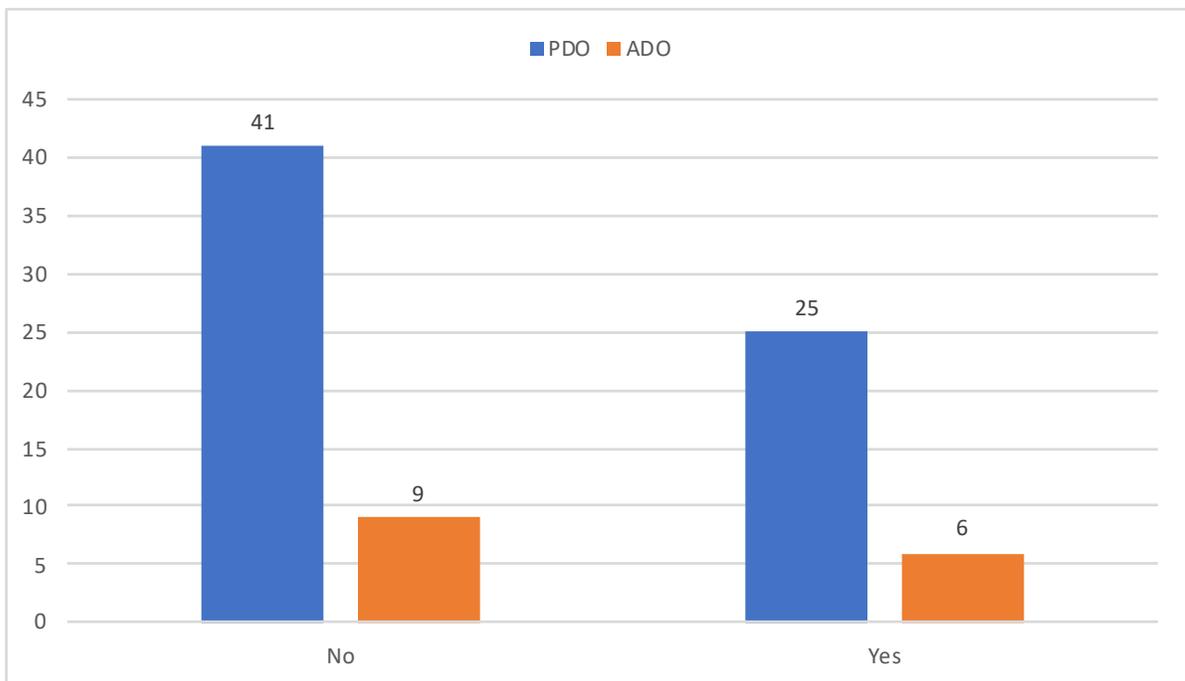
15. Do you perform any of the following tasks for your office? (select all that apply)

Tasks Performed (by Classification)	Count
Attorney	
I do not perform any of these tasks	61
Provide orientation training to new staff	18
Formulate policies and procedures for office functions	13
Answer the main phone line and direct calls (pre-Covid)	3
Work the front desk and assist walk-ins (pre- Covid)	1
Investigator	
I do not perform any of these tasks	15
Provide orientation training to new staff	7
Formulate policies and procedures for office functions	4
Legal Clerk	
I do not perform any of these tasks	9
Answer the main phone line and direct calls (pre-Covid)	8
Work the front desk and assist walk-ins (pre- Covid)	4
Provide orientation training to new staff	2
Work the front desk and assist walk-ins (pre- Covid)	1
Formulate policies and procedures for office functions	1
Other Staff	
I do not perform any of these tasks	14
Answer the main phone line and direct calls (pre-Covid)	7
Provide orientation training to new staff	6
Work the front desk and assist walk-ins (pre- Covid)	5
Formulate policies and procedures for office functions	3
Work the front desk and assist walk-ins (pre- Covid)	1
Paralegal	
I do not perform any of these tasks	16
Provide orientation training to new staff	6
Formulate policies and procedures for office functions	5
Answer the main phone line and direct calls (pre-Covid)	3
Work the front desk and assist walk-ins (pre- Covid)	2
Social Worker	
Provide orientation training to new staff	2
Formulate policies and procedures for office functions	1
I do not perform any of these tasks	1

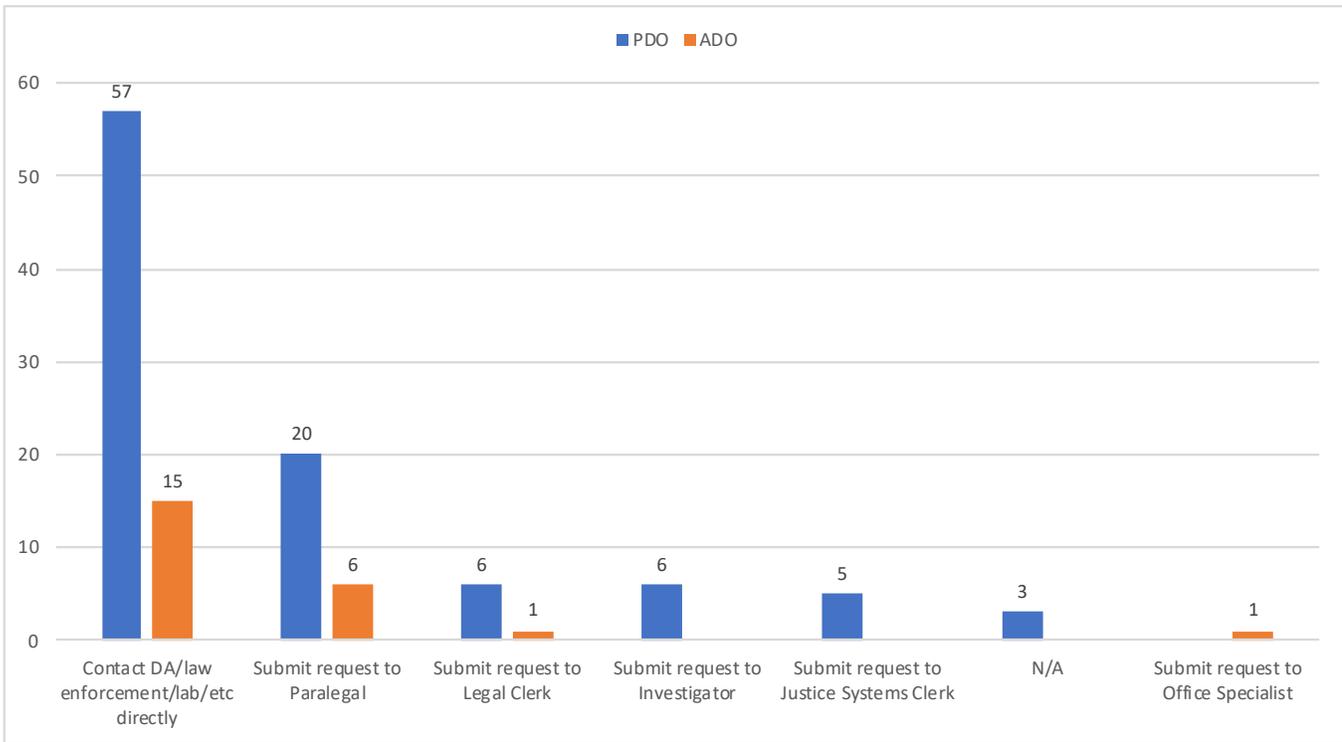
16. (As an attorney) how has a backlog of opening cases fully in JustWare affected your workflow or your ability to work on cases?



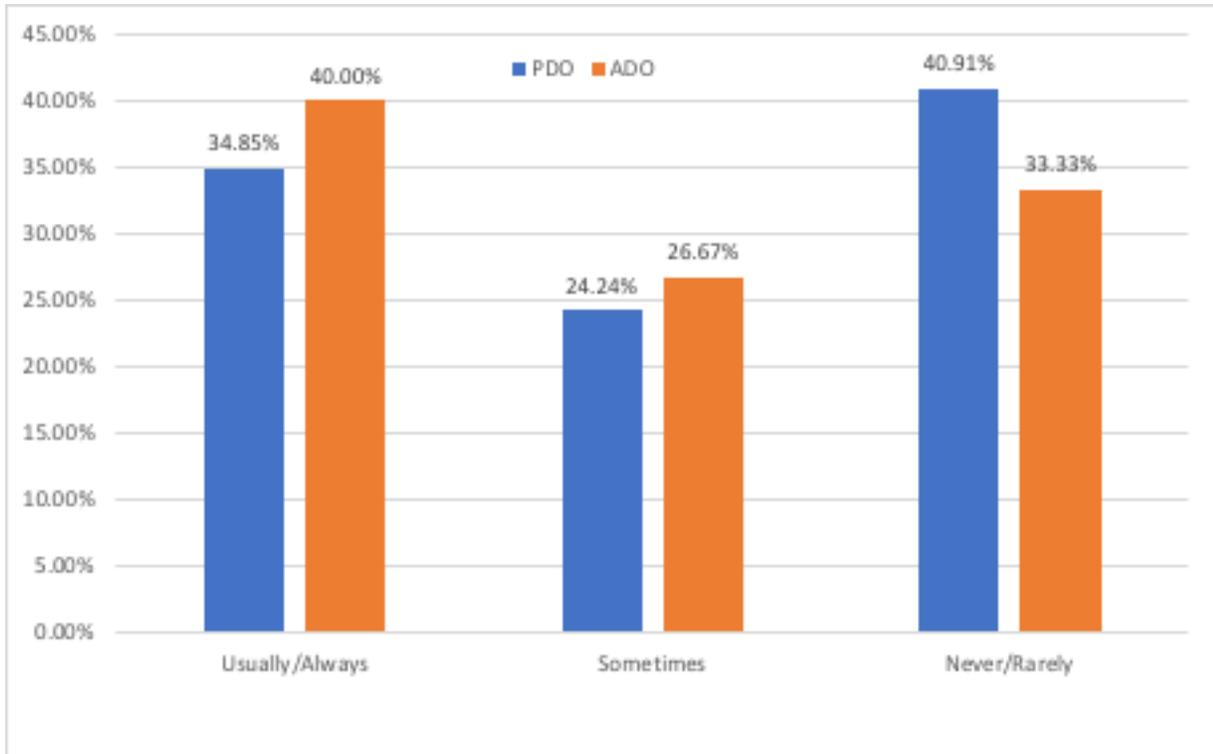
17. (As an attorney) do you still carry cases from a previous team you were assigned to?



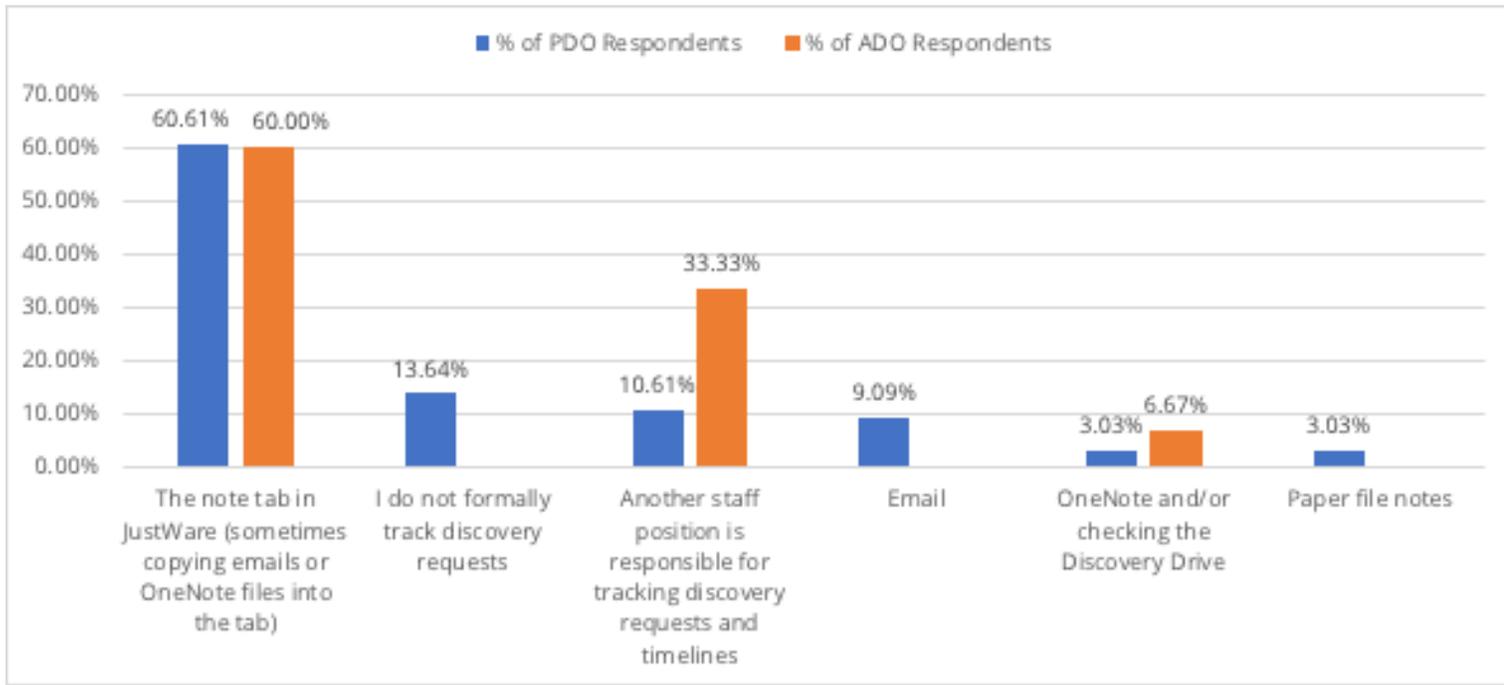
18. (As an attorney) how do you make requests for discovery? (select all that apply)



19. (As an attorney) when staff submit a discovery request to the DA/law enforcement/lab/etc are you notified that your discovery request has been made?



20. (As an attorney) how do you track requests for discovery and the timeline of those requests?



21. (As an attorney) how often do delays in receiving discovery from the DA/law enforcement/lab/ etc result in the following outcomes:

		Request That the Court Issue a Subpoena	Delay in Identifying Witnesses	Loss of Access to Witnesses	Delay in Identifying Conflicts	Request for a Continuance
PDO	Always/Usually	4.55%	28.79%	10.61%	25.76%	48.48%
	Sometimes	22.73%	48.48%	51.52%	43.94%	31.82%
	Rarely/Never	59.09%	12.12%	27.27%	18.18%	12.12%
ADO	Always/Usually	6.67%	33.33%	20.00%	33.33%	73.33%
	Sometimes	26.67%	53.33%	53.33%	66.67%	26.67%
	Rarely/Never	46.67%	6.67%	26.67%	0.00%	0.00%

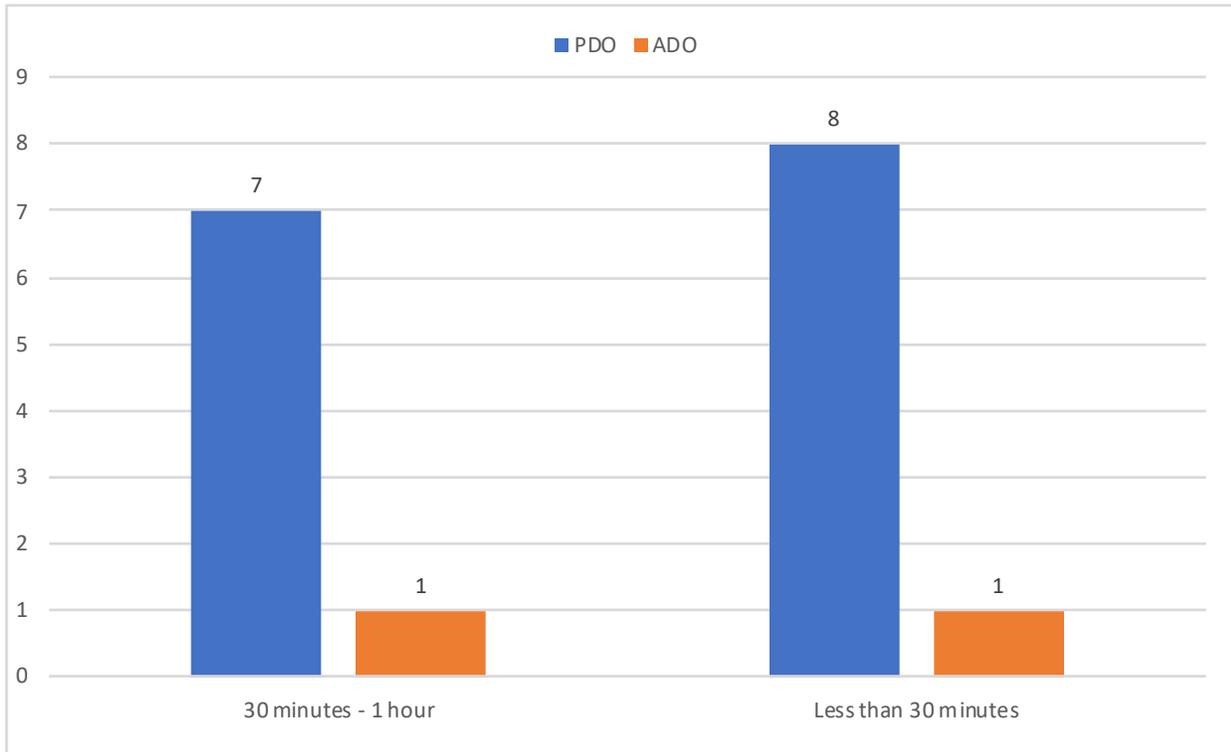
22. What discovery related work do you perform?

	Paralegals		Legal Clerks		Investigators	
	% of PDO Respondents	% of ADO Respondents	% of PDO Respondents	% of ADO Respondents	% of PDO Respondents	% of ADO Respondents
I perform discovery tasks	66.67%	100.00%	53.33%	50.00%	17.65%	0.00%
I direct other staff to perform discovery tasks	9.52%	0.00%	40.00%	0.00%	17.65%	25.00%
I do not perform any discovery related work	28.57%	0.00%	20.00%	50.00%	70.59%	75.00%

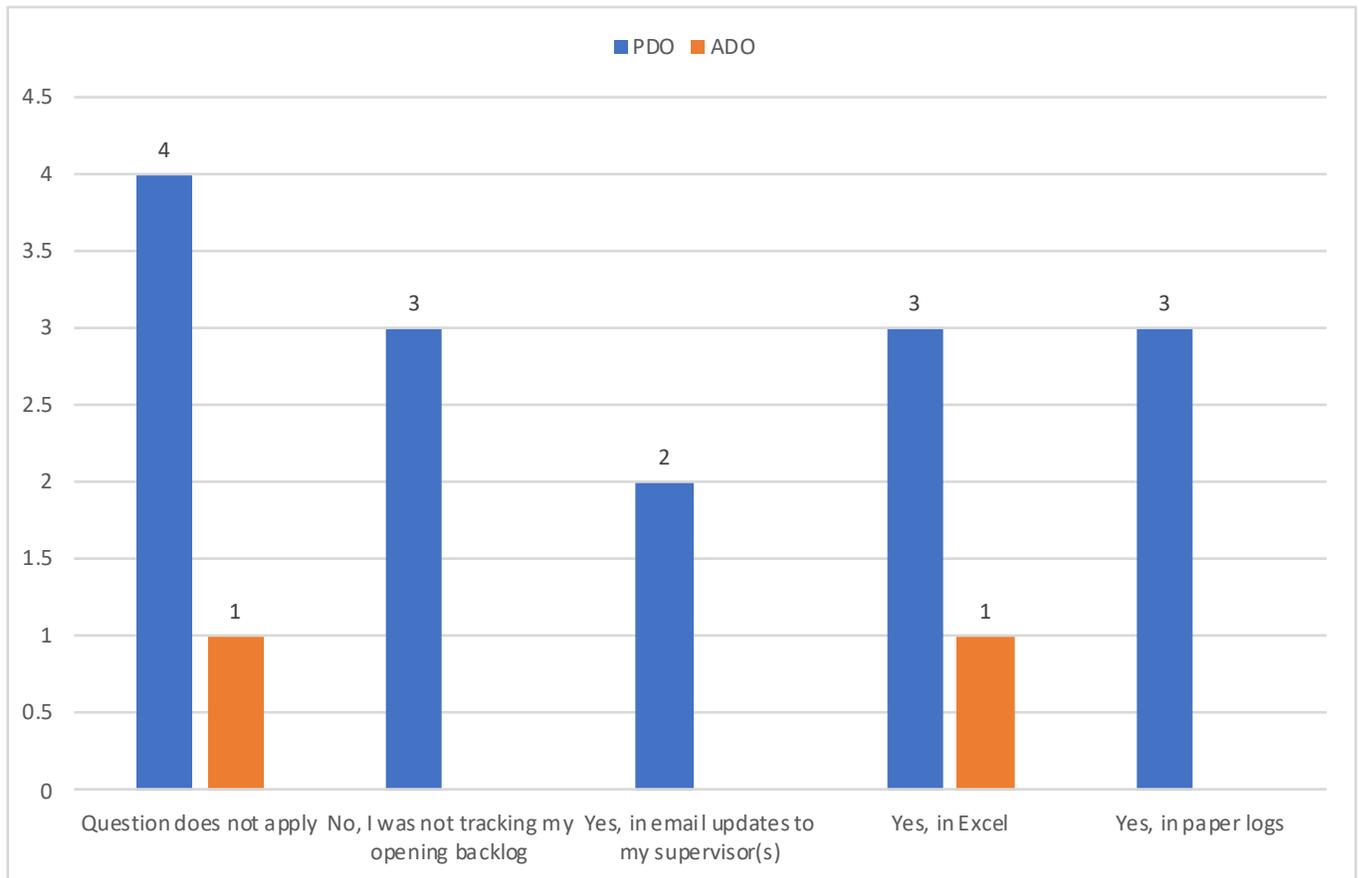
23. (As an investigator) how has a backlog of opening cases fully in JustWare affected your workflow/ your ability to work on cases? (select all that apply)

Impacts	Count
I have received tasks from attorneys later in the case timeline than usual	10
There was a lack of case information within the file upon case assignment	10
The lack of full information in JustWare increased my workload	10
It took longer to identify witnesses	8
I could not work on a case until it has been fully opened in JustWare	8
It took longer to identify conflicts of interest	6
It had no effect on my ability to work on cases or my workflow	4
It took longer to receive client intakes	4
Discovery requests were submitted/received later in the case timeline than usual	4
The wrong attorney was assigned to cases	4
The system does not allow a user to multi task. It is hard to tell which case needs to be closed first to move on with a task. The system is also very redundant.	1
I don't know	1

24. (As a legal clerk) on average, how long does it take you to fully open a case in JustWare for your current unit/department/case type assignment?



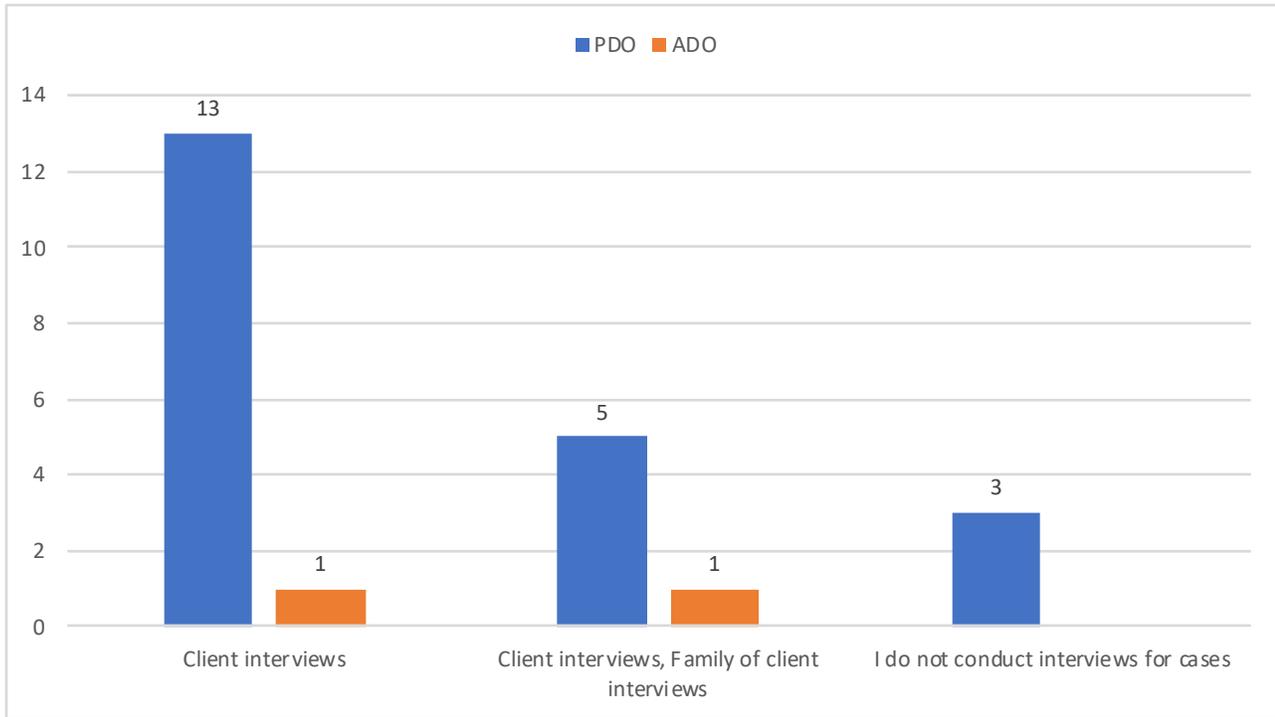
25. (As a legal clerk) were you tracking your case opening backlog earlier this year?



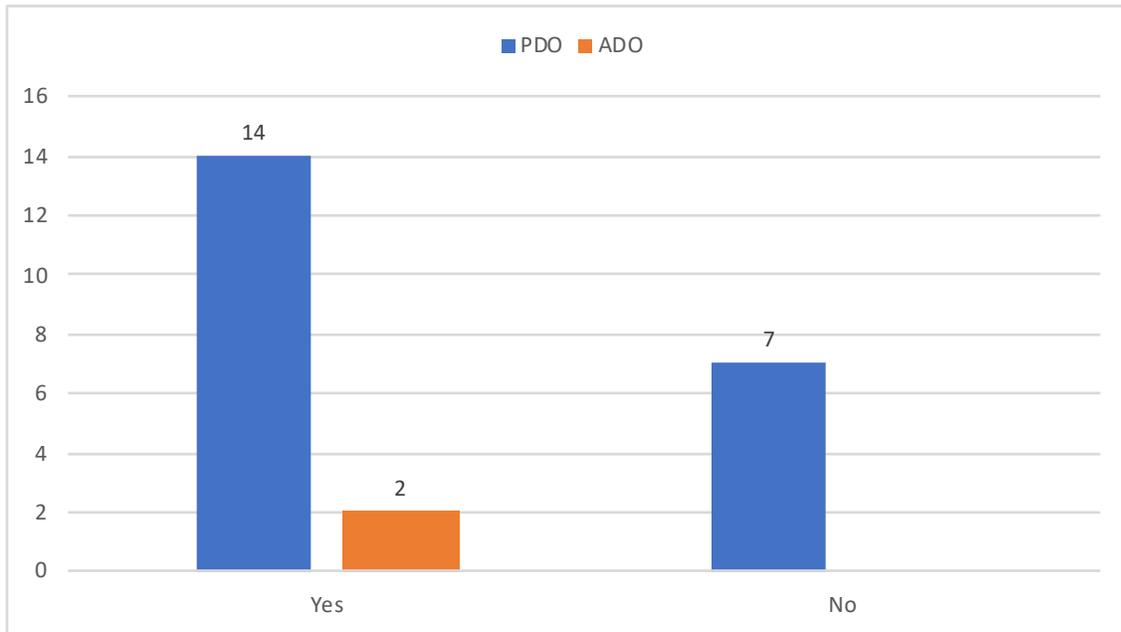
26. (As a paralegal) how has a backlog of opening cases fully in JustWare affected your workflow/ your ability to work on cases? (select all that apply)

Impacts	Count
The lack of full information in JustWare increased my work-load	10
There was a lack of case information within the file upon case assignment	9
It had no effect on my ability to work on cases or my workflow	6
It took longer to complete client intakes	6
It took longer to identify conflicts of interest	5
I have received tasks from attorneys later in the case timeline than usual	4
Discovery requests were submitted/received later in the case timeline than usual	3
I could not work on a case until it has been fully opened inJustWare	4
The wrong attorney was assigned to cases	3
I open my own cases	1
NA	2

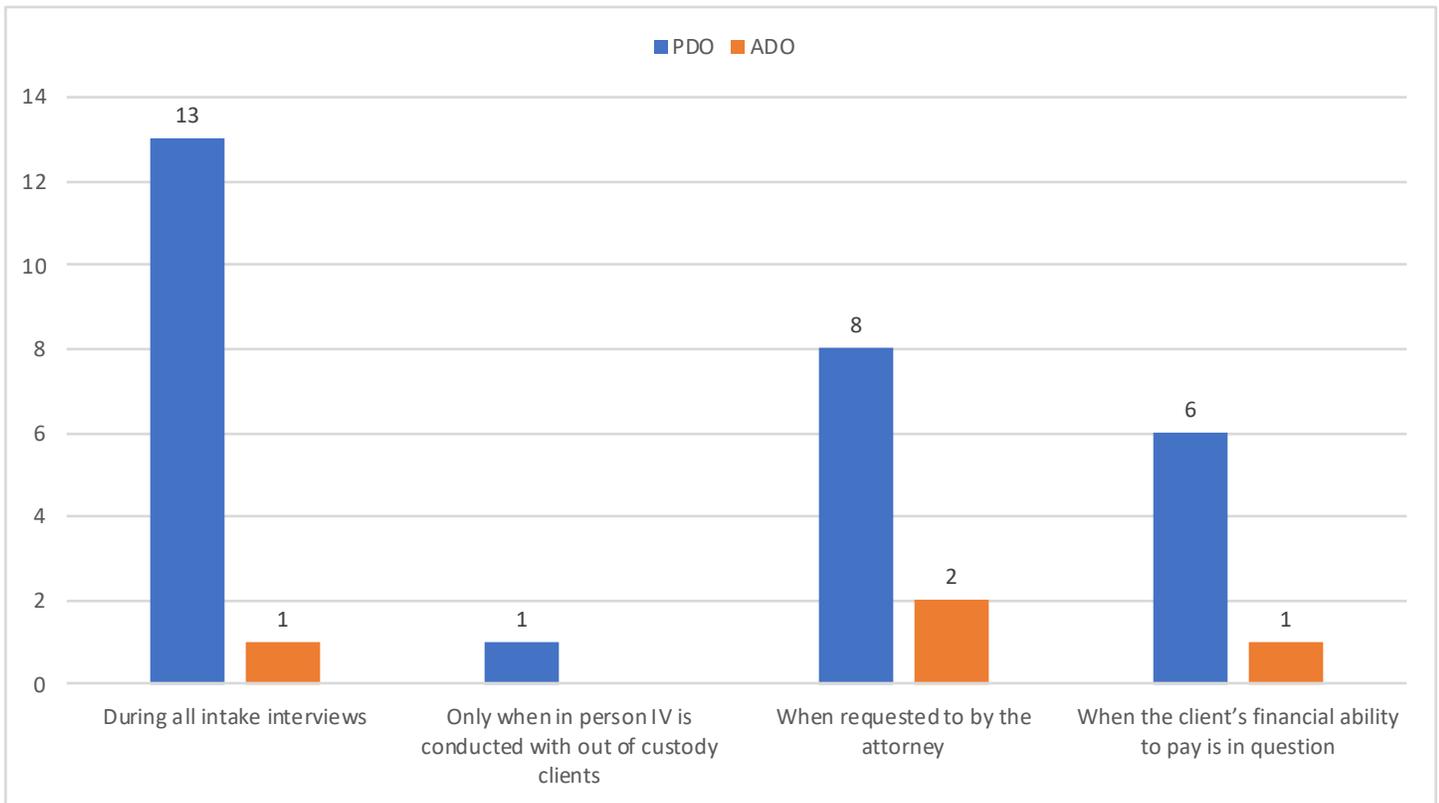
27. (As a paralegal) what kinds of interviews do you conduct for cases? (select all that apply)



28. (As a paralegal) do you conduct financial screenings or request registration fees from clients?



29. (As a paralegal) when do you conduct financial screenings of clients? (select all that apply)



30. (As a paralegal) when do you request the registration fee from clients? (select all that apply)

	PDO	ADO	Total Responses (PDO & ADO)
During all intake interviews	13	1	14
Only when in-person interview is conducted with out-of-custody clients	0	1	1
When requested to by the attorney	8	2	10
When the client's financial ability to pay is in question	6	1	7

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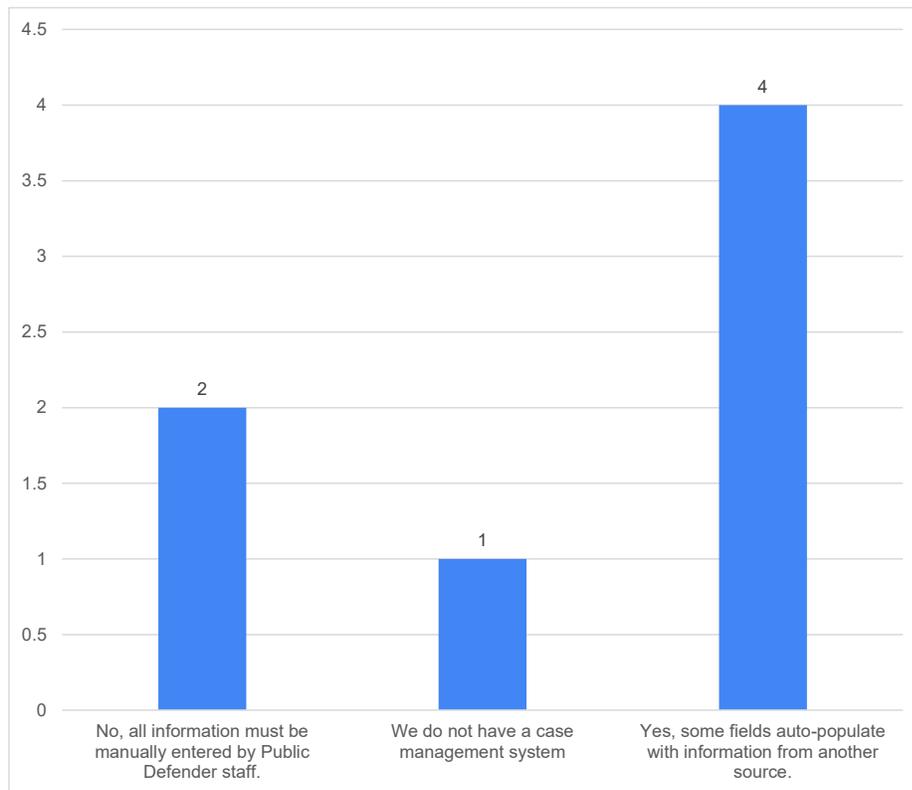
1. What county do you work for? (*This information helps us place responses within the context of census and court statistic data. We will not share this information unless you give us permission below)

Stanislaus	Contra Costa
Ventura	Riverside
Anonymous County	Anonymous County
Anonymous County	

2. What is the name of the Public Defender’s Office case management information system?

ICJIS	N/A
VCIJIS	Defender Data
JCATs - Canyon Solutions	AutoFacts
JCATS	

3. Does defendant information and/or case information auto-populate in this system? (examples: court dates, defendant names, witness names)



4. What information auto-populates within the case management information system?

Defendant’s name & booking info, case number, initial charges, law enforcement witnesses name and information - initial information is “pulled” from DA/SO system - no link built yet for EDM (initial discovery)

Case number, name of client, information re: charges

Name, Case number, Charges, DOB

Case number, client name

5. Are there specific features/tools that are needed by the Public Defender's Office but are missing from this case management information system?

Yes, dashboard, investigator module, and system is clunky and not user-friendly

Yes

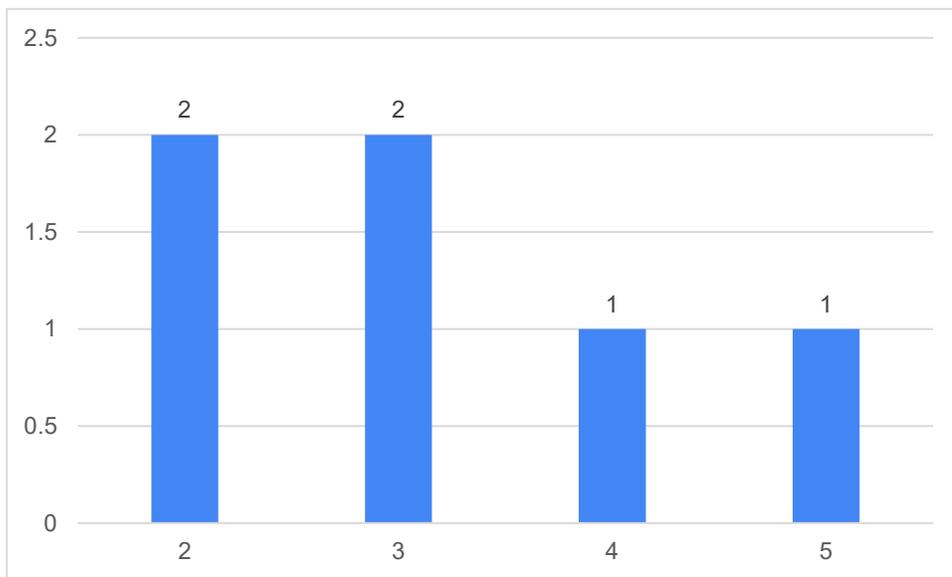
Custody/Incustody button

Auto population

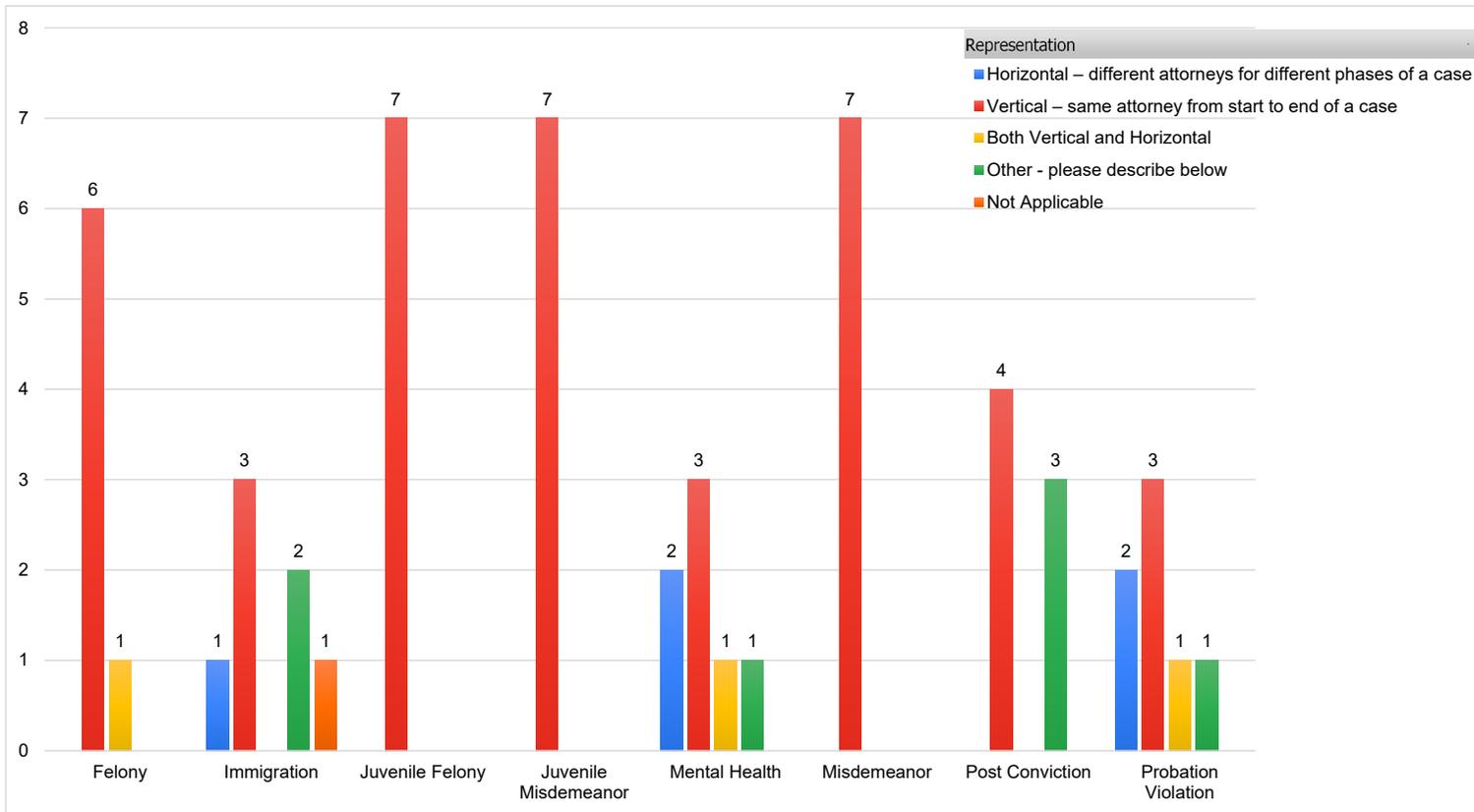
No

No

6. Please rank your office's overall satisfaction with this case management information system as a tool to perform daily work. (1 = Very unsatisfied with this tool; 5 = Very satisfied with this tool)



7. What kind of representation does your office provide for the following case types?



8. If you selected “Other” as the kind of representation provided by your office, please describe below:

For IST cases, a mental health unit attorney handles the competency proceedings. Once those proceedings are over the case goes back to the originally assigned attorney. For post-conviction work, the case might be handled by our clean slate unit.

We provide Padilla consultation and our expert is entered as secondary assigned attorney

Specialized units handle post conviction and probation violation cases

9. How are cases assigned to an attorney?

By supervising attorney

A supervisor assigns the cases based on caseloads and attorney experience level

Felonies are assigned by the assistant Public Defender; misdos are assigned by clerical staff

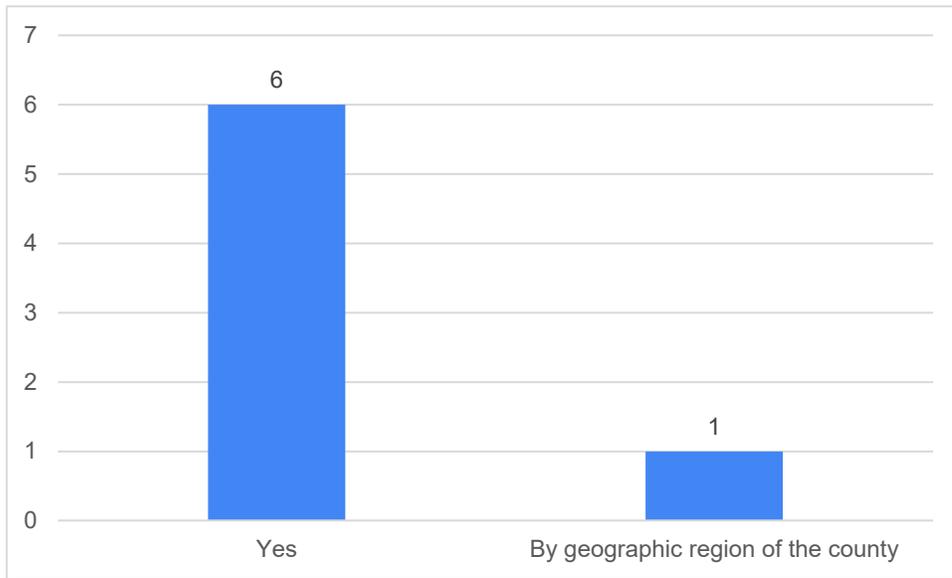
Manually imputed by supervisor, based on degree of difficulty and assignments

Varies per units

Case Number Split determined by departments.

By the supervisor

10. Are attorneys organized by teams? (example: by case type or phase)



11. What are the different teams to which attorneys are assigned in the Public Defender's Office?

Vertical court - so, teams are assigned by criminal department assignment

Felony, misdemeanor, mental health, juvenile

Misdemeanor, felony, juvenile, mental health, probate, writs and appeals, immigration, SVP

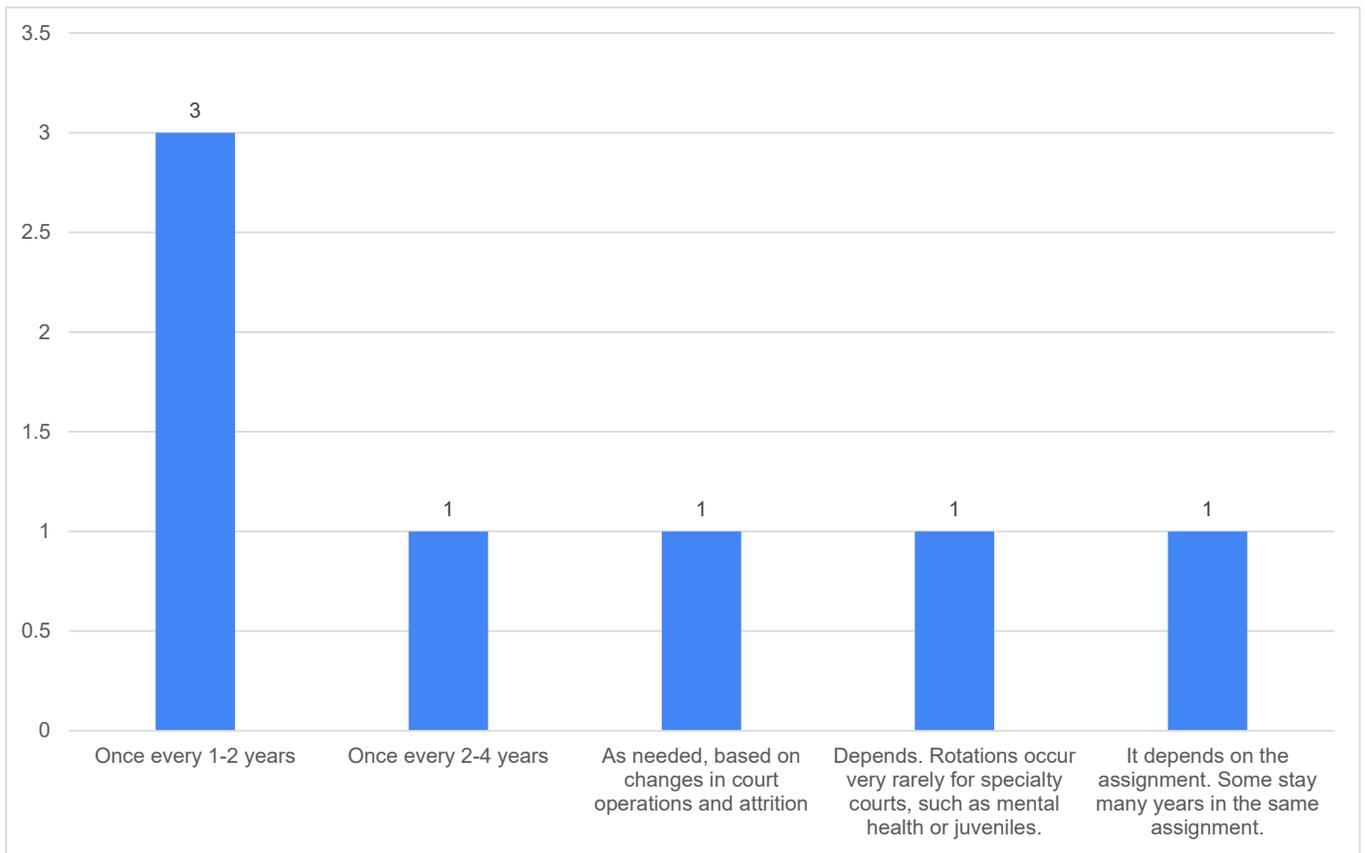
Misdemeanors, Domestic Violence, Felonies, Complex Litigation Unit, Writs, Mental Health, Juveniles

Juvenile, Misdemeanor, Felony, Domestic Violence, Major Crimes, Prison unit

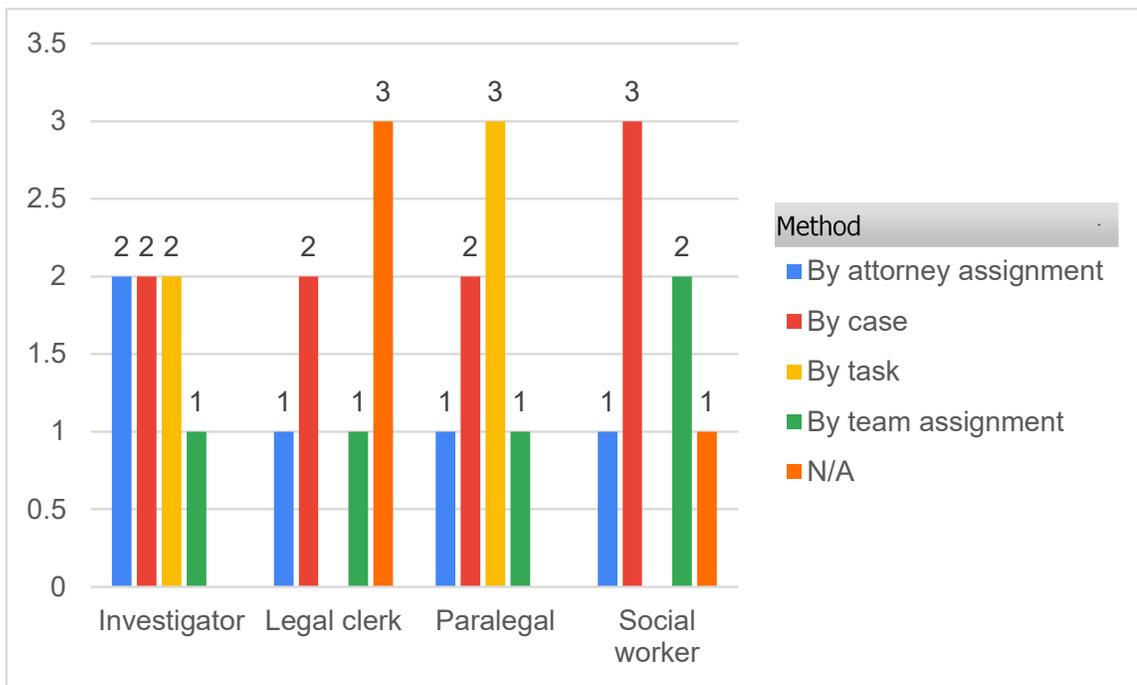
Misd, Felony, MDO,s Post conviction

Misdemeanors, felonies, writs and appeals, collaborative courts, Fresh Start/ Prop 47, mental health, juvenile

12. On average, how often do attorneys change team assignments?



13. How is work assigned to the following classifications:



14. If you would like to provide any clarifying information regarding work assignments for investigators, paralegals, legal clerks, or social workers please do so below:

A supervisor assigns the cases

15. What is the maximum income/asset value for a defendant to be eligible for representation by the Public Defender's Office in your county?

Unknown

We don't use a dollar figure. We consider multiple factors.

There is not a set maximum

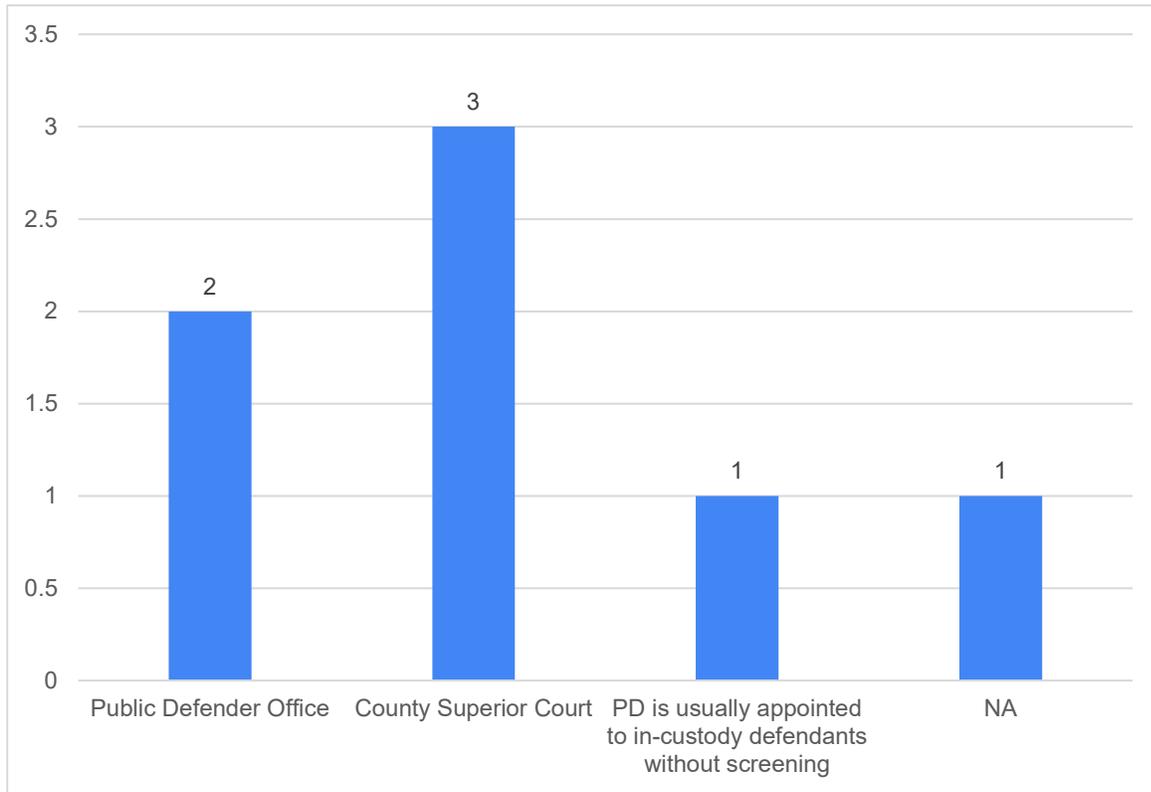
15,000 to 20,000

NA

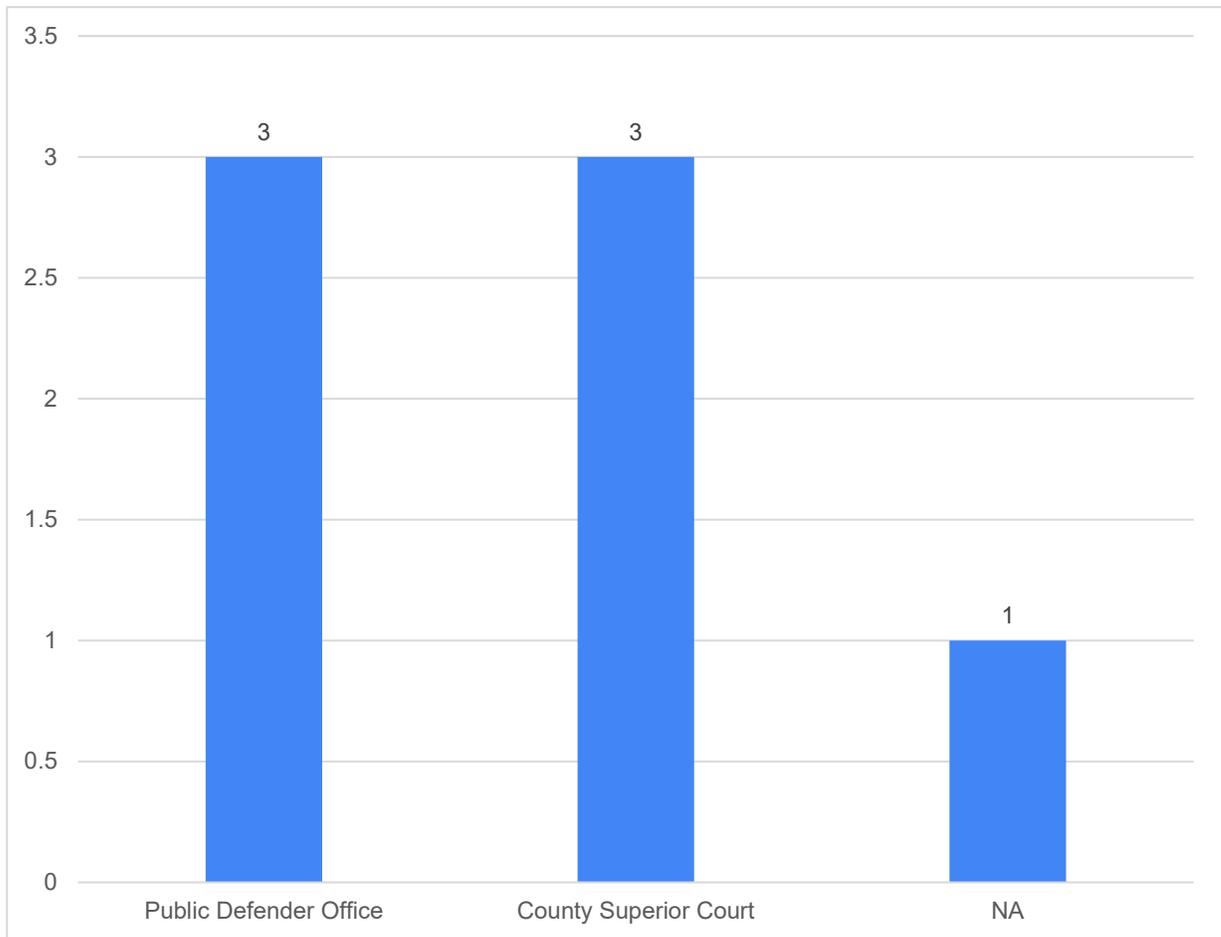
NA

The court makes the determination to assign a case to the Public Defender

16. For In-Custody defendants: which entity is responsible for conducting financial eligibility screenings of Public Defender services in your county?



17. For Out-Of-Custody defendants: which entity is responsible for conducting financial eligibility screenings of Public Defender services in your county?



18. What policy/regulation/law governs the process of financial screenings for Public Defender services in your county?

Unknown

Internal policies

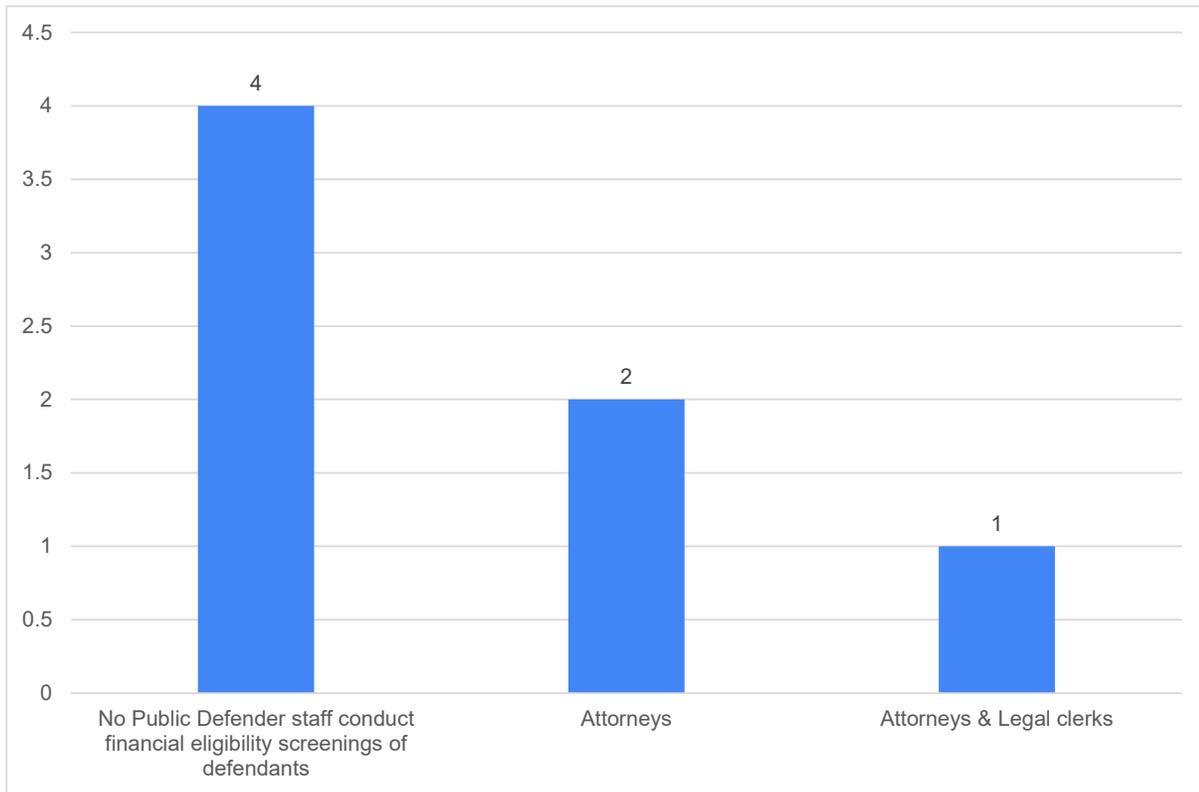
Our office policy is to have potential clients fill out a financial declaration. We take or decline the case based on the information on that form.

There is a chart with income level and number of people in the household.

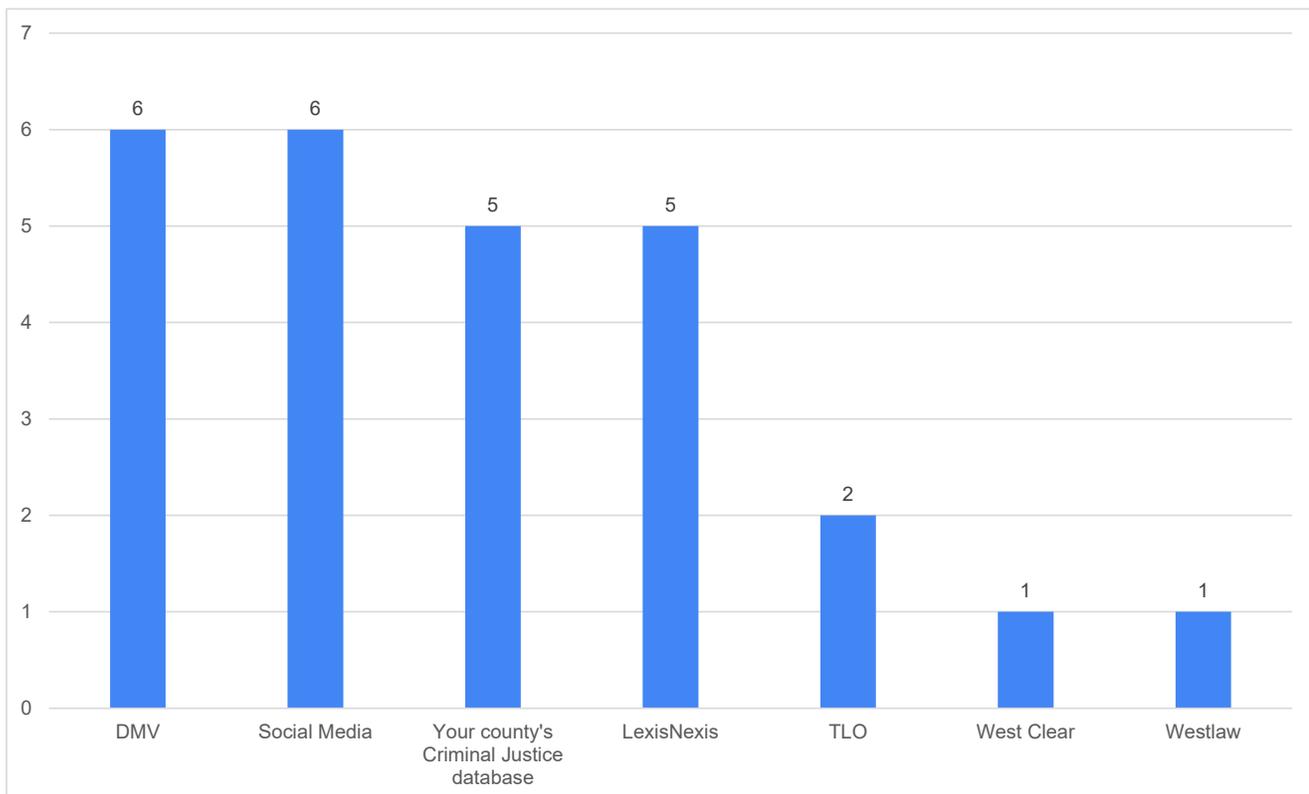
NA

NA

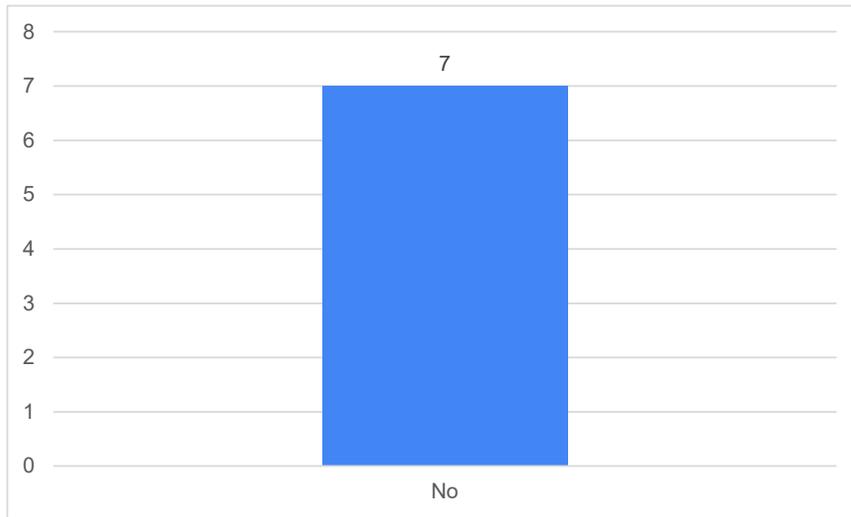
19. If Public Defender staff conduct financial eligibility screenings of defendants for services, which classification(s) conduct these screenings?



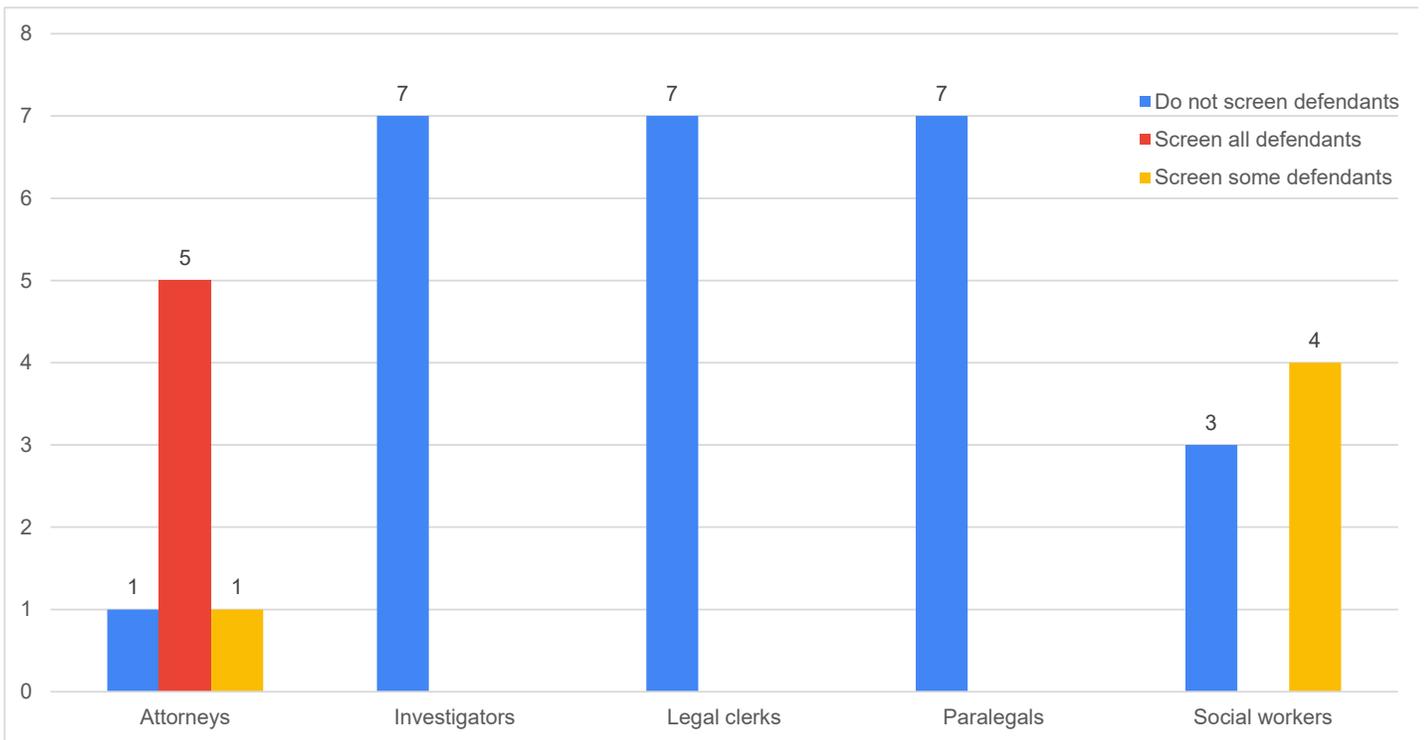
20. What sources of information do investigators have access to for case investigations (gathering client/witnesses information, etc)?



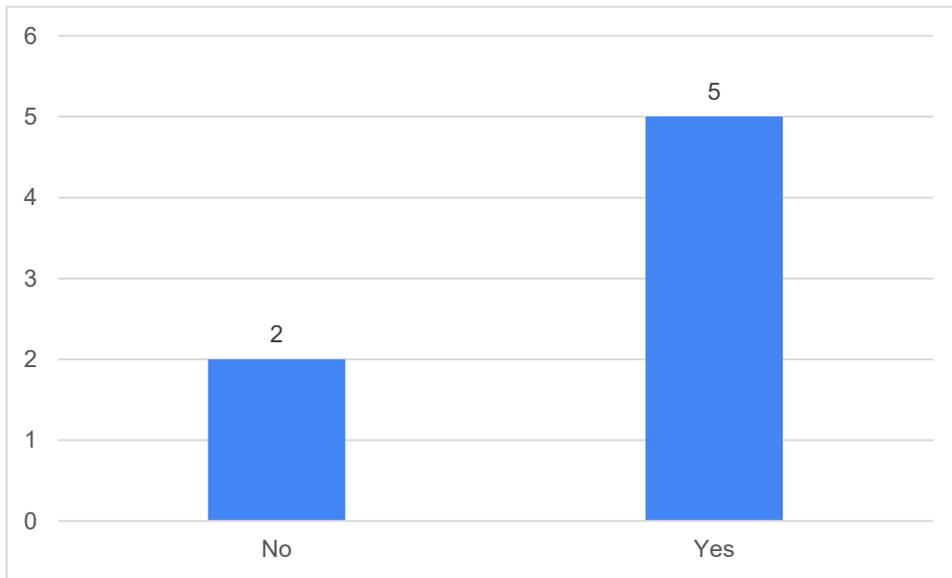
21. Do investigators within your department have Peace Officer status?



22. Do any of the following Public Defender classifications screen clients for mental health needs (including clients with non-mental health cases)?



23. Does the Public Defender's Office have Social Workers on staff?



24. What is the role of the Public Defender Social Worker(s)? Do they work directly with defendants and attorneys?

Our social workers provide a number of support services, including conducting social histories, connecting clients with services, and developing reentry plans.

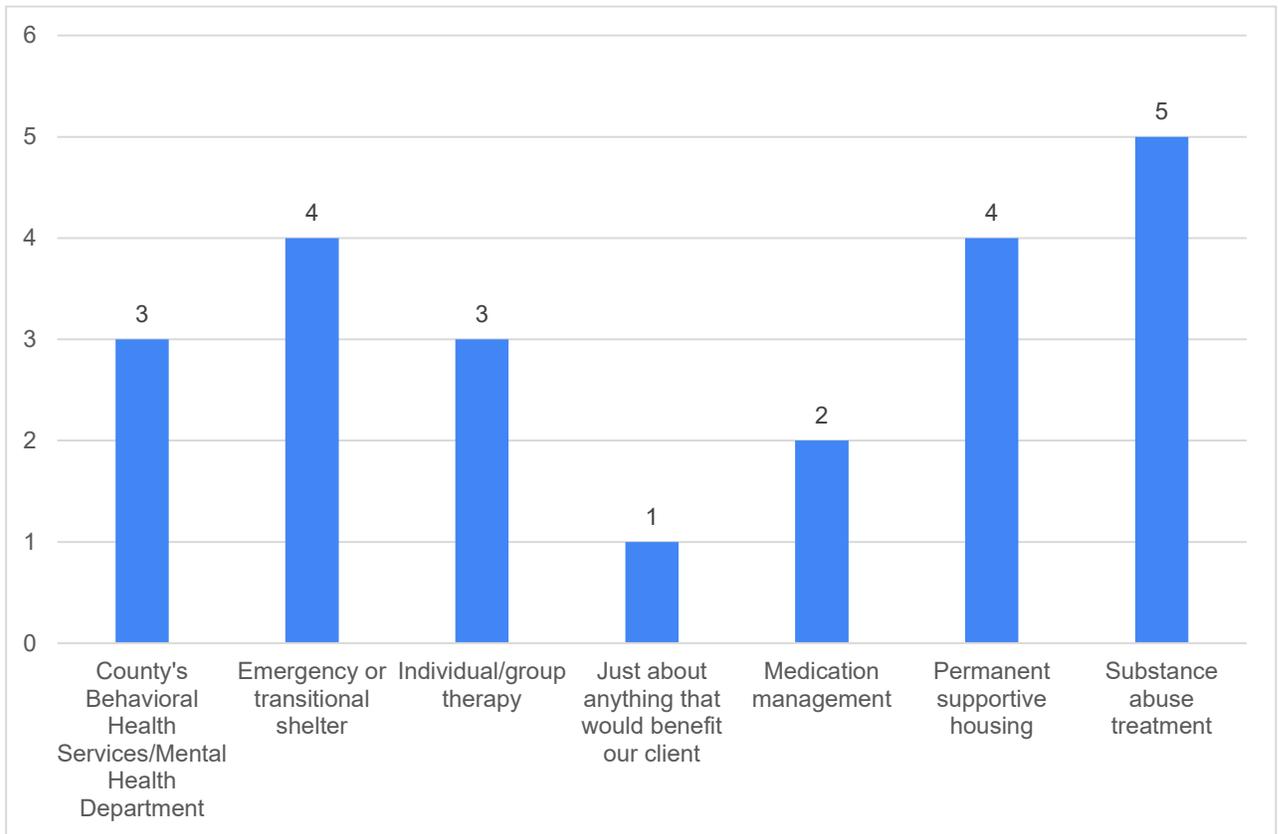
Yes

Yes, they work with our attorneys and their clients

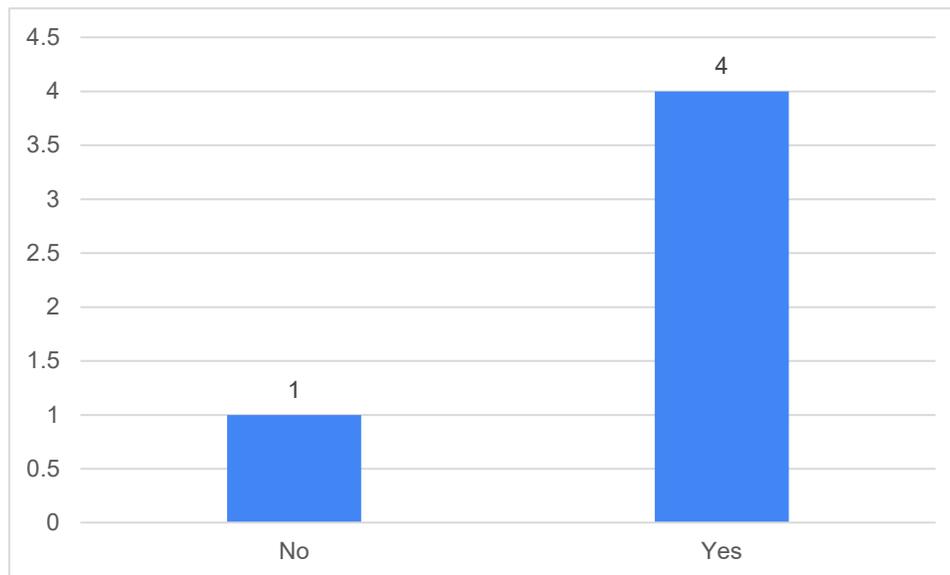
Social Workers are assigned cases based on a request for a Public Defender

A tremendous number of people facing criminal charges are living with mental illness. The criminal behavior of which they are accused is a product of their struggles with mental health management and not outright criminal thinking. Frequently homeless and with no family support, these clients have proven unable to access mental health services when released from custody. The Defense Transition Unit was created to help resolve criminal cases where the primary goal is effective mental health management. The DTU is built around 4 licensed mental health clinicians who work as part of the criminal defense team, accepting referrals directly from a client's attorney. With attorney supervision and paralegal support, the clinicians personally assess the mental health needs of clients in custody, and do so within five working days of a referral. The clinicians then use their knowledge of community resources to arrange comprehensive mental health treatment, and prepare a treatment plan for use by attorneys, judges and the Probation Department. Finally, the DTU ensures that clients are transported directly from custody to mental health service providers. By more quickly linking mentally ill clients to the resources they need, the DTU intends to reduce recidivism among our most challenging clients. Clients will attend intake appointments while stable and motivated, and be less likely to return to more costly hospitalizations, crisis houses and other emergency responses. Ultimately, the Defense Transition Unit expects to reduce recidivism and benefit the taxpayer while improving the quality of life for Public Defender clients.

25. Do Public Defender Social Workers refer clients to any of the following services?



26. Do Public Defender Social Workers help clients in custody with discharge planning?



27. Are there specific programs/procedures used by the Public Defender's Office which are meant to reduce recidivism of defendants?

No

Social work support, clean slate services, immigration assistance, reentry planning.

Not department specific, but we are working on a program with Social Finance which is designed to reduce recidivism by offering programming, incl. moral reconnection therapy

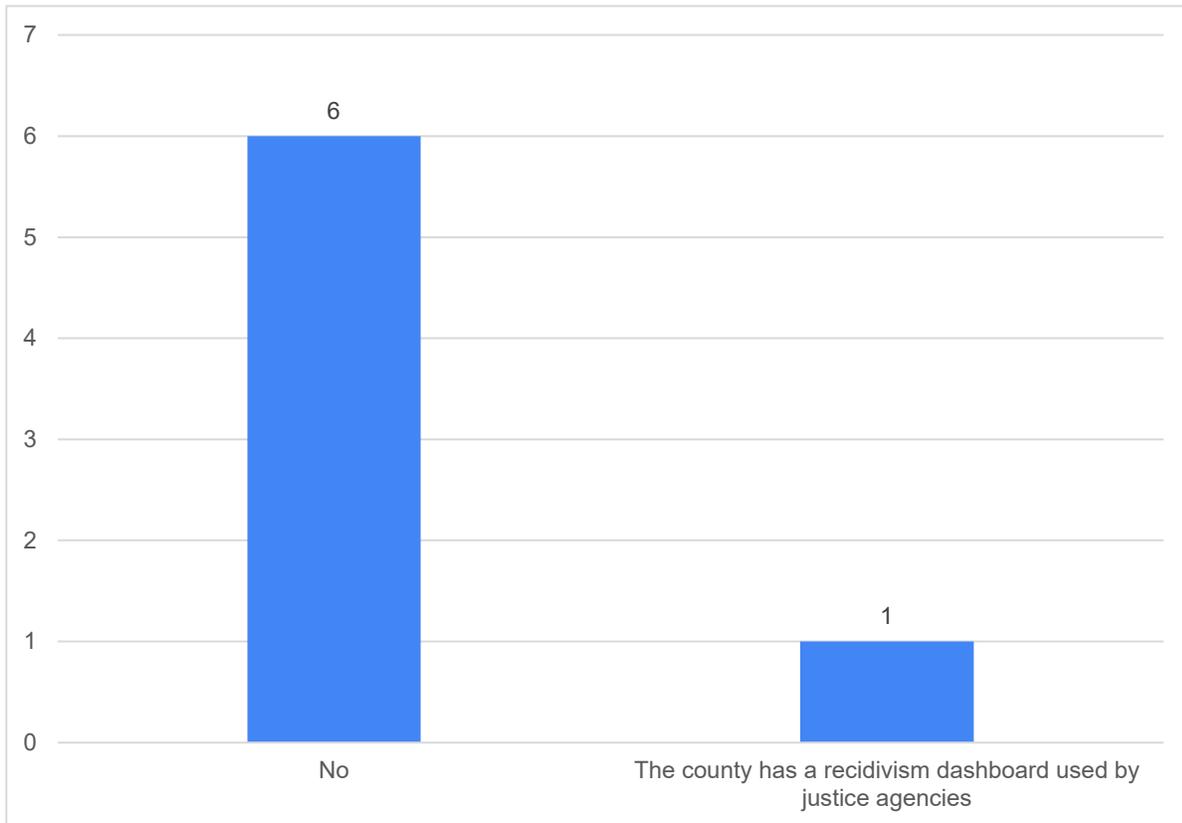
Our limited funding does not allow for such programs or procedures

NA

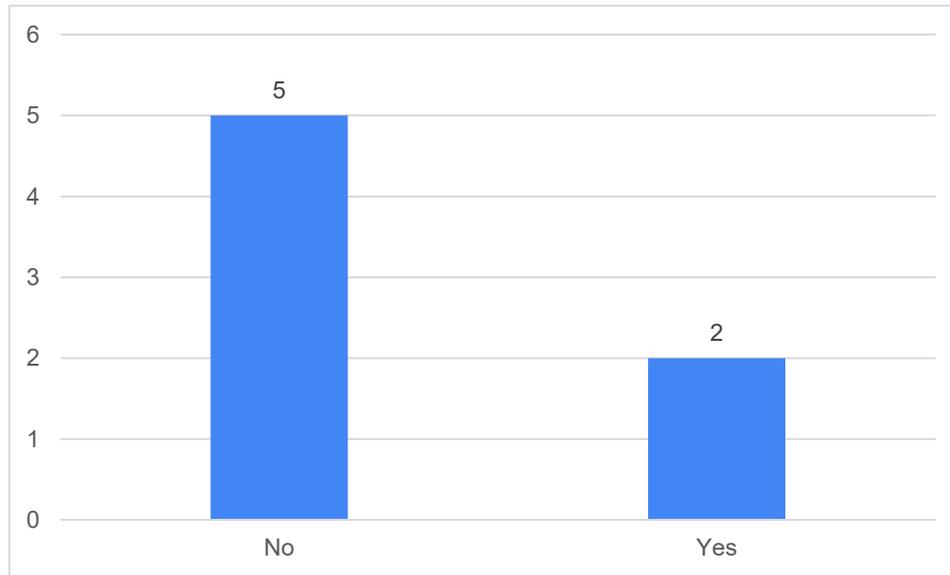
Social Workers and outreach/community involvement

We actively advertise and have fairs for post conviction relief which when sought/granted helps people get jobs and back on track without a record, which reduces recidivism

28. Does the Public Defender's Office track the recidivism of past defendants?



29. Does the Public Defender's Officer have a Pre-Arrestment Services/Pre-Trial Release program? (i.e. does the Public Defender's Office provide counsel or investigate defendants' cases before arraignment?)



30. When was the Pre-Arrestment Services/Pre-Trial Release program started and how is it staffed?

Started in 2012 or thereabouts. We staff each arraignment court with an attorney and a legal assistant.

Started about a year ago and staffed by an attorney, a social worker, and an investigator

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County of Santa Clara

Law Offices of the Public Defender
120 West Mission Street
San Jose, California 95110
(408) 299-7700 FAX (408) 998-8265



Molly O'Neal
Public Defender

To: Management Audit Team

From: Molly O'Neal

Date: December 27th, 2021

Re: Accomplishments of the Public Defender Office

Thank you for the opportunity to provide information regarding accomplishments of the Public Defender office as an amendment to the Management Audit.

The Office of the Public Defender provides legal services to indigent clients in Santa Clara County. In recent years, our office has expanded its service model to include holistic representation where we attempt to treat the “whole person” rather than simply address the person’s criminal case. Earlier contact with clients produces better representation and better outcomes. Contact with family members and employers now occurs at the outset of the case, cases are investigated sooner, and lawyers are better prepared at the first court date to present pre-trial release plans to the court. Additionally, with the series of criminal justice reforms starting in 2011 with AB 109 Realignment, the office’s post-conviction workload has greatly increased, helping people get back into the work force by clearing old records, obtaining resentencing hearings and reducing convictions.

PUBLIC DEFENDER FY 2020-2021 ACCOMPLISHMENTS:

- Expunged roughly 1500 criminal records.
- Provided early representation to hundreds of incarcerated clients in advance of their arraignments.
- Implemented Rapid Representation where PDO engaged clients immediately after booking and before being housed in the jail.
- Provided immigration consultation to roughly 3,000 non-citizen clients.
- Used social worker specialists to create reentry plans for post-conviction clients, emergency plans for juvenile clients, case management plans for mental health clients.
- During the pandemic, sent outreach teams to ensure homeless clients were notified of their court dates.
- Sent community outreach attorney to William C. Overfelt High School to work on campus weekly to prevent and deter incidents, provide know your rights trainings and create Black Student organization.
- Partnered with Stanford University’s Computational Policy Lab to create a mobile app notification system to prevent missed court dates.
- Provided legal representation during covid lockdown to protect rights of incarcerated clients.
- Implemented video arraignment model to enhance safety in courtrooms during covid.

Assistant Public Defenders: Jose G. Guzman, Charles Hendrickson, Damon Silver

December 27, 2021

Page 2

- Implemented jail tablet system in order to continue to communicate with in-custody clients during lockdown and no visitation policy put in place by the Department of Corrections.
- Added additional misdemeanor supervisor to large team of lawyers to provide better oversight to new lawyers and enhance training regimen.
- Represented juvenile justice clients during pandemic with special attention to isolation and lack of in-person instruction.
- Helped hundreds of post-conviction clients through youthful offender parole hearings, felony-murder resentencings, Penal Code Section 1170 recall hearings and post-conviction immigration relief.
- Delivered gift cards and pizza on Christmas Eve for incarcerated youth who suffer greatly during the holidays when separated from their families.

2. Structure and Role of Management

- **The role of managers at the Public Defender's Office does not include establishment of staff performance and efficiency goals and objectives or responsibility for ensuring that they are accomplished. Without such a focus, staff are receiving inconsistent levels and quality of oversight by their managers and supervisors. The managers' spans of control vary, adding to inconsistent levels of management oversight.**
- **The four Assistant Public Defenders are responsible for managing all attorney staff and performing a variety of administrative and special project functions, many of which could be performed by less costly, non-attorney staff. By their own estimates, their administrative functions consume 81 percent of their collective time, leaving little time for overseeing staff performance.**
- **Many of the administrative and special project duties now performed by Assistant Public Defenders could be performed by the Administrative Services division. By transferring such functions, the Assistant Public Defenders could concentrate on legal team management. Further, much needed staff analytical capacity could be increased by converting, through attrition, one Assistant Public Defender position to a Management Analyst at an annual cost savings of approximately \$145,000. Even with this conversion of one management position, more Assistant Public Defender time could be allocated to management activities than is the case at present.**
- **The ten supervisors who report to the Office's managers provide varying levels and approaches to supervision, with their spans of control ranging from 2.5 to 28 employees supervised and a number reporting to multiple managers. Some of the supervising attorneys process cases themselves; others do not. The majority of staff attorneys responding to the audit survey indicated that their supervisors are generally available and treat them respectfully, but approximately 40 percent of respondents reported that they do not receive useful guidance from their supervisors on how to perform their jobs.**

Organizations that function effectively possess several common attributes. At the highest levels, managers create and foster an appropriate organizational culture by focusing on the organization's strategic issues; providing general direction to employees by defining the organization's mission, goals and objectives; establishing appropriate policies to ensure that all applicable laws, policies and organizational goals are complied with; and, providing the resources that are necessary for employees to accomplish their responsibilities. At the lowest levels, supervisors of effective organizations have well

Section 2: Structure and Role of Management

defined responsibilities for which they and their staff can be held accountable; a clear understanding of reporting lines and chain of command; manageable spans of control; and, appropriate authority to achieve their assigned objectives.

The complexity of an organizational structure is often defined by its size. If the organization is large, it requires more organizational tiers and divisions. If it is small, an organization requires fewer tiers and divisions. For any organization, it is important to create a compact structure, while maintaining manageable spans of control.

The Office of the Public Defender can be characterized as a small to medium-sized organization of 198.63 full-time equivalent (FTE) positions¹. It has three major components: (1) Legal; (2) Administrative support services; and, (3) Investigation. Although the three main service areas have remained constant in recent years, the organization has changed and evolved as the County has grown and workload has increased. The Office of the Public Defender will continue to evolve with the County as population and workload dictates.

Current management structure

Under the current Public Defender organization structure, there are inconsistent spans of control and inconsistent reporting lines. Several key characteristics of the Public Defender organizational structure impede effective management:

1. The upper management structure leaves the line staff unsure of direct and indirect reporting lines.
2. The direct and indirect spans of control is inconsistent and inequitable based on the numbers of staff supervised. Some Assistant Public Defender positions supervise numerous staff, while other management staff have minimal direct management responsibilities.
3. There is a lack of sufficient supervisory and lead personnel focused on the Public Defender's daily operations at satellite facilities in Sunnyvale and South County. Formalizing and developing a strong tier of supervisors and lead personnel would free managers to focus on broader management issues affecting office productivity.
4. Supervising Attorneys, responsible for the direct supervision of line-staff, are distributed inequitably throughout the Department and several report to multiple Assistant Public Defenders.

There are currently three management levels in the Public Defender's Office (PDO): 1) the Public Defender; 2) Managers; and, 3) Supervisors. A description of each follows.

¹ This includes both the Public Defender and the Alternate Defender.

Section 2: Structure and Role of Management

Management Level 1: Public Defender

The Public Defender oversees all legal functions of the Office of the Public Defender as well as all administrative functions for the Offices of the Public Defender and Alternate Defender. The Public Defender is responsible for budget development and expenditure management, and other administrative functions such as procurement and information systems and development of all administrative policy and procedures and organization decisions, including organization of attorney staff, investigative staff, paralegal staff, and legal clerk staff. The Public Defender acts as the liaison with the Board of Supervisors, other County Departments, the Trial Courts and State agencies. Currently, the Public Defender has six positions reporting directly to her: four Assistant Public Defenders; an Administrative Services Manager; and, the Chief of Investigations. The Alternate Defender also reports for the Public Defender on administrative matters only.

Management Level 2: Managers

Immediately supporting the Public Defender is the Office's second management level, comprised of: four Assistant Public Defenders², the legal services managers of the Office, one Administrative Services Manager and the Chief of Investigations, all reporting directly to the Public Defender.

Each Assistant Public Defender is responsible for a number of staff attorney teams and each has a number of administrative and special project responsibilities Exhibit 2.1 summarizes the administrative and staff oversight responsibilities of each Assistant Public Defender. As shown in Exhibit 2.1, the Assistant Public Defenders oversee 8 supervisor positions and 103 staff positions. However, most of the Assistant Public Defenders' time is consumed by administrative duties and special project responsibilities, also detailed on Exhibit 2.1, including human resources functions such as recruitment and vacation scheduling, budget preparation and monitoring, preparation of quarterly reports, training, the Office's internship program, videoconferencing, liaison with the Board of Supervisors and various inter-agency collaborations.

According to their own estimates, administrative duties consume 81 percent of the Assistant Public Defenders' time, which translates in to 3.25 of the four full-time equivalent Assistant Public Defender positions. This leaves only the equivalent of .75 of their four full-time positions, or 19 percent of their time, for staff advising and management functions such as performance monitoring and managing process improvements. Some teams receive more management attention than the others. For example, the attorney teams at the satellite South County and Sunnyvale courthouses receive very little management attention as their Assistant Public Defender's time is 95 percent consumed by administrative duties.

² Technically the Public Defender has three Assistant Public Defender positions and one Attorney IV position that serves in an Assistant Public Defender role. Thus, we have identified all positions as Assistant Public Defender positions based on role and responsibility.

Section 2: Structure and Role of Management

**Exhibit 2.1
Assistant Public Defenders
Responsibilities and Staff Supervision**

Assistant Public Defender	Special Duties and Responsibilities	Staff Supervision
1) Assistant Public Defender - HR	<ul style="list-style-type: none"> ▪ Human Resources ▪ Personnel Evaluations ▪ Assignment Changes ▪ Internship Program ▪ Recruitment ▪ Examination ▪ CJIC Security 	<ul style="list-style-type: none"> ▪ Satellite Offices <ul style="list-style-type: none"> ○ San Martin - 4 positions ○ Sunnysvale - 2 positions ▪ Paralegals <ul style="list-style-type: none"> ○ Supv. Paralegal - 1 position ○ Staff - 23 positions <p><i>Total positions= 30.0</i></p>
<i>% Time</i>	95.0 %	5.0 %
2) Assistant Public Defender – Administrative	<ul style="list-style-type: none"> ▪ Annual Budget ▪ Quarterly Reports ▪ Legislative Contacts ▪ Special Expenses Oversight ▪ Appellate Reviews 	<ul style="list-style-type: none"> ▪ Information Systems <ul style="list-style-type: none"> ○ IS Supervisor - 1 position ○ IS Staff - 3 positions ▪ Juvenile Delinquency <ul style="list-style-type: none"> ○ Supv. Attorney - 1 position ○ Staff - 8 positions ▪ Research Unit <ul style="list-style-type: none"> ○ Supv. Attorney - 1 position ○ Staff - 3 positions <p><i>Total positions= 17.0</i></p>
<i>% Time</i>	90.0 %	10.0 %
3) Assistant Public Defender – Supervisor	<ul style="list-style-type: none"> ▪ Videoconferencing ▪ Drug Court Policy ▪ Mental Health Policy ▪ Proposition 63 ▪ DOC Liaison 	<ul style="list-style-type: none"> ▪ Special Trials Unit <ul style="list-style-type: none"> ○ Supv. Attorney - .33 positions ○ Staff - 6 positions ▪ Sexually Violent Predator Unit <ul style="list-style-type: none"> ○ Supv. Attorney - .83 positions ○ Staff - 2 positions ▪ Drug Court Unit <ul style="list-style-type: none"> ○ Supv. Attorney - .5 positions ○ Staff - 7 positions ▪ Mental Health Unit <ul style="list-style-type: none"> ○ Staff - 4 positions <p><i>Total positions= 20.7</i></p>
<i>% Time</i>	75.0 %	20.0 %
4) Assistant Public Defender – Training	<ul style="list-style-type: none"> ▪ Training 	<ul style="list-style-type: none"> ▪ Felony Trial Unit <ul style="list-style-type: none"> ○ Supv. Attorney - .83 positions ○ Staff - 21 positions ▪ Felony Preliminary Unit <ul style="list-style-type: none"> ○ Supv. Attorney - .5 positions ○ Staff - 9 positions ▪ San Jose Misdemeanor <ul style="list-style-type: none"> ○ Supv. Attorney - .5 positions ○ Staff - 7 positions ▪ Domestic Violence Unit <ul style="list-style-type: none"> ○ Supv. Attorney - .5 positions ○ Staff - 3 positions ▪ Probation Violations <ul style="list-style-type: none"> ○ Staff - 1 position <p><i>Total positions= 43.3</i></p>
<i>% Time</i>	65.0 %	35.0 %

Section 2: Structure and Role of Management

Many of the administrative duties now performed by the Assistant Public Defenders do not require a senior attorney's skills, abilities or high cost, particularly when the Office does have an Administrative Services Manager position who, according to the County's classification specifications, should be capable of managing all of the Office's administrative functions. Typical tasks for an Administrative Service Manager III in the County include planning and organizing central administrative activities including responsibility for fiscal matters, personnel, purchasing, records maintenance, and analytical studies, according to the County's job specifications for this position.

The Administrative Services Manager in the Public Defender's Office oversees 28 Legal Clerks and other administrative support positions through one direct reporting supervisor position. The Chief of Investigations, the sixth manager reporting to the Public Defender, oversees 24.5 positions in the Investigations unit, primarily investigators. An investigations supervisor reports to this position.

Role of managers needs to be clarified

The role of managers in the Public Defender's Office has not been formally defined to include core management functions. The Office has not established systems and procedures or assigned managers responsibility for ensuring that the teams or units they oversee are meeting Office quality of service and performance standards. This should specifically include clear assignment of goals and objectives to all managers by the Public Defender and manager responsibility for monitoring the performance of their staffs and identifying corrective actions when problems are discovered such as performance goals not being achieved or quality standards not being met.

Currently, the primary role played by the Assistant Public Defenders regarding attorney staff they oversee is individual advising on case work. While this is no doubt very valuable since all of the Assistant Public Defenders are long-term veterans of the Office and have a great deal of legal experience, it does not replace the need for management of the legal teams. Goals, objectives and improvement initiatives implemented by the Assistant Public Defenders and other managers should be driven by Office-wide goals and objectives established by the Public Defender and the management team.

In the staff survey conducted for this audit, the majority of staff attorney respondents indicated that management has communicated the core values and mission for the Public Defender's Office, specifically that providing the best possible service to clients and maintaining high ethical standards are high priorities of the office. But slightly over 40 percent of respondents indicated that the roles of the Office managers are not clearly defined. In other words, while the Office mission is clear, the manner in which it is implemented through the management team is not as clear. Exhibit 2.2 presents the responses by staff attorneys to several survey questions pertaining to Office management.

Section 2: Structure and Role of Management

Exhibit 2.2
**Staff attorney responses to questions pertaining to management of the
Office of the Public Defender**

Statement	Agree Strongly	Agree	Agree Somewhat	All Agree	Disagree Somewhat	Disagree	Disagree Strongly	All Disagree
Management has communicated to staff that providing the best possible services to our clients is a high priority of the Office.	51.7%	41.4%	3.4%	96.6%	3.4%	0.0%	0.0%	3.4%
Management has communicated to staff that maintaining high ethical standards is a high priority of the Office.	58.6%	41.4%	0.0%	100.0%	0.0%	0.0%	0.0%	0.0%
The roles of the Office's managers are clearly defined.	0.0%	40.7%	18.5%	59.3%	0.0%	40.7%	18.5%	40.7%
The Office has the right number of managers.	10.3%	31.0%	13.8%	55.2%	17.2%	20.7%	6.9%	44.8%

Source: Survey of Offices of the Public Defender and Alternate Defender staff, conducted July 2006 by Management Audit Division

Management Level 3: Supervisors

The third level of management in the Office of the Public Defender is comprised of: (1) Supervising Attorneys for most of the legal teams; and (2) non-attorney supervisors for the Paralegals, Legal Clerks, Information Systems, Investigations, and Administrative support staff units. Each supervisor reports to either an Assistant Public Defender or one of the two non-attorney managers. Most of the Office's legal teams have at least a part time supervisor, but this is not the case for the South County and Sunnyvale courthouse, Mental Health and Probation Violation teams. For most of the legal teams, the supervisors are shared, with only a portion of their time dedicated to each team they oversee. Three legal team supervisors report to two managers each. The legal teams with less than full-time supervisors are indicated by partial supervisor position numbers in Exhibit 2.1.

Role of supervisors needs to be clarified

As with the Office's managers, the role of supervisors is not clearly defined in the Public Defender's Office. All of the legal team supervisors indicated that they allocate a good deal of their time to staffing and ensuring that court calendars have sufficient coverage.

Management Audit Division

Section 2: Structure and Role of Management

Beyond that, their approaches to supervision vary, with some supervisors serving primarily in an advisory capacity to staff attorneys on their cases. Some supervisors maintain some statistical data on each attorney's workload to ensure that caseload is evenly distributed, but some supervisors do not use this approach. Some supervisors provide regular reports to their managers or the Public Defender on their staff's activities and cases; others do not. Some solicit feedback from judges and observe staff in court, but these are not consistent practices by all supervisors. Finally, some supervisors carry cases while others do not, affecting their time available for staff supervision.

In the staff survey conducted for this audit, the majority of responding Public Defender's Office staff attorneys reported that they are respected by their supervisors who they stated are generally available to help them. However, slightly under a third of the respondents indicate that they do not regularly receive useful guidance from their supervisors and that performance evaluations do not help them learn if they are meeting Office standards. While the majority of responding staff attorneys reported that they do receive useful guidance and that performance evaluations help them, the rate of opposing views is an indication of inconsistent supervision practices. Table 2.3 provides the survey results in these areas for staff attorneys in the PDO.

Table 2.3
PDO staff attorney survey responses regarding supervision

Statement	Agree Strongly	Agree	Agree Somewhat	All Agree	Disagree Somewhat	Disagree	Disagree Strongly	All Disagree
I regularly receive useful guidance about how best to perform my job from my supervisor.	24.1%	20.7%	24.1%	69.0%	20.7%	6.9%	3.4%	31%
Performance evaluations help me learn if I'm meeting Office standards for my position.	15.4%	30.8%	23.1%	69.2%	15.4%	7.7%	7.7%	30.8%
I am treated respectfully by my supervisor.	69.0%	27.6%	0.0%	96.6%	3.4%	0.0%	0.0%	3.4%
Office supervisors and managers are generally available to provide assistance and guidance to me.	51.7%	20.7%	20.7%	93.1%	3.4%	0.0%	3.4%	6.9%

Source: Survey of Offices of the Public Defender and Alternate Defender staff, conducted July 2006 by Management Audit Division

As part of management's goals and objectives for the Office, provision of useful guidance and performance evaluations as standards should be included for the supervisors.

Section 2: Structure and Role of Management

Manager and supervisor spans of control vary

A review of the Department's organization and staffing documents reveals differences in the number of positions reporting to the Office's managers and supervisors. While the number of positions reporting is not the only measure of management responsibility, it is one way of assessing the distribution of responsibilities among comparable managers and supervisors. It must be balanced, however, with an assessment of other responsibilities assigned to each.

As presented in Table 2.4, there is a wide range in spans of control for all PDO managers, ranging from 17 to 43.6 reporting positions, with a median of 26.8. While those with fewer reporting positions also have other responsibilities, so do those with more positions reporting. For managers with higher spans of control, the amount of time available for management oversight of their units and staffs is reduced not only due to their other responsibilities, but also because of their higher numbers of staff positions reporting.

For Office supervisors, the number of positions directly reporting ranges from 2.5 to 28.0, with a median of 14.0 positions. The amount of time available for individual case advising for staff attorneys, one of the common tasks performed by the supervisors, is negatively affected by the higher number of reporting positions.

The largest attorney unit in the organization is the Felony Trial Team with a total of 21 staff attorney positions, an appropriate size given the Office's felony caseload. But a problem with supervision of this unit is that there are two Supervising Attorneys assigned, but each also has other supervisory responsibilities. One Supervising Attorney is also responsible for the supervision of the Sexually Violent Predator (SVP) Team and the other Supervising Attorney is also responsible for the Special Trials Unit. The reporting lines are further blurred because these two Supervisors report to two different Assistant Public Defenders for each of the teams for which they are responsible.

While dual reporting relationships can be effective in some organizations, they present challenges which can also result in ineffective management. Because the role of managers and supervisors is not sufficiently defined for the Office, the number of dual reporting relationships does not appear to be beneficial. To the extent possible, the reporting lines in the Office should be more direct and broken down along areas of operation that are similar. The current organization appears to be created in a manner focusing on the strengths of the incumbent in each of the Assistant Public Defender positions, and not on the basis of clear and consistent reporting relationships. As a result of this organization structure, when incumbents are replaced, the organization may have to be amended or the result will be that areas of supervision will be insufficient.

Section 2: Structure and Role of Management

Table 2.4
Manager and supervisor spans of control
Public Defender's Office

Team/unit	Direct Reports to Asst. PDs (Supervisors & staff in units w/out supervisors)	Indirect Reports to Asst. PDs (# postns reporting to supervisors)	Total Direct & Indirect Reports to Asst. PDs	Staff: Supervisor ratio
Assistant PD for:				
Felony Trial Unit	0.8	21.0	21.80	26.3
Preliminary Unit San Jose	0.8	9.0	9.80	11.3
Misdemeanor Unit	0.5	7.0	7.50	14.0
Domestic Violence Unit	0.5	3.0	3.50	6.0
Probation Violations	1.0	-	1.00	
Subtotal	3.6	40.0	43.6	
Assistant PD for:				
Special Trials Unit	0.3	6.0	6.30	20.0
Sexually Violent Predator Unit	0.8	2.0	2.80	2.5
Drug Court Unit	0.5	7.0	7.50	14.0
Mental Health Unit	4.0		4.00	
Subtotal	5.6	15.00	20.6	
Assistant PD for:				
South County (San Martin)	4.0		4.00	
Sunnyvale	2.0		2.00	
Paralegal	1.0	22.5	23.50	22.5
Subtotal	7.0	22.5	29.5	
Assistant PD for:				
Juvenile Delinquency	1.0	8.0	9.00	8.0
Research	1.0	3.0	4.00	3.0
Information Systems	1.0	3.0	4.00	3.0
Subtotal	3.0	14.0	17.0	
Administrative Services Mgr.	1.0	28.0	29.0	28.0
Chief of Investigations	1.0	23.5	24.50	23.5
GRAND TOTAL	21.2	143.0	164.2	6.7
<i>Median: all staff</i>	3.3	23.0	26.8	14.0
<i>Minimum</i>	1.0	14.0	17.0	2.5
<i>Maximum</i>	7.0	40.0	43.6	28.0
<i>Median: APDs only</i>	4.6	18.8	25.1	11.3

Note: Numbers in Table 2.4 are expressed as Full-Time Equivalents (FTEs). Each Assistant Public Defenders and most Supervising Attorneys supervise multiple teams so Supervising Attorney time is often expressed as less than a whole FTE.

Section 2: Structure and Role of Management

In summary, some of the issues pertaining to the role and structure of management at the Public Defender's Office are:

- Assistant Public Defenders spend more of their time on administrative activities and special projects than team management to maintain and improve their performance.
- The role of managers has not been defined to include responsibility for ensuring that staff is meeting performance and quality standards and operating in compliance with all applicable laws, regulation and policies.
- Staff spans of control vary considerably for both managers and supervisors.
- The approach to Office supervision varies and has not been defined and standardized by management.
- A number of supervisors are responsible for multiple teams or units and report to more than one manager, blurring the lines of communication and management oversight.

To address these issues, alternatives to the current management structure and roles of managers and supervisors were considered.

In terms of manager and supervisor roles, the goals and objectives of the Office and its divisions should be established and codified by the Public Defender and her management team, with plans established for how each manager will contribute to achievement of these goals and objectives, how each units' effectiveness will be measured so that the managers can provide assurance to the Public Defender that Office quality, performance and efficiency standards are being met and clients are receiving the best services possible.

Alternative solutions considered

Various options were considered to address the issues identified above including reinstatement of the Chief Assistant Public Defender position and restructuring of current positions. The Office's Chief Assistant Public Defender position was deleted when the current Public Defender was appointed. Prior to that, when the position was in place, it reported directly to the Public Defender, with all other managers except the Administrative Services Manager III, reporting to the Chief Assistant. The Chief Assistant position assumed responsibility for many of the administrative matters that are now distributed among the four Assistant Public Defenders. There were only two Assistant Public Defenders under the old structure, responsible for the legal teams only. Now there is no Chief Assistant positions and four Assistant Public Defenders.

The potential advantages of a reinstated Chief Assistant position, if structured as it was in the past, is that the position would be responsible for all internal management issues and would allow the Public Defender to focus on external policy matters and Office-wide issues without getting involved in day to day operations. Since all but the Administrative Services Manager reported to the Chief Assistant under the old structure, the Public

Section 2: Structure and Role of Management

Defender would have only two positions reporting directly to her as compared to the current six. The disadvantage of reinstating the Chief Assistant position is that it would create another management layer in the organization, potentially slowing down decision-making and management and staff access to the Public Defender.

Removing administrative functions and duties from Assistant Public Defenders would allow them to concentrate on legal team management

To achieve some of the advantages of a Chief Assistant position without creating another management layer in the Office, removal of administrative functions and responsibilities from the four Assistant Public Defender and consolidating them under a single manager is an option that should be considered. The current Administrative Services Manager position is not performing all of the functions that are expected of this classification according to the County's classification specifications. The specifications state that the position is responsible for:

“...managing the administrative and business management services required of all divisions of a department and for directing a staff of professional, technical and clerical personnel performing duties in support of such services”.

The specifications indicate that functions under an Administrative Services Manager's supervision can include fiscal, personnel, purchasing, facilities and property maintenance contract administration, and policy implementation and the supervision of professional staff, many of which are now being performed by the Assistant Public Defenders.

Administrative tasks now performed by the Assistant Public Defenders that could be transferred to administrative staff include some of the human resources, budget and statistical report preparation functions. These activities now consume the equivalent of 1.85 full-time equivalent positions. While not all of the administrative tasks in these areas now performed by the Assistant Public Defenders could be transferred to the Administrative Services division staff, many could be. Tasks such as appellate reviews, recruiting interviews and aspects of applicant examination development and staff assignments would still require managing attorney input and involvement. However, an estimated 75 percent of the personnel, fiscal and related administrative functions could be transferred from two of the Assistant Public Defenders, resulting in significantly more of their time becoming available for legal team management.

To further focus the Assistant Public Defender management function, the Information Systems unit and the Paralegal units, two administrative support units now under the jurisdiction of the Assistant Public Defenders, could be transferred to the Administrative Services Manager. Neither of these units are staffed by attorneys and they both perform administrative support functions that would be more appropriate for the Administrative Services division. By making these transfers, the Assistant Public Defenders would have 27.5 fewer positions to manage and significantly fewer administrative and special project responsibilities, resulting in time that could be redirected to management tasks more appropriate to their backgrounds and compensation.

Section 2: Structure and Role of Management

Altogether, the recommended transfers of administrative responsibilities and functions would result in the following components in the Administrative Services division:

1. Paralegal services
2. Information systems
3. Fiscal management/statistical analysis
4. Human resource administration
5. Legal Clerks*
6. Accounting*
7. Other clerical*

* already part of Administrative Services division

The Investigations unit is not appropriate for the Administrative Services division and should remain a separate stand-alone unit, with the Chief of Investigations continuing to report directly to the Public Defender.

The recommended changes would enable the Assistant Public Defenders to concentrate more of their time on legal team management than is occurring at present. In fact, more time would be available for legal team management and the current spans of control could be maintained even if one Assistant Public Defender position were deleted. Deleting one such position would result in three Assistant Public Defenders for the Office. The rationale for deleting one position is that there would be more management capacity than presently exists as a result of re-defining the role of managers and transferring administrative tasks and functions from Assistant Public Defenders to Administrative Services staff. It would also provide resources to address another area of Office deficiency: analytical staff capacity.

Enhance Administrative Services with more analytical capacity

To manage the transferred responsibilities, the Administrative Services division would need additional resources. This could be accomplished by transferring the existing Executive Assistant position, who now provides support on human resources matters for one of the Assistant Public Defenders, to the Administrative Services division. Further, a new Management Analyst position should be created for the Office to perform many of the human resource, fiscal and statistical analyses now performed by managers or not at all.

The savings from deletion of one Assistant Public Defender position, as discussed above, would more than cover the costs of a Management Analyst and result in net savings while providing needed analytical capability to the staff. Currently, the Administrative Services division, and the Office as a whole, does not have analytical staff capacity to conduct fiscal and statistical analyses needed to support management. Instead, this type of analytical work is either not done at all or conducted by Assistant Public Defenders who have facility in these areas. For example, basic information such as caseload, cases per attorney, number of conflicts of interest cases, individual team costs and other performance measures cannot be easily generated for management use due to a

Section 2: Structure and Role of Management

combination of some difficulties with information systems and, more importantly, the absence of staff analytical capacity in the Office.

County Management Analyst job specifications state that these positions

“perform a variety of analytical staff studies and/or projects in support of the improvement of management functions, practices and services...[including] but not limited to budgeting, management and organization, work flow and staffing, systems development, program evaluation, policy and procedure development, management information analysis, classification, recruitment and examination, employee relations, employee training, affirmative action, test validation and career development.”

These typical duties and tasks are exactly what is needed in the Public Defender’s Office.

For the remaining three Assistant Public Defenders, the allocation of legal teams should be along the lines of the following structure, with the goals of equalizing spans of control, number of directly reporting positions and the distribution of responsibilities. The proposed configuration would also minimize the number of supervisors reporting to more than one Assistant Public Defender and would maintain the span of control, at 28.2 positions per manager, only slightly more than the current 25.1. An example responsibility and staff allocation to the three recommended Assistant Public Defenders is presented in Table 2.5. A chart is presented on the next page.

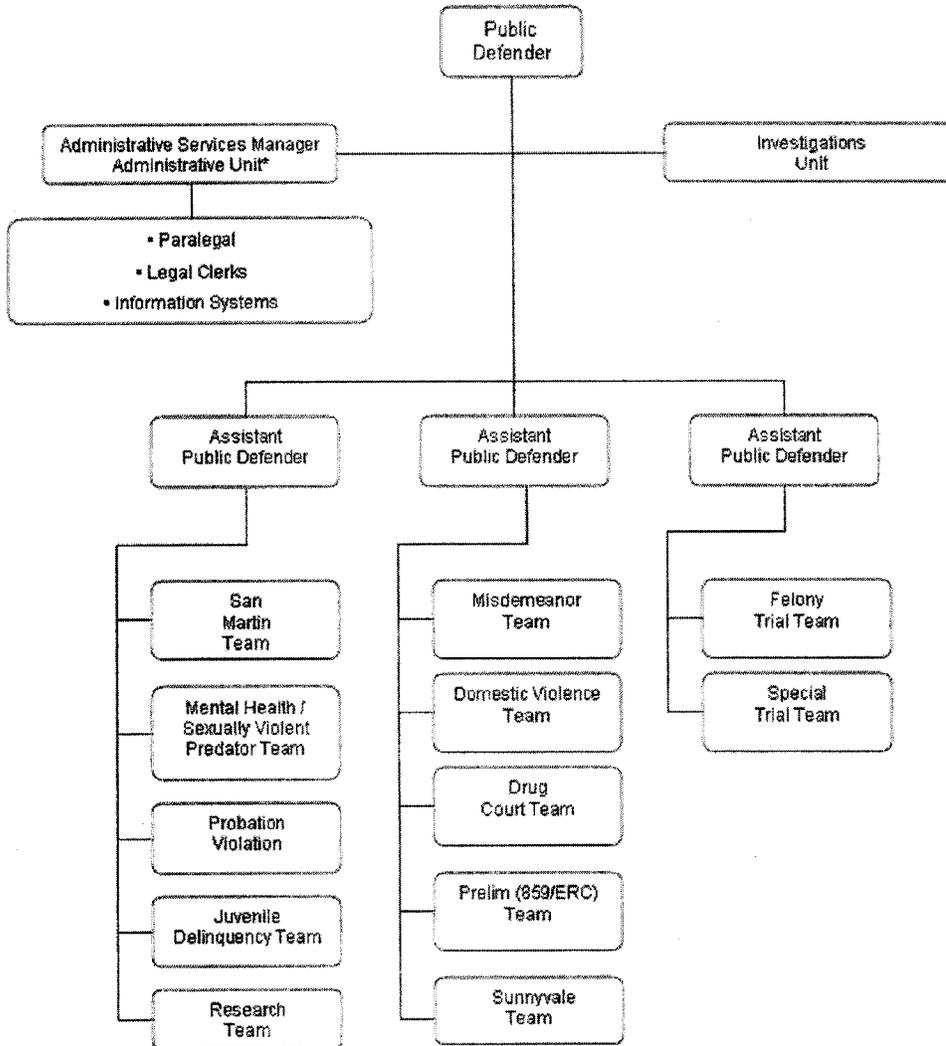
**Table 2.5
Example of Alternate Legal Team Configuration
with Three Assistant Public Defenders**

Team/unit	# staff	# supervisors	Total	Staff/ supervisor
Research	3.0	1	4.0	3.0
South County	4.0	0.0	4.0	n.a.
Juvenile Delinquency	8.0	1	9.0	8.0
Sexually Violent Predator Unit	2.0	0.8	2.8	2.4
Probation Violations	1.0	0	1.0	n.a.
Mental Health Unit	4.0	0	4.0	n.a.
<i>Team total</i>	<i>22.0</i>	<i>2.8</i>	<i>24.8</i>	<i>--</i>
Drug Court Unit	7.0	0.5	7.5	14.0
Sunnyvale	2.0	0	2.0	n.a.
Domestic Violence Unit	3.0	0.5	3.5	6.0
San Jose Misdemeanor Unit	7.0	0.5	7.5	14.0
Preliminary Unit	9.0	0.5	9.5	18.0
<i>Team total</i>	<i>28.0</i>	<i>2.0</i>	<i>30.0</i>	<i>--</i>
Felony Trial Unit	21.0	0.8	21.8	25.3
Special Trials Unit	6.0	0.3	6.3	18.2
<i>Team total</i>	<i>27.0</i>	<i>1.1</i>	<i>28.1</i>	<i>--</i>
MEDIAN		1.1	28.2	14.0

Management Audit Division

Section 2: Structure and Role of Management

Example of Public Defender Proposed Reorganization



* This includes human resources, accounting, budgeting, purchasing, and other administrative functions.

Section 2: Structure and Role of Management

This allocation of legal teams would result in an equitable distribution of staff positions between the three Assistant Public Defenders and would reduce the number of supervisors currently reporting to more than one manager. The recommended management structure would also reduce the number of positions reporting directly to the Public Defender from the current six to five.

Defining the role of managers

To improve the role of managers at the Public Defender's Office, the roles of managers and supervisors need to be redefined with accountability assigned for achieving and improving the Office's performance and efficiency standards. This should start with establishing long- and short-term goals and objectives set for the Office as a whole by the Public Defender and the management team, in concert with Board of Supervisors' policy directives. From this broad framework, each manager should be given goals and objectives to accomplish within their units, with specific measurable targets such as:

- Achieving specified attorney productivity standards
- Meeting specified case processing time standards
- Providing high quality service as measured by formalized client and judicial feedback
- Minimizing the average number of continuances per case
- Achieving specified case results (e.g., number of reduced sentences, acquittals, etc.)

Data to track these and related measures can be obtained from existing sources including SCALES, the Public Defender's internal computer system and the Countywide Criminal Justice Information Council System (CJIC), as discussed in more detail in Section 3 of this audit report.

For the Investigator, Paralegal, Legal Clerk and other support staff, measures could be developed for the relevant managers to achieve regarding quality of services, based on assessments by attorney staff, and efficiency measures such as investigations per investigator, timeliness of investigation completions, intakes per paralegal and others. To the extent the performance measures show that Office goals and objectives are not being achieved, the managers should be responsible for identifying and correcting the root problems.

Defining the role of supervisors

The roles of the Office supervisors should be formally defined by the Public Defender in conjunction with the Office's managers. This should include an overall definition of the

Section 2: Structure and Role of Management

function as well as specific requirements such as average amount of time to be devoted to case work, tools to use for supervision such as court observations review of case files, time management observation and coaching and how to feedback by County judges and clients on the quality of services provided should be used.

Conclusion

The roles of managers and supervisors in the Public Defender's Office have not been defined to include core management functions such as establishing performance and efficiency goals and assuming responsibility for achieving such goals. Managers are not held accountable for ensuring that the staff they oversee are providing representation in compliance with all applicable laws and local and Office policies.

The four Assistant Public Defenders in the Public Defender's Office are responsible for managing all of the legal services teams but allocate much of their time to administrative and special project activities including human resources management, budget and fiscal analyses, training, and inter-agency collaborations. They estimate that 81 percent of their collective time is allocated to these functions, leaving little time for management of the legal teams. They also oversee two administrative support units: the information systems unit and the paralegal units.

Many of the tasks now performed by the Assistant Public Defenders are appropriate to high level, highly compensated attorneys, but a number are more appropriate for the Office's Administrative Services Manager and staff. In fact, by transferring certain administrative functions and tasks to the Administrative Services division, the amount of Assistant Public Defender time available for legal staff management activities could be increased, even with one less Assistant Public Defender. Deletion of one such position through attrition would enable the Office to establish a much needed analytical capacity by adding a Management Analyst position who could perform many of the administrative and analytical tasks now performed by Assistant Public Defenders.

The role of supervisors is also not sufficiently defined in the Office. The approach and number of staff supervised varies by supervisor. A number of supervisors oversee more than one unit of staff attorneys and report to more than one manager. As a result, the lines of communication and authority are not clear to all staff.

Recommendations

The Public Defender should:

- 2.1. To the extent possible, collaborate with the Office's management team to establish Office of the Public Defender short- and long-term performance and efficiency goals and objectives, and performance measures in at least the following areas: quality of service as assessed by clients and County judges; staff productivity; case processing efficiency; case results; and others. (Priority #2³)

³ See end of this section for definition of Priority rankings.

Section 2: Structure and Role of Management

- 2.2. Direct the Assistant Public Defenders to assume responsibility for monitoring performance and achieving or improving on Office goals and objectives pertinent to their units by monitoring performance and identifying and resolving any problems identified in areas such as staff productivity, case processing efficiency and quality of service. (Priority #2)
- 2.3. Direct the Assistant Public Defenders to monitor and report performance of their teams and organizational units using actual performance data from the Office's SCALES and the County's CJIC computer systems. (Priority #2)
- 2.4. Transfer the information systems and paralegal units and most human resources, budget and statistical compilation functions, to be performed by the recommended Management Analyst position (See Recommendation #2.8), from the Assistant Public Defenders to the Administrative Services division. (Priority #2)
- 2.5. Request funding from the Board of Supervisors for a new Management Analyst position, to report to the Administrative Services Manager III, to be responsible for fiscal analyses, development and analyses of performance measurement reports, human resources administrative and analytical functions and related analyses and special projects and whose cost would be offset through deletion of one Assistant Public Defender. (Priority #1)
- 2.6. Realign legal teams under three Assistant Public Defenders such as the following allocations to allow for more equitable spans of control, better alignment of functional areas and fewer supervisors reporting to multiple Assistant Public Defenders:
- Assistant Public Defender #1: Juvenile Delinquency; Mental Health; South County courthouse; Research; Sexually Violent Predator unit; and Probation Violations.
 - Assistant Public Defender #2: San Jose Misdemeanor unit; Drug Court; Preliminary Hearing unit; Sunnyvale courthouse; Domestic Violence unit.
 - Assistant Public Defender #3: Felony trial unit; Special Trials Unit.
- (Priority #2)
- 2.7. In collaboration with the Office's managers, prepare a description of and standards for supervisors, addressing issues such as whether or not attorney supervisors should process cases and how they should monitor performance of their staff and how their monitoring should be reported to management. (Priority #2)

The Board of Supervisors should:

- 2.8. Add one Management Analyst position to the Salary Ordinance for the Office of the Public Defender at an approximate annual costs of \$104,600 in salaries and benefits and, as allowed by attrition or other opportunities, delete through attrition one of the four positions serving as Assistant Public Defenders in the Public

Section 2: Structure and Role of Management

Defender's Office, for an annual savings of approximately \$250,000 in salaries and benefits. (Priority #1)

- 2.9 Adjust the salaries and benefits budget for the Office of the Public Defender to reflect the \$145,000 in net savings in accordance with the increases for the new Management Analyst position and the decrease for the deleted Assistant Public Defender. (Priority #1)

Costs and Benefits

The recommendations above could be implemented with existing staff without new direct costs. The benefits of the recommendations would include improved and more consistent management and supervision of staff and improved Office performance as demonstrated through measurable results. Net annual salary and benefits savings of \$105,000 would be realized. Managers would be held accountable for achieving results and making improvements in operations to ensure that Office performance and efficiency goals and objectives are met. The risk of staff functioning out of compliance with governing State laws or local and Office policies would be reduced through manager responsibility for compliance.

Recommendation priorities:

The priority rankings shown for each recommendation are consistent with the audit recommendation priority structure adopted by the Board of Supervisors, as follows:

<p>Priority 1 = Recommendations that: address noncompliance with federal, State and local laws, regulations, ordinances and the County Charter; would result in increases or decreases in expenditures or revenues of \$100,000 or more; or, suggest significant changes in federal, State or local policy.</p> <p>Priority 2 = Recommendations that: would result in increases or decreases in expenditures or revenues of less than \$100,000; advocate changes in local policy; would revise existing departmental or program policies and procedures for improved service delivery, increased operational efficiency, or greater program effectiveness.</p> <p>Priority 3 = Recommendations that: address program-related policies and procedures that would not have a significant impact on revenues and expenditures but would result in modest improvements in service delivery and operating efficient.</p>
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3. Information Systems

- **The Public Defender and Alternate Defender offices (PDO and ADO) do not fully utilize available information systems to streamline work processes or as a tool for measuring and improving performance. The offices' internal system, SCALES, offers automation of certain staff functions and the potential for producing management reports and information for tracking key performance measures. However, many staff members do not use the system for common work processes and management does not use data available in the system to monitor and analyze performance and productivity such as caseload and cases per attorney.**
- **The County Criminal Justice Information Control System (CJIC) contains extensive data about all adults currently or previously in the criminal justice system. System data could be used by the PDO and ADO to identify co-defendants, victims and witnesses who represent a conflict of interest and for system-wide performance management reports. Unfortunately, PDO and ADO access to CJIC is restricted by the CJIC Steering Committee, prohibiting many of these potential benefits. CJIC data is not being used by the County to monitor the indigent defense system or to reconcile cases and costs reassigned from the Public Defender to the Alternate Defender and Legal Aid Society are verified and accurate.**
- **Use of both systems by the PDO, ADO and County management should be expanded to streamline work processes and to develop better reports for management review and assessment of efficiency measures of each segment of the indigent defense system such as cost per case, cases per attorney, average case processing time and average number of continuances per case. The County Executive's Office should assume an oversight role for the indigent defense system as a whole to ensure caseload and cost accuracy and consistency for the three segments of the system.**

The Offices of the Public Defender and the Alternate Defender (PDO and ADO) both have access to two computerized systems that automate some work processes and store case, defendant and other information. These systems are SCALES¹, maintained by the PDO and ADO, and the countywide Criminal Justice Information Control System (CJIC). SCALES provides the PDO and ADO, the two Defender offices, with the ability to electronically record client information and events, to enter notes about their cases and to electronically prepare common legal documents, forms and letters using system templates. It also enables the offices to prepare management reports to measure productivity with data compilations such as caseload by type of case and cases per attorney and to measure case processing efficiency with data such as case processing

¹ SCALES is not an acronym.

Section 3: Information Systems

time. SCALES is used by some attorneys, investigators, paralegals and legal clerks in the two offices to enter and track their case information and, by some staff, to prepare case documents. Most of the case data in SCALES is initially downloaded from CJIC, though some data is entered from paper referrals, then added to by Public Defender and Alternate Defender staff.

CJIC, the countywide criminal justice system clearinghouse, is the repository of data about all adults in the criminal justice system, whether or not they are PDO or ADO clients. It provides criminal case history and tracking capabilities for all adults currently or previously in the system. Data in CJIC for each individual case includes arrest(s), booking and incarceration records, charges, court dates, court outcomes and more. The system contains information on all court cases, individuals with criminal pasts, and other information associated with criminal cases. Data is entered in to the system initially by local law enforcement agencies and then added to by the District Attorney, courts and other criminal justice agencies. The system is a powerful tool utilized by law enforcement agencies throughout the County.

Much of the information pertaining to individual defendants is contained in the Criminal Offender Record Information² (CORI) database within CJIC. This is a set of records that includes current and historical information on criminal offenders. This information includes a summary of arrests, all pretrial hearings, charges, final disposition of charges, sentencing, incarceration, probation, and release information.

In addition to containing information and data about individual criminal history, CJIC contains significant court information including initial and final charges, court docket numbers, counsel appointed, whether representation was changed due to a conflict of interest, court department, dates and types of appearances, continuance dates, bail amounts, sentencing dates and number of days from start to finish of the case. This information provides the County with a sizeable database from which performance reports can be produced and case information analyzed in a variety of ways.

A crucial difference between SCALES and CJIC is that CJIC has extensive broad-based criminal history data for all individuals previously or currently in the criminal justice system and includes data entered by other agencies such as the Probation Department and the courts. CJIC information can potentially be used by the PDO and ADO to extract case-related information about individual clients and for broader-based management reports regarding overall case trends, outcomes and other performance measures. Not all data in CJIC is available to the PDO and ADO, however, as discussed further below.

² The California Penal Code §13102 defines "criminal offender record information" as data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

Section 3: Information Systems

Though it has technical difficulties, the SCALES system is underutilized by the PDO and ADO

Both SCALES and CJIC are perceived as valuable by PDO and ADO staff in performing their jobs, though many staff members complained in interviews that SCALES is not as easy to use as desirable and that they might use it more if it were easier to use. This sentiment was captured in the staff survey conducted as part of this management audit in which approximately 31 percent of staff respondents disagreed with the statement, "...SCALES helps me to be more productive on the job", as presented in Exhibit 3.1. In response to a comparable question about CJIC, only 3 percent of the respondents disagreed with the statement.

Exhibit 3.1

Attorney staff survey responses to questions regarding information systems

	Strongly agree	Agree	Somewhat agree	Total Agree	Somewhat disagree	Disagree	Strongly disagree	Total Disagree
The computer system SCALES helps me to be more productive on the job. (n=29)	13.8%	31.0%	24.1%	68.9%	10.3%	13.8%	6.9%	31.0%
Access to the CJIC computer system helps me be more productive on the job. (n=29)	41%	45%	10%	96.0%	0%	3%	0%	3.0%

Source: staff survey conducted by Management Audit Division for management audit.

In addition to some staff having difficulty using SCALES, its capabilities as a management tool are not being taken advantage of by PDO and ADO management. Much of the data in the system could be compiled and reported to help management track office performance in areas such as: overall caseload; caseload by office, team and attorney; case processing time; cost per case; number of continuances; and, other measures. Unfortunately, such information cannot be easily extracted from the system at present. As part of this management audit, PDO Information Systems staff was asked to provide data from the system, all of which is contained in SCALES, to enable preparation and analysis of the following performance measures:

- Caseload data by type of case for the Office of the Public Defender (PDO) and the Alternate Defender Office (ADO) for Fiscal Years 2003-04 through FY 2005-06.
- Number of cases per attorney, by team, for the PDO and ADO.
- Number and nature of conflict of interest declarations.
- Average case timelines from case opening to final disposition.
- Causes of case timeline changes.

Section 3: Information Systems

- Average number of and reasons for continuances.
- Cost per case, by type of case, for the PDO and ADO.

While staff provided a large database, due to some technical limitations of the system, it was not structured in such a manner that compilation and analysis of the data could be easily accomplished. While the office does prepare annual reports that contain office statistics, including total caseload, some basic management information such as number of cases per attorney or average case processing time for the two offices cannot be readily retrieved. This should be a regularly reported and management monitored statistic for both Defender offices. The annual caseload data provided for this management audit by the PDO had to be restructured significantly to provide a simple listing of caseload by the basic type of cases (misdemeanor, felony, etc.). This key measure of office productivity should be used to regularly assess and adjust resource allocations.

In addition to some of the technical problems with SCALES, in many instances key data that should be extracted and reviewed by management are not being entered into the system by staff in the first place, making management monitoring of certain measures impossible. Such data is not being entered by staff primarily because of inadequate staff resources, according to management.

The Office of the Public Defender should be commended for the implementation of the SCALES system, but if the full capacity of the system is not utilized, its value is diminished. Its utilization should be maximized not only to improve staff efficiency in its daily work, but to provide management with more analytic tools to regularly monitor performance and identify areas where changes and improvements are needed.

In addition to regularly produced caseload summary and other management reports, the Public Defender's Information Systems staff³ should work with the management of the PDO and ADO to design a series of reports that can be generated from the SCALES system to enable management to monitor performance and compliance with key office policies. These reports should cover at least the following areas: (a) case disposition times; (b) number of continuances per case; (c) outcomes by type of case and location; (d) conflict of interest declarations; (e) number of days cases are held by the Office of the Public Defender or Alternate Defender until a conflict of interest is declared; (f) investigation completion time; and, (g) elapsed time for special requests, such as preparation of a social history for a Romero Hearing. Production of such management information reports will require some restructuring of the system and management direction to staff to regularly input all the needed data. Identifying cost per case, a key performance measure, is feasible but will require some enhancements to SCALES, discussed further below. Details on conflict of interest data that can be extracted from SCALES are presented in Section 5 of this report.

³ The Public Defender's Information System unit serves both the Office of the Public Defender and Alternate Defender.

Section 3: Information Systems

The Offices need to track staff team assignments so management can identify and monitor average costs per case and other performance measures

As part of this management audit, a detailed analysis was conducted of cost per case by type of case for the Public Defender, Alternate Defender and the Legal Aid Society, as discussed in detail in Section 1. The need for regular management review of this performance measurement as discussed in that report section is to ensure that staff and County resources are being allocated as effectively as possible to minimize costs per case while still providing the highest quality services possible. This measure is particularly important for comparing the three tiers of the indigent defense system - the PDO, the ADO and the Legal Aid Society - and ensuring that the comparative costs per case are reasonable for each tier.

The process to determine cost per case by type of case for this management audit took significant assistance from Public Defender staff to determine how to distribute staff time to specific teams and by type of cases since staff time is not recorded by team or case. Staff members periodically rotate teams and some work for both the Offices of the Public Defender and the Alternate Defender in some years so it cannot be safely assumed that staff have actually worked all year on the team to which they were originally assigned at the start of the year. Because of the importance of tracking cost per case to ensure that the County is expending its indigent defense funds cost effectively, staff team assignments should be tracked and recorded in the SCALES system. This would allow for regular calculation of and updates to cost per case, by type of case, for the two Defender offices.

Standard attorney time record-keeping by six or ten minute increment might prove a burdensome task for PDO and ADO staff but this effort could be minimized if each staff member assigned to teams simply recorded when they make changes to their original team assignments. For many attorneys, changes in team assignment are infrequent and this approach to record-keeping would thus have little impact on them. For those that do change, it would be a simple matter of recording their new teams at each rotation. For staff such as legal clerks, some are assigned to different teams on different days of the weeks but they would only need to record changes to their regular schedule.

Other staff such as investigators work cases for different teams and would have to record the team that generated each investigation performed in their case files. This staff time information could be stored on SCALES and compiled annually, or as needed, to determine cost per case by type of case. As was done for this management audit, these records would have to be combined with payroll and financial records from County systems so that accurate actual costs for salaries, benefit and non-personnel expenses are included and allocated to the correct teams. Management overhead costs would have to be allocated according to a pre-determined cost allocation plan. Once this structure is established, cost per case could be regularly updated as needed for management review purposes.

SCALES could also facilitate management monitoring of individual staff productivity by capturing and reporting the number of cases per attorney by type of case, team and office

Section 3: Information Systems

(PDO or ADO). This information is already recorded in the system but would need to be compiled and manipulated and reported in a regular management performance report. Information such as this would enable management to compare individual staff attorney output to averages for the offices for each type of case. If certain staff members were significantly and consistently above or below the norm, managers and supervisors could assess the situation and determine if changes were needed in work assignments or if staff members need to be counseled on improving their productivity if they are consistently below the norm.

Criminal Justice Information Control System (CJIC)

A key difference between SCALES and CJIC is that SCALES contains information only about current PDO and ADO clients and their activities in the criminal justice system while they are clients. As described above, the Criminal Offender Record Information⁴ (CORI) portion of CJIC contains current and historical information on all criminal offenders in the system, regardless of who is representing them. The data includes arrests, all pretrial hearings, charges, final disposition of charges, sentencing, incarceration, probation, and release information for anyone arrested, detained or otherwise involved in criminal proceedings.

The CJIC system is under the jurisdiction of the County's CJIC Steering Committee chaired by the District Attorney and comprised of representatives of County criminal justice and local law enforcement agencies. Based on the following definition of criminal justice agencies found in State law, restrictions have been imposed on PDO and ADO access to CJIC by the District Attorney and the Steering Committee due to their concern that records about individuals such as victims and prosecution witnesses may be passed on to defendants by PDO or ADO staff.

"Criminal justice agencies are those agencies at all levels of government which perform as their principal functions, activities which either: (a) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or (b) Relate to the collection, storage, dissemination or usage of criminal offender record information." (California Penal Code §13101)

As a result of current restrictions, the PDO and ADO only have access to information pertaining to their current clients. They cannot access information about co-defendants, prosecution witnesses or others in the system not currently served by their offices though such information would facilitate case processing.

The State Penal Code also provides that a local agency shall furnish local summary criminal history information to, "a public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and

⁴ The California Penal Code §13102 defines "criminal offender record information" as data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

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pardon⁵ ... or when representing a person in a criminal case and when authorized access by statutory or decisional law.”⁶ This is the apparent basis of providing information about current clients only to the two Defender offices. Criminal history information is defined in State law as including data such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

At the present time, the offices of the Public Defender and Alternate Defender have some access to some of the following. In some cases, requests for the information below by staff has to first be approved by supervisors or managers.

- | | |
|--|----------------------------|
| ▪ Defendant Name and Summary | ▪ List of Current Bookings |
| ▪ Court Dockets | ▪ Criminal Court Calendars |
| ▪ Crime Lab Results | ▪ Criminal Charges |
| ▪ Court Hearings | ▪ Limited Court Complaint |
| ▪ Public Defender Referrals by the Court | ▪ Custody Information |

Controls over CJIC data in place at present include a Security Agreement between the Public Defender and the Steering Committee, a Public Defender CJIC security plan and a CJIC Security Acknowledgment Form signed by each staff member of the PDO and ADO. The Security Agreement defines the Public Defender’s access restrictions and includes requirements for the PDO’s security plan, appointment of a records security coordinator/CJIC security coordinator, CJIC security training requirements, monthly audits of CJIC transactions by PDO staff conducted by designated PDO managers and staff and quarterly review audits of CJIC usage by the Steering Committee’s designee.

A crucial difference between SCALES and CJIC is that CJIC has extensive historical information on all individuals in the criminal justice system, including criminal history. This criminal history is one area where the SCALES system is deficient compared to CJIC. This is partially because the CJIC data is entered by numerous organizations and has an extensive history that is compiled from multiple sources with different roles in the criminal justice system.

Impact of Limited CJIC Access

The impact of the PDO’s and ADO’s limited access to CJIC pertains primarily to obtaining information that could expedite case processing time. The ease with which PDO and ADO staff are able to utilize information contained in the CJIC system could reduce staff time that is spent getting the same information in other, more time-

⁵ A Certificate of Rehabilitation is a court order, which declares that a person who has been convicted of a felony is rehabilitated.

⁶ (California Penal Code § 13300(b) (7) and (8)).

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consuming ways or later in the case process. However, to have this type of access to CJIC and address the concerns of the District Attorney and the Steering Committee, the two Defender offices must have controls in place to ensure that any information obtained is not misused or transferred to any unauthorized individuals (e.g., prosecution witnesses should not be identified to defendants) though current controls are extensive and seem to cover all eventualities.

Some of the ways in which broader Public Defender and Alternate Defender access to CJIC could facilitate case processing include:

- Earlier and more complete identification of conflicts of interest: Since CJIC contains information on more than just their clients, the PDO and ADO would be able to identify cases where a conflict of interest exists sooner in the case process. This would be particularly useful in instances where a victim, prosecution witness or co-defendant was previously represented by one of the Defender offices. The longer it takes to identify such individuals, the more time the Defender office is likely to spend on the case, only to have it transferred to alternate counsel when a conflict of interest is discovered and case processing begins again. According to PDO staff, the SCALES database lacks historical information regarding the identification of co-defendant cases or past client cases, all of which is available in CJIC but not available to PDO or ADO staff.
- Identification of Multiple Cases for the Same Defendant: The PDO's and ADO's limited access to the CJIC system makes it difficult for the two offices to identify multiple cases for the same defendants. SCALES does not have the ability to identify multiple cases for current PDO/ADO clients currently in the criminal justice system but CJIC does contain this information. It is apparently not unusual for Defender office clients to be under active probation orders and thus subject to probation violation proceedings when they are rearrested, but this status cannot be readily determined by the offices with current limitations on their CJIC access and, thus, such cases cannot be readily coordinated for joint court proceedings.
- Identification of Defendants in the System Represented by Others: PDO staff indicate that a problem caused by the lack of access to CJIC is their inability to identify all indigent defendants in the system that either they are representing or alternate counsel such as the ADO or Legal Aid Society is representing. This information is needed when the courts provide referrals to the Defender offices without any accompanying information, or when defendants contact one of the offices unaware that they are actually being represented by the other Defender office or by the Legal Aid Society. If the offices could access more of the CJIC database, they could determine if they are representing the defendants in question and either begin processing the case or refer them to the correct office representing them. They could also provide information about their court dates even if they aren't representing them.
- Docket and Calendar Information: Public Defender staff report that without full access to all court calendars in the CJIC system, they have to rely on printed court

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calendars that in some instances are not accurate or complete in terms of which office is representing which defendants. In other instances, the Defender offices reportedly receive case files without the attorney of record for the case listed. In such situations, CJIC would be a useful resource for clarifying information about these cases and ensuring that the correct office has the appropriate case files and can begin processing the case as soon as possible.

In all of the situations above, broader access to CJIC would allow cases to be processed more efficiently by identifying conflicts of interest earlier on in the process, consolidating cases for defendants with multiple cases in the system, maintaining better Countywide control over the inventory of all active cases and who is providing representation, and enhancing the ability of the Defender offices to provide information to all defendants regarding who is representing them, when they should be in court, and related information.

Existing California law allows release of victim and witness names, addresses and related information to defense attorneys and it prohibits disclosure of such information to defendants⁷. These requirements are already codified in the Security Agreement and the individual agreements that all PDO and ADO staff attorneys are required to sign. To strengthen these controls, PDO and ADO management could regularly reinforce these provisions through written communications to staff, periodic training sessions and through expanded audits of CJIC transactions beyond what is currently required. Thorough such actions, the PDO and ADO should be able to demonstrate to the District Attorney and Steering Committee that broader access to CJIC would not pose a risk and would benefit case processing efficiency.

CJIC data should be used to assess indigent defense performance by Public Defender and County management

Many of the management reports and performance measures discussed above that should ideally be produced from data in SCALES could also be produced from the CJIC system. The difference between using the two systems is that the CJIC system contains court docket numbers, counsel appointed, conflict cases, court departments, charges, court dates, types of appearances, continuances, bail, final charges, and number of days from start to finish of the case for defendants represented by all three tiers of the indigent defense system as well as other individuals in the criminal justice system. SCALES only contains data for current clients of the two County Defender offices: the PDO and ADO. To produce comprehensive management reports containing the same performance measures for all three tiers of the indigent defense system, CJIC would have to be used. CJIC includes data that would enable the County to determine many of the same measures discussed above but for the PDO, ADO and Legal Aid Society, including:

- Caseload by type of case.

⁷ California Penal Code § 1054.1 and 1054.2

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- Average number of conflict of interest declarations per case and summaries of the nature of the conflicts declared.
- Average number of days from case opening to final disposition.
- Causes of case timeline changes.
- Average number of continuances per case requested by the defender organization and the reason for these continuances.
- Cost per case (when integrated with the cost records of each entity).

The ability to identify these measures and compare the three defender organizations against one another would give the County an ability not currently in place to ensure that there are not significant variations in these measures between the three tiers of the indigent defense system and, if there are, to determine reasons why and make changes as necessary. Because the Public Defender does not have management responsibility over the Alternate Defender's Office or the Legal Aid Society, this level of management oversight should be performed by the County Executive's Office rather than the Public Defender. Decisions about changes to the indigent defense system should be made at the County Executive's Office level.

To improve case disposition time in the County, increase staff efficiency, and reduce the duplicative nature of some work performed by the Defender offices, the Public Defender should work with the CJIC Steering Committee, the District Attorney, County Counsel, and the Board of Supervisors to determine what additional information could be provided to indigent defense organizations from the CJIC system and what additional controls need to be imposed in the offices of the Public Defender and Alternate Defender to allow this to occur. This management information should be provided to the Public Defender, the Alternate Defender, and the Legal Aid Society. By providing such information, case disposition times should be reduced.

Conclusion

The Public Defender and the Alternate Defender are not taking full advantage of the two information systems at their disposal. The first system, SCALES, is the PDO's and ADO's internal system that automates some work processes and allows for tracking information about current clients. Unfortunately, many staff members do not find it easy to use and management has not made use of it as a management tool to track and monitor caseload, productivity and the case processing efficiency of the two offices.

The second system is Santa Clara County's Criminal Justice Information Control System (CJIC), which is a countywide criminal justice clearinghouse of adult criminal case information. It contains criminal history information and data from all criminal justice agencies for adults in the criminal justice system at present and in the past. This data could be used by the PDO and ADO to improve their case processing efficiency through earlier identification of conflict of interest cases, identification of multiple cases for the same defendants and access to data about defendants being represented by other indigent defense service providers. CJIC also offers a rich data source that could be used by PDO

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and ADO management and the County to assess and compare the efficiency and effectiveness of each tier of the indigent defense system: the PDO, ADO and Legal Aid Society.

CJIC is controlled by the District Attorney and an inter-agency CJIC Steering Committee who have determined that the PDO's and ADO's access to the system should be limited since they do not meet the legal definition of a criminal justice agency and due to concerns that they may pass information about victims or prosecution witnesses to defendants. As a result, case processing efficiency is hampered because the two Defender offices do not have access to all information in the system. Further, due to the restrictions imposed, the more comprehensive CJIC database cannot be used by PDO or ADO management to make system-wide assessments of their offices' performance. Such information would be very valuable from a Countywide perspective for comparative assessments of the three tiers of the indigent defense system: the PDO, ADO and Legal Aid Society since data for all three entities is included in the CJIC database.

The Public Defender has entered into a Security Agreement with the CJIC Steering Committee that outlines restrictions to the database and controls that must be in place including a Security Plan, appointment of a CJIC Security Coordinator, and other measures and signed statements affirming adherence to applicable laws and policies by every employee using CJIC. However, even with these controls in place, PDO and ADO access is still restricted and many of the benefits of full access are not being realized.

Recommendations

The Public Defender should:

- 3.1 Direct Public Defender's Office Information Systems staff to identify staff problems and issues preventing use of the SCALES system and assist with planning appropriate training to increase its usage and/or make technical changes to the system if possible to improve the ease with which it can be used. (Priority #2⁸)
- 3.2 Direct Information Systems staff to work with PDO and ADO management and design a series of reports from SCALES, or possibly using readily available software, that will allow for regular management analysis of key performance measures (a) case disposition times; (b) number of continuances per case; (c) outcomes by type of case and location; (d) conflict of interest declarations; (e) number of days the case was with the Public Defender until a conflict of interest was declared; (f) investigation time; and, (g) time for special requests, such as preparation of a social history for a Romero Hearing. (Priority #2)
- 3.3 Direct staff in both Defender offices to keep team assignment records indicating every time their team or other assignment is changed so that the offices will have a full accounting of staff time by team or by administrative function at the end of the year. (Priority #2)

⁸ See end of this section for definition of Priority rankings.

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- 3.4 Combine staff team assignment records with actual payroll and other cost data to develop the ability for ongoing assessments of cost per case for both the PDO and ADO by team and type of case. (Priority #2)
- 3.5 Work with the Criminal Justice Information Control System (CJIC) Steering Committee, the District Attorney, County Counsel, and the Board of Supervisors to determine what additional controls should be established to allow more full access to the County's Criminal Justice Information Control System (CJIC). (Priority #2)
- 3.6 Work with CJIC Steering Committee to develop protocols for more extensive access to CJIC for determining conflicts of interest earlier on in cases, identifying defendants with multiple simultaneous cases and other case streamlining processes. (Priority #2)

The Board of Supervisors should:

- 3.7 Direct PDO Information Systems staff, the County Executive's Office and CJIC technical staff to collaborate on development of new management reports using CJIC data and including cross-system comparisons of consistent measures such as reconciled conflict of interest caseload between the three indigent defense entities, case processing time, number of continuances, case outcomes, cost per case and others for all three tiers of the indigent defense system: the PDO, the ADO and the Legal Aid Society, and to report the results back to the Board of Supervisors within six months and on a regular ongoing basis subsequently. (Priority #2)
- 3.8 Director the Public Defender, County Executive and CJIC to collaborate with the County's Trial Courts to develop protocols so that data is entered in a consistent manner in CJIC to allow for production of comprehensive management reports for all segments of the indigent defense system. (Priority #2)

Costs and Benefits

The costs associated with implementing these recommendations would be primarily in the form of staff time to address the technical difficulties with SCALES and to compile and produce management reports from the SCALES and CJIC databases. There could potentially be some one-time expenses, unknown at this time, for software upgrades or vendor service related to SCALES improvements. Staff time would be saved, on the other hand, through improved access to the CJIC database, with subsidiary benefits throughout the criminal justice system. Case processing would become more efficient, shortening case disposition times and reducing impacts on participating criminal justice departments.

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Recommendation priorities:

The priority rankings shown for each recommendation are consistent with the audit recommendation priority structure adopted by the Board of Supervisors, as follows:

Priority 1 = Recommendations that: address noncompliance with federal, State and local laws, regulations, ordinances and the County Charter; would result in increases or decreases in expenditures or revenues of \$100,000 or more; or, suggest significant changes in federal, State or local policy.

Priority 2 = Recommendations that: would result in increases or decreases in expenditures or revenues of less than \$100,000; advocate changes in local policy; would revise existing departmental or program policies and procedures for improved service delivery, increased operational efficiency, or greater program effectiveness.

Priority 3 = Recommendations that: address program-related policies and procedures that would not have a significant impact on revenues and expenditures but would result in modest improvements in service delivery and operating efficient.

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FINANCIAL AFFIDAVIT UNDER PENALTY OF PERJURY TO OBTAIN SERVICES OF PUBLIC DEFENDER

I hereby apply for the services of the Public Defender. I understand that the Public Defender will not accept my case unless I qualify financially, and that the following representations are not confidential, and will be revealed to the court at the end of the case.

NAME: _____

1. MARITAL STATUS _____

2. MONEY AVAILABLE _____

3. PROPERTY _____

4. PARENTAL SUPPORT _____

5. EMPLOYMENT _____

I hereby affirm, under penalty of perjury, that the above representations are truthfully given to the best of my knowledge and belief. I know that I can be prosecuted for a crime (Perjury or Theft) if I sign this form knowing it contains false information, and that this application can be used as evidence against me in court.

I understand that under Penal Code Section 987.8 the judge, at the end of my case, must determine if I have the present ability to pay Santa Clara County all or a portion of the cost of the services which the Public Defender provided for me.

X _____

Witnessed by: _____

IMPORTANT NOTICE

You must come to the Public Defender Office as soon as possible if you are released from jail on OR/Bail in this _____ charge in _____ Court.

120 West Mission Street
San Jose, California 95110
TELEPHONE: 299-7700

Give this slip to the receptionist when you come in, she will find the right person for you to see. Interview hours are from 8:00 a.m. to 12:00 p.m. for misdemeanors and from 1:00 p.m. to 5:00 p.m. for felonies Monday through Friday.

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**APPLICATION FOR PUBLIC DEFENDER SERVICES
(Out-of-Custody)**

My name is _____. I hereby apply for the services of the Office of the Public Defender. I understand that the Public Defender is required by law to take my financial statement under penalty of perjury and that if I am able to hire a private attorney the Public Defender cannot represent me. In support of my application for Public Defender services I declare **under penalty of perjury** that the following statements are true and correct:

1. **Private Attorney(s) Contacted About This Case:** State name and why attorney is not handling your case:_____.
2. **Income:** I and/or my spouse (if any) have the following monthly gross income.

Income Name	Type	Amount
a. Welfare		\$
b. Job	Employer:	\$
c. Spouse's Job	Employer:	\$
d. Unemployment	Start date:	\$
e. Disability		\$
f. Other		\$
TOTAL MONTHLY GROSS INCOME		\$

3. **Property and Assets Owned:** I and/or my spouse (if any) own the following.
Please complete the following calculation: (Total Value – Amount Owed = Net Value)

Property Type	Total Value	Amount Owed	Net Value
a. Money			\$
b. Money owed to me/us			\$
c. Vehicle			
1. Type:	\$	\$	\$
2. Type:	\$	\$	\$
d. Real Estate: (include any interest in land or bldg.)			
1. Type	\$	\$	\$
2. Type	\$	\$	\$
e. Personal Property: (include stocks, bonds, jewelry, insurance with loan value)			
1. Personal Property:			\$
2. Personal Property:			\$
f. Claims for Money or Property: (include lawsuits, inheritances, etc.)			\$
TOTAL a) THROUGH f)			\$

1. Family Support and Unusual Debts and Expenses:

- a. I provide support for the following persons who live in my home:
 Husband ___ Wife ___ Children/Ages: ___ Parents/Ages: ___ Others: ___
 I provide for my own living expenses. Circle: Yes No
 (If you do not provide your own living expenses, explain who provides your support and how much: _____)
- b. In addition to ordinary debts and expenses, I have the following unusual debts on which I am presently paying: _____

Debt/Expense	Balance Due	Monthly Payment Amount
Alimony		\$
Child Support		\$
Taxes	\$	\$
Court Fines or Restitution	\$	\$
Major Medical/Dental	\$	\$
Other	\$	\$
TOTAL MONTHLY PAYMENTS		\$

2. **Bail Posted:** Y N Amount: _____ Bondsman: _____ Premium: _____
 Paid By: _____

If my case is accepted by the Public Defender, I will promptly notify my attorney of any changes in my job or income situation and change of address or phone number. I understand that at the end of my case, the Court may order me to pay for the services of the Public Defender if I then have the ability to pay. I also understand that this application and its contents can be disclosed to the Court at such time, solely for the purpose of aiding the Court in making a determination of my ability to pay for the services of the Public Defender.

 Signature Date

WITNESS: _____

FOR OFFICE USE ONLY

Recap:

Total Gross Monthly Income	\$
Total Payments on Unusual Debts	\$
Income Less Unusual Debts (to be applied to income chart)	\$
Total Net Value of Property and Assets	\$

Conclusion: Eligible Ineligible Refer to Bar

Comments:

JustWare Data Fields Available in CJIC	Original System of Record
Client - Name	CJIC
Client - Current Residential or Mailing? Address	Multiple sources
Client - DOB	CJIC
Client - Phone	Multiple sources
Client - Pfn (which will be replaced by AFIS # in the new jail mgmt system)	CJIC
Client - Gender	CJIC
Client - Race/ethnicity	CJIC
Client - Driver's lic #	CJIC
Client - SSN	CJIC
Client - FBI #	CJIC
Case - Arrest Date	CJIC
Case - Filing date	Odyssey
Case - Docket #	Odyssey
Case - Co-defendant info (name, pfn)	CJIC
Case - Arraignment Date	Odyssey
Case - Arraignment Time	Odyssey
Case - Arraignment Location	Odyssey
Case - Status of time waiver (waived or not-waived, and last day if not-waived)	Odyssey
Case - Charges/amended charges (with a flag if amended)	Odyssey
Case - Enhancements	Odyssey
Case - Charge dispo info (guilty, not guilty, dismissed, etc.)	Odyssey
Case - Bench or Arrest Warrants related to	Odyssey
Case - Status (active, inactive, etc.)	Odyssey
Custody - status (in/out/OR/SORP/bail)	CJIC
Custody - if in custody, current housing loction	CJIC
Cutody - if in custody, booking date	CJIC
Bail - Amount (if bail is set)	Odyssey
Bail - Conditions	Odyssey
Sentence - Sentence type (jail, community service, EMP, etc.)	Odyssey
Sentence - Fines/fees imposed	Odyssey
Sentence - Other orders imposed (restraining order, eg.)	Odyssey
Sentence - Jail days ordered and credit for time served	Odyssey
Probation - Type (court, formal)	Odyssey
Probation - Period/duration	Odyssey
Probation - Conditions	Odyssey
Probation - Violations Filed	Odyssey

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FACT SHEET

DEFENDANT'S NAME, AS CHARGED IN THIS CASE				TRUE NAME, IF DIFFERENT			
STREET ADDRESS				APT. NO.		CITY, STATE (IF NOT CALIF.), AND ZIP	
CAN BE REACHED BY TELEPHONE AT				TELEPHONE OWNED BY			
SEX	HEIGHT ____ FT ____ IN	WEIGHT ____ LBS	COLOR OF HAIR	COLOR OF EYES	COMPLEXION <input type="checkbox"/> FAIR <input type="checkbox"/> MEDIUM <input type="checkbox"/> OLIVE <input type="checkbox"/> DARK		
AGE	DATE OF BIRTH	PLACE OF BIRTH (CITY AND STATE - OR NATION)			CITIZENSHIP <input type="checkbox"/> U.S. <input type="checkbox"/> _____		
LAST COURT DATE	HAVE WE ALREADY TALKED TO YOU ABOUT THIS CASE? <input type="checkbox"/> YES <input type="checkbox"/> NO			SOCIAL SECURITY NUMBER		DRIVER'S LICENSE NUMBER	
RACE/ETHNICITY <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> LATINO <input type="checkbox"/> CAMBODIAN <input type="checkbox"/> VIETNAMESE <input type="checkbox"/> OTHER ASIAN <input type="checkbox"/> API <input type="checkbox"/> ASIAN INDIAN <input type="checkbox"/> MIDDLE EASTERN <input type="checkbox"/> MULTI-RACIAL <input type="checkbox"/> NATIVE AMERICAN <input type="checkbox"/> UNKNOWN							
DATE OF INTERVIEW	INTERVIEWER	PLACE OF INTERVIEW <input type="checkbox"/> OFFICE <input type="checkbox"/> MAIN JAIL <input type="checkbox"/> ELMWOOD <input type="checkbox"/> P.A. <input type="checkbox"/> SO.CO. <input type="checkbox"/> OTHER _____					
CLIENT RESIDES WITH (RELATIONSHIP AND NAME)				CLIENT'S CHILDREN AT THIS ADDRESS NUMBER _____ AGES ____ TO ____		ELSEWHERE	
LENGTH OF RESIDENCE ____ YEARS ____ MONTHS		IN COUNTY ____ YEARS IN ____ CO		IN CALIF. ____ YEARS		IN CUSTODY ON THIS CHARGE SINCE	
EMPLOYER'S NAME AND ADDRESS (OR SCHOOL ATTENDING)						OTHER RELEASE INFORMATION (LOCAL)	
TYPE OF WORK (OR YEAR IN SCHOOL)		HOW LONG EMPLOYED THERE ____ YEARS ____ MONTHS		JOB WAITING <input type="checkbox"/> YES <input type="checkbox"/> NO		FAMILY, IMMIGRATION STATUS, ETC.	
EDUCATION GRADE	RECENT SICKNESS OR INJURIES <input type="checkbox"/> NONE <input type="checkbox"/>						
HISTORY OF MENTAL ILLNESSES <input type="checkbox"/> NONE <input type="checkbox"/>				NUMBER OF COMMITMENTS			
DETAILS (PLACE OF CONFINEMENT, HOW LONG CONFINED, LAST RELEASE DATE)							
MILITARY ____ YEARS	BRANCH	YEAR OF DISCHARGE	TYPE OF DISCHARGE				
ADULT RECORD	COURT	OFFENSE	<input type="checkbox"/> MISD <input type="checkbox"/> GBI	<input type="checkbox"/> FEL <input type="checkbox"/> ARMED	PROB <input type="checkbox"/> NO <input type="checkbox"/>	SENTENCE: <input type="checkbox"/> ATTY <input type="checkbox"/> NONE	
YEAR	COURT	OFFENSE	<input type="checkbox"/> MISD <input type="checkbox"/> GBI	<input type="checkbox"/> FEL <input type="checkbox"/> ARMED	PROB <input type="checkbox"/> NO <input type="checkbox"/>	SENTENCE: <input type="checkbox"/> ATTY <input type="checkbox"/> NONE	
YEAR	COURT	OFFENSE	<input type="checkbox"/> MISD <input type="checkbox"/> GBI	<input type="checkbox"/> FEL <input type="checkbox"/> ARMED	PROB <input type="checkbox"/> NO <input type="checkbox"/>	SENTENCE: <input type="checkbox"/> ATTY <input type="checkbox"/> NONE	
YEAR	COURT	OFFENSE	<input type="checkbox"/> MISD <input type="checkbox"/> GBI	<input type="checkbox"/> FEL <input type="checkbox"/> ARMED	PROB <input type="checkbox"/> NO <input type="checkbox"/>	SENTENCE: <input type="checkbox"/> ATTY <input type="checkbox"/> NONE	
YEAR	COURT	OFFENSE	<input type="checkbox"/> MISD <input type="checkbox"/> GBI	<input type="checkbox"/> FEL <input type="checkbox"/> ARMED	PROB <input type="checkbox"/> NO <input type="checkbox"/>	SENTENCE: <input type="checkbox"/> ATTY <input type="checkbox"/> NONE	
JUVENILE RECORD <input type="checkbox"/> NONE TIMES COMMITTED TO CYA _____ TO RANCH _____ IN JUV. HALL _____							
OTHER CASES PENDING <input type="checkbox"/> YES <input type="checkbox"/> NO		DETAILS (OFFENSE, COURT, ATTORNEY)			ARE YOU CURRENTLY A PROSECUTION WITNESS OR VICTIM IN ANY CASE PENDING IN THIS COUNTY? <input type="checkbox"/> YES <input type="checkbox"/> NO		
PROBATION OR PAROLE OFFICER		CITY	HOLDS <input type="checkbox"/> YES <input type="checkbox"/> NO		NAME OF DEFENDANT CASE NO. _____ DOB _____		
1381 DEMAND		YES <input type="checkbox"/> NO <input type="checkbox"/>					
CLIENT DESIRES <input type="checkbox"/> PG <input type="checkbox"/> PNG <input type="checkbox"/> OTHER (DESCRIBE BELOW)				WAIVE TIME, IF OUT <input type="checkbox"/> YES <input type="checkbox"/> NO			
Names of witnesses		Address			Phone Numbers		

Return completed form to: coe.ecm@ceo.sccgov.org

Social Media Application Business Plan for County of Santa Clara Department/Agency Heads

Using this Form

This form is required for all County departments/agencies wishing to engage in any Social Media Application (SMA) activity while conducting County business. All County departments/agencies must fill out and obtain approval of this form **prior to** using or implementing any SMA activities on behalf of the County or the department/agency. Once your Business Plan is approved, your SMAs will become County-sponsored SMAs. This form is intended to help departments/agencies address potential legal and public policy issues associated with SMAs, not to be used to prevent departments/agencies from using SMAs to connect with the public.

What to Do if Your Department/Agency Already Uses an SMA

Departments/agencies that already used SMAs prior to the implementation of the County Social Media Application Policy must fill out this form and obtain County-sponsored status retroactively. Departments/agencies may need to alter their existing SMAs in order to comply with this Business Plan and the Social Media Application Policy. Departments/agencies that fail to submit this form within 4 months of the implementation of the Social Media Application Policy must cease all activity on non-County-sponsored SMAs.

Social Media Application Business Plan Review Procedure

The County CEO has designated the County Enterprise Content Management – Center of Excellence (ECM - CoE) as the authority to approve a County department's/agency's Social Media Application Business Plan Form **prior to** that County department/agency using or implementing any SMA activities for County business. The Business Plan will be reviewed by the ECM - CoE, as well as by any additional sub-groups pertaining to social media that are comprised of representatives from departments/agencies, including County Counsel and Labor Relations representatives. Their review will include evaluation of compliance with County policies and identification of potential legal and security issues in the Social Media Business Plan. Also, the ECM – CoE will strive to ensure that the Business Plan has consistent processes for using social media for conducting County business.

After the Business Plan is approved, the department's/agency's social media activities will be considered "County-sponsored."

Appeals

If you are unsatisfied with any decision associated with this form, you or your department/agency may appeal to the Office of the County Executive. Contact policies@ceo.sccgov.org if you would like to appeal any decision made regarding this form.

Contact Info

If you have any questions about this form, please contact the Enterprise Content Management – Center of Excellence (ECM – CoE) at coe.ecm@ceo.sccgov.org.

Return completed form to: coe.ecm@ceo.sccgov.org

Part 1: County Department/Agency Information

County Dept./Agency Info	Name	Email	Phone
Dept./Agency Name			
Dept./Agency Head			
Authorized Agent(s) (Use "Additional Information" section to list any that do not fit here)			
Form Prepared By			

Part 2: Social Media Platforms

Indicate the types of social media that you plan to use. If you have already reserved a username or URL, please provide it below. For each social media type, select the appropriate option in the box to indicate if your department/agency will not be using that type at this time, your department/agency intends to create a full account for that type, or your department/agency intends to create an account used only to respond to other users' content.

Type of Social Media	Account Use	Username, URL, or other identifying information
Facebook	Not Using	
Twitter	Not Using	
YouTube	Not Using	
LinkedIn	Not Using	
Google+	Not Using	
Blog (indicate blogging platform)	Not Using	
Other (specify; use "Additional Information" section if more space is needed)	Not Using	

Return completed form to: coe.ecm@ceo.sccgov.org**Part 3: Department or Agency Goals for County-Sponsored Social Media**

Consider the goals, target audience and tactics for this social media project. Most successful social media efforts are part of a broader communications strategy. The questions in this part are intended to help guide your department/agency through the legal issues you may face, not to prevent you from using social media. Some questions may not apply, and most questions may only require a sentence or two for an answer. You need only include enough information to show that your department/agency has thought about these issues and understands the risks.

Goals	Briefly, what are the business and communications goals of your proposed County-sponsored Social Media Application? Are your goals measurable?
Target Audience	Who is your target audience, and how will you reach them through social media?
Strategy	How does your social media site(s) fit into your department's or agency's outreach and publicity efforts?
Frequency	How frequently will you post content or otherwise update your social media page?
Timeline	When will your social media account go live to the public? Do you plan to keep the page up indefinitely, or do you have a specific end date? If you have determined a specific end date, what are your plans for shutting down the account?
Comments	Some Social Media Applications, such as Facebook, allow other users to post comments in response to your content. Per sec. 2.4.6 of the Social Media Application Policy, if your SMA allows comments, you may only moderate, edit, delete, remove, or otherwise alter comments with permission from the Social Media Monitoring Team (SMMT). Is your Authorized Agent(s) able to commit to looking at your site's comments at least once per work day and forwarding potentially inappropriate comments to the SMMT?

Return completed form to: coe.ecm@ceo.sccgov.org

Prior Permission to Moderate	<p>If your department/agency would like to request prior permission to moderate comments during non-business hours (see sec. 2.4.7 of the Social Media Application Policy), please include the following information:</p> <ol style="list-style-type: none"> 1) How often does your department use social media during non-business hours and on weekends? 2) Explain the reason your department requires permission to immediately remove comments prior to receiving SMMT approval. 3) Please provide the name and contact information for the employee from your department who will serve on the SMMT.
Criticism Tolerance	<p>Most social media sites allow other to publicly provide both positive and negative feedback. Are there any issues about which your department/agency is particularly sensitive? Are there any types of comments that your department/agency is particularly concerned about showing up on your Social Media Application?</p>
Security Measures	<p>How will you ensure that your site remains secure and that any security breaches will be reported to the CIO or designee in a timely manner?</p>
Records Retention	<p>Some social media content may qualify as an official record and therefore must be retained under California law. How will your department/agency retain social media content, if necessary? Note: As of August 2014, County Counsel is drafting a new Record Retention and Destruction Policy that may take some of the records retention burden off your department/agency.</p>

Return completed form to: coe.ecm@ceo.sccgov.org

CIO Login Info	<p>If your department wishes to establish its own internal safeguards rather than provide the CIO or the CIO’s designee with your login and password information (see sec. 2.2.3.1 of the Social Media Application Policy), please explain how your department/agency will:</p> <ol style="list-style-type: none"> 1) Ensure that someone in your department/agency will be able to access your social media site if your Authorized Agent(s) is unavailable? 2) Ensure that the County will be able to retain control of your social media page in the event that your Authorized Agent(s) leaves County service?
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Additional Information

Please use this space to provide any other information that would not fit on the form or that you would like to provide.

Return completed form to: coe.ecm@ceo.sccgov.org

Part 4: Acknowledgment of Social Media Application Policy, and SMA Guidelines and Standards

The Department or Agency head agrees to follow the *Social Media Application Policy*. The Department or Agency head acknowledges that he/she will ensure the Department or Agency will follow the *IT Security Policies and the IT Security Practices and Procedures*.

Of particular note:

After the site or account is created for your County-sponsored social media, the account information, password, and security verification questions/answers (and subsequent changed account and/or password) will be provided to the CIO or designate within 24 hours, unless an exception is granted.

The department or agency Social Media Application Business Plan will be reviewed by the County Enterprise Content Management – Center of Excellence (ECM – CoE), comprised of departmental/agency representatives, including County Counsel and Labor Relations representatives.

Dept./ Agency Head Name <i>Printed</i>	Dept. or Agency Head <i>Signature</i>	Date
Dept./Agency Authorized Agent Name <i>Printed</i>	Dept. or Agency Authorized Agent <i>Signature</i>	Date
Dept./Agency Authorized Agent Name <i>Printed</i>	Dept. or Agency Authorized Agent <i>Signature</i>	Date
Dept./Agency Authorized Agent Name <i>Printed</i>	Dept. or Agency Authorized Agent <i>Signature</i>	Date
Use "Additional Information" section to additional Authorized Agent signatures, if necessary.		

Submit Form

Clear Form

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**Public Health Department Personnel Policies and Procedures
Performance Appraisal Procedure**

PH Policy # 160.1

Public Health Department
Santa Clara Valley Health & Hospital System



January 24, 2017

TO: Public Health Managers & Staff

FROM: Sara H. Cody, MD 
Health Officer and Public Health Director

SUBJECT: Performance Appraisal Procedure

Reference: Memorandum of Agreement 521, Section 6.11 Performance Appraisal Program
Memorandum of Agreement CEMA, Article 17 Performance Appraisal and
Development Process

PURPOSE:

The Board of Supervisors of Santa Clara County is committed to having the highest caliber employees and to providing citizens with quality service. Toward these ends, the County and many labor organizations have negotiated employee performance appraisal programs. The purpose of this procedure is to provide functional guidance to managers and staff regarding the performance appraisal process within the Department, according to previously negotiated agreements with affiliated unions.

POLICY:

The performance appraisal programs cover all workers represented by the (521 and CEMA) Unions, with the exception of extra-help employees unless otherwise required based upon regulation or law.

Note: The Engineers and Scientists Union (ESC) contract does not address performance appraisals, however, federal CLIA requirements require annual personnel competency assessments. The Public Health Laboratory is the only program that employs ESC workers and thus keeps procedures for competency assessments within their program.

All participants in affiliated unions and their supervisors/managers shall complete training prior to performance appraisals being conducted. A 45-minute web-based training called *Performance Appraisal Process at County of Santa Clara* is available on sccLearn.

Performance Appraisals shall be completed annually by the employee's immediate Supervisor/Manager on Employee Service Agency-approved forms. (With the exception of clerical leads, leads may provide input to supervisors on performance. Leads will not write or issue performance appraisals on other workers). A copy of the completed appraisal shall be retained in the employee's personnel file.

An employee who is dissatisfied with his/her appraisal may request and receive a review from the next

**Public Health Department Personnel Policies and Procedures
Performance Appraisal Procedure**

PH Policy # 160.1

highest level manager. Changes made as a result of the review process will be included in the appraisal document.

For 521, performance appraisals will not be used by the County, the worker or the Union in the disciplinary process or for the purpose of transfers or for the purpose of promotions.

For CEMA, performance appraisals may be used by either party in the transfer and promotion process but may not be used in the disciplinary process, the oral board process or in a probationary release.

PROCEDURE:

**For 521 Members
Responsible Party**

Action

Supervisor/Manager	<p>Schedules a performance appraisal meeting with employee within 1 month +/- of employee's salary anniversary date (as listed in PCIS). Requests employee to complete a self-assessment in advance of the meeting. Meeting shall be scheduled with at least ten (10) working days' notice.</p> <p>Prepares performance appraisal document draft (See Performance Appraisal Program Agreement for details).</p> <p>During the performance appraisal meeting, supervisor and employee jointly complete the final appraisal.</p> <p>After the meeting, completes the appraisal and provides the employee with a finalized copy. Submits copy to PH Admin Staff to be filed in employee's departmental personnel file.</p> <p>If employee requests a secondary review, schedules a meeting between immediate supervisor and employee within ten (10) working days' of the request.</p>
Employee	<p>Completes self-assessment in advance of the performance appraisal meeting, as requested.</p> <p>During the performance appraisal meeting, employee and supervisor jointly complete the final appraisal. Communicates his/her training and support needs.</p> <p>If not satisfied with final appraisal, employee may 1) provide a written response to the performance appraisal, and request that it be attached to the appraisal and/or 2) request a meeting with the evaluator's immediate supervisor.</p>
Second-level Manager	<p>Schedules secondary review meeting within ten (10) working days of a request. Makes any changes directly on the form. Makes a copy of the finalized appraisal and provides it to the employee and PH Admin Staff to be filed in</p>

**Public Health Department Personnel Policies and Procedures
Performance Appraisal Procedure**

PH Policy # 160.1

employee's departmental personnel file.

PH Admin Staff

Files performance appraisal in employee's departmental personnel file.

Removes performance appraisal from the employee's departmental personnel file if a hiring authority or management requests to review the file for the processes or purposes of disciplinary action, lateral transfer, or promotion.

**For CEMA Members
Responsible Party**

Action

Manager

Schedules a performance appraisal meeting with employee, during the month of January (evaluating the previous calendar year) or as directed by the Administrative Support Services Director.

Prepares performance appraisal, reviewing each skill area with narrative and optional ratings (See Performance Appraisal Guide for details).

During the performance appraisal meeting, manager and employee are to agree on developmental goals for the next year.

After the meeting, completes the appraisal and provides the employee with a finalized copy. Submits copy to PH Admin Staff to be filed, no later than February 15.

Schedules 6-month update meeting with employee to review the progress toward goals and objectives. The update forms are working documents and not included in the employee file. Signed copies go to the manager and the employee.

Employee

During the performance appraisal meeting, employee and manager are to agree on developmental goals for the next year.

If not satisfied with final appraisal, employee may request and receive a review from the next highest level manager (within 20 working days of the delivery of the appraisal). If still dissatisfied, employee may request a further review to the Department/Agency Head.

Participates in 6-month update meeting with manager to review the progress toward goals and objectives.

Second-level Manager

Schedules secondary review meeting, if requested. Changes made as a result of the review process will be included in the appraisal document.

Reviews and signs all performance appraisal documents, whether a second-level review meeting is requested by employee or not.

**Public Health Department Personnel Policies and Procedures
Performance Appraisal Procedure**

PH Policy # 160.1

Department/Agency Head	Schedules final review meeting, if requested. Changes made as a result of the review process will be included in the appraisal document.
PH Admin Staff	Makes 2 copies of performance appraisal and distributes: (1) employee's departmental personnel file, (1) Departmental Service Center (HHS), (1) original to ESA, personnel-records division.

Attachments:

CEMA Performance Appraisal Form

<https://hhsconnect.sccgov.org/sites/phd/humanresources/Documents/CEMA%20Performance%20Appraisal%20for%20PHD%20REV12.28.15.docx>

521 Performance Appraisal Form

https://connect.sccgov.org/sites/forms/esa/_layouts/15/WopiFrame.aspx?sourcedoc=/sites/forms/esa/LaborRelationsCountywideForms/521%20Appraisal%20and%20Development%20Form.doc

Issued: 03/25/14

Revised: 01/24/17

By: S.Barragan; PHofford

Law Office of the Santa Clara County Public Defender ATTORNEY PERFORMANCE EVALUATION

Attorney	Position/Grade
Evaluation Period	Assignment(s) Felony Trial Team

This evaluation is based upon my observation and/or knowledge. It represents my best judgment of the attorney's performance	
Name	Title
Name	Title
Damon Silver	Felony Team/Drug Court Supervisor
Reviewer's Signature	Date

This evaluation has been reviewed and discussed with me.	
Name	Date

PERFORMANCE AND EVALUATION STANDARDS

These Performance and Evaluation Standards are intended as a guide for observing and evaluating attorney performance and to provide expectations in specific skill areas. They establish a basis for communicating about expectations, level of performance, career development, training, and assignment considerations.

APPLICATION

The sections contained in the Performance Evaluation have been selected to provide consistent criteria for evaluating attorneys, although the great variation in assignments precludes a single set of criteria. In advance of meeting with the evaluator, lawyers are expected to complete a self-evaluation using this form. Evaluators shall consider this input, supervisory observations, courtroom performance and work product in finalizing the evaluation. The form and its content will be discussed with the lawyer and used to set objectives for the next evaluation period. The lawyer should view the process as a continuing one of evaluation and positive career development.

Lawyers on trial assignments for the evaluation period are required to submit at least one significant motion written and argued by the lawyer during this evaluation period.

EVALUATION CATEGORIES

STRENGTH OF PERFORMANCE – Performance is consistent with experience and expected development.

OBJECTIVES FOR THE NEXT YEAR – The lawyer and supervisor develop a plan to achieve desired performance goals as defined in the specific skill area.

STRENGTH OF PERFORMANCE

Strength of performance is measured by any or all of the following:

- The consistency and frequency of cases in which the lawyer meets or exceeds the standards;
- The degree of excellence in the work product of the lawyer;
- The lawyer's ability to work independently;
- Exceptional or notable accomplishments in the specific skill area during the evaluation period.

ADVOCACY AND COMMUNICATION SKILLS

CLIENT RELATIONS

- The lawyer develops a professional relationship and rapport with the client. This includes regular personal contact with the client, outside of court (in the office or at the jail), and his or her family as often as necessary to establish and maintain a relationship of trust and confidence and obtain from the client any information necessary to effectively prepare the case for trial and/or disposition.
- The lawyer fully advises the client of all rights and options, and meaningfully and effectively imparts his or her opinion of those alternatives which best serve the interests of the client.
- The lawyer considers client's special needs such as immigration consequences, substance abuse and/or mental health treatment, and makes referrals to the reentry resource center where appropriate.
- The lawyer exhibits a positive and respectful attitude towards clients and their families, and is understanding and tolerant of all persons, lifestyles, and beliefs.
- The lawyer returns phone calls in a timely fashion and interacts with the client's family in a professional manner, protecting client confidences.
- The lawyer demonstrates maturity and professionalism when faced with difficult clients and is responsive to client requests.
- Lawyer is able to deal effectively with mentally ill, hostile, developmentally disabled and otherwise difficult clients. Attorney can appropriately assess the needs of impaired clients.
- Attorney informs supervisor of all Marsden motions.

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

COURTROOM EFFECTIVENESS

- The lawyer develops professional relationships with judges, courtroom staff, the District Attorney's Office, the Office of Pretrial Services, Probation and other justice system partners in a manner that best serves the client(s)
- The lawyer notifies the court if the lawyer will be late for an appearance and notifies the court and opposing counsel in advance when seeking a continuance of a scheduled hearing.
- The lawyer has a professional demeanor and is appropriately attired.
- The lawyer recognizes ethical issues when they arise, and seeks the advice of a supervisor when in doubt as to the appropriate course of action.

- Prior to court appearances, the lawyer is familiar with the facts and the law relating to the case, and where possible, has met with the client in advance of the court date.
- The lawyer prepares witnesses and clients before presentation of testimony, covering such areas as courtroom procedures, demeanor and appearance, and direct and cross examination.
- The lawyer's performance in trial evidences thoughtful attention to trial strategy, motions in limine, witness preparation, evidentiary foundations, jury instructions and whether or not the client should testify. The lawyer presents the facts and the law in a logical, organized fashion, and argues zealously, but with sound judgment on behalf of the client.
- While appreciating the adversarial role of a defense attorney, the lawyer projects a professional image, acts at all times with integrity, and adheres to the highest ethical standards.
- The lawyer files Notices of Appeal as required by office policy and responds to the inquiries of appellate counsel promptly and professionally.
- Lawyer prepares cases for trial in a timely and efficient manner. The lawyer does not unnecessarily delay trials or request excessive continuances.
- The lawyer takes cases to trial when appropriate:

Defendant name	Charges	Month/year	Result

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

CASE NEGOTIATIONS AND SENTENCING SKILLS

- The lawyer gathers background information; thoroughly investigates the merits of the case and possible defenses; consults with experts as necessary in accordance with best practices, and reviews resources and develops appropriate strategy to reach the best outcome for the client.
- The lawyer recognizes the strengths and weaknesses of the case, including plea alternatives, and with knowledge of sentencing laws, and attention to potential immigration and/or other foreseeable collateral consequences, appropriately advises the client.

- The lawyer counsels the client for pre-sentence interviews and, when appropriate, furnishes additional information to benefit the client.
- The lawyer interacts and communicates with colleagues, court personnel, resource persons, family members, and community providers to negotiate the best possible disposition for the client.
- The lawyer prepares for and actively participates in the sentencing hearing, demonstrating knowledge of applicable procedural and substantive laws so as to insure protection of the client's rights.

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

CASE ANALYSIS AND PREPARATION SKILLS

LEGAL ANALYSIS, RESEARCH, AND WRITING SKILLS

- The lawyer keeps current on changes in the law and is aware of forensic developments (particularly in the areas of physical and behavioral science) impacting best practices and the evolving standard of care in the criminal defense community.
- The lawyer recognizes legal issues and is familiar with, and uses available resources including electronic tools, e.g., Westlaw, West KM and Crime Time.
- The lawyer uses the resources of the research department in an appropriate manner; reviewing relevant materials and engaging in preliminary research prior to asking for assistance. The lawyer recognizes that motions work is an important component of the practice, and strives to improve research and writing skills by drafting and arguing his or her own motions whenever possible.
- The lawyer demonstrates creativity in preparing motions, developing case strategy, fashioning and proposing plea agreements, and exploring community based alternatives to incarceration.

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

EFFECTIVE USE OF INVESTIGATORS, PARALEGALS, EXPERTS AND WITNESSES

- The lawyer recognizes cases in which the use of an investigator and/or paralegal would be appropriate. Requests are reasonable and timely, and information is provided that presents clear guidance and specific objectives.
- The lawyer arranges field visits with the assigned investigator and maintains communication with all members of the defense team.
- The lawyer seeks the assistance of experts in appropriate cases, and uses good judgment in matching the needs of the case with the qualifications, abilities and reputation of the expert. The lawyer provides relevant information to the expert in a timely fashion.
- The lawyer maintains good relationships with office staff.
- The lawyer maintains consistent communication with the paralegal, investigator, and expert, keeping each apprised of any significant developments.

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

WORK HABITS AND ORGANIZATIONAL SKILLS

- The lawyer meets the challenge and demands of calendar and case management with confidence, skill and effectiveness.
- The lawyer budgets time in a manner that allows for the interview of clients and witnesses, preparation of investigation requests, acceptance and return of telephone calls, and all other steps necessary to provide quality representation for the client.
- Case files are appropriately documented and the lawyer's office, files, and legal materials are organized in a manner that facilitates retrieval, review, and use by the lawyer and others.
- Lawyer closes files in a timely manner by submitting to legal clerk.

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

EXPERIENCE AND LEADERSHIP

EXPERIENCE

- The lawyer's level of experience is demonstrated by past and present ability to handle cases of increasing complexity at his or her grade level.
- The lawyer increasingly is more adept and skilled in handling case responsibilities in and out of the courtroom.
- Experience as defined in this component emphasizes the degree of wisdom, knowledge, judgment, professional care, maturity, and practical abilities with which the lawyer performs the assigned responsibilities.

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

PROFESSIONAL DEVELOPMENT

- The lawyer volunteers in the community and/or participates in community educational programs.
- The lawyer regularly attends and participates in both in-house training as well as seminars sponsored by organizations such as State Bar, CPDA and CACJ.

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

COMPLIANCE WITH POLICIES AND PROCEDURES

- The lawyer complies with County and departmental directives, policies and procedures. Attendance is regular and proper office hours are observed.
- The lawyer makes punctual court appearances, keeps appointments and informs his/her supervisor and the front desk of his or her whereabouts.

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

ATTITUDE AS A PUBLIC DEFENDER, ASSIGNMENT FLEXIBILITY, AND LEADERSHIP

- The lawyer acts professionally and is a credit to the Office of the Public Defender.
- The lawyer acts as a mentor and willingly shares individual expertise.
- The lawyer accepts any assignment or special tasks, including the responsibility of representing clients in more complex cases.
- As a team player, the lawyer accepts emergency assignments of cases, handles a fair share of coverage requests, assists court partners when necessary and handles matters for unavailable colleagues.
- The lawyer's interaction with all staff contributes to office morale and demonstrates an attitude and knowledge that commands respect, trust, and cooperation.

- The lawyer establishes effective working relationships through objectivity, openness, and impartiality.
- The lawyer is accessible and helpful to others while being a resource and setting an example for other lawyers. The lawyer uses common sense and exercises good judgment in all aspects of his/her practice.

PERFORMANCE CONSISTENT WITH EXPERIENCE AND EXPECTED DEVELOPMENT:

OBJECTIVES FOR THE NEXT YEAR:

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