

EXECUTIVE SUMMARY

MEMORANDUM
MONTEREY COUNTY
OFFICE OF THE PUBLIC DEFENDER



To: THE BOARD OF SUPERVISORS

From: Monterey County Public Defender James Egar

Subject: Caseload/Workload Analysis

Monterey County has maintained its duty to provide for the defense of indigent persons accused of crimes with a Public Defender's Office for over forty years. Maintaining this quality in the face of budgetary challenges and government restructuring requires careful analysis, evidence-based decision making and the vision to identify where benefits from investments in efficiencies will exceed savings from short-term budget cutting.

Staffing decisions should be forward looking, based on building an adequately-sized team of career service attorneys and professional support staff, rather than on the need to meet exigencies. This report will describe principles for maintaining a fiscally sound and independent public defense system. We emphasize the need to provide adequate numbers of personnel to meet the Public Defender's responsibilities. We discuss the serious need for appropriate supervision and the roles of those whose current titles inadequately describe the critical service they provide and without whom the Department's work could not adequately be performed.

Mindful of the many difficult budget decisions faced by the Executive and the Board of Supervisors, we urge that funding be provided consistent with the principles and recommendations discussed in this report in order to preserve the quality of public defense services that the citizens of Monterey County deserve and have come to expect.

LEGAL AND PROFESSIONAL FRAMEWORK

Unlike many services provided by Monterey County, most services provided to indigent defendants by the Public Defender (PD) are mandated by the United States Constitution, the California Constitution, the California Supreme Court, and the Legislative Code of California. This means that the volume of work that the PD must perform cannot be reduced due to resource constraints, as is possible in many other County programs or departments.

Federal Constitutional Requirements

The Sixth Amendment to the U.S. Constitution provides in part: "In all criminal prosecutions, the accused shall enjoy the right to... have the Assistance of Counsel for his defence." The scope of the Sixth Amendment right to counsel has been defined by the U.S. Supreme Court. Its decisions extending back over 80 years establish that any person, juvenile or adult, subject to a loss of liberty upon conviction of an offense, is entitled to have an effective attorney appointed if he or she is unable to afford one. The right to counsel includes advice on a broad range of consequences beyond incarceration, such as immigration, and includes services such as investigation and expert witnesses, trial transcripts for an appeal, and many other kinds of assistance, both expert and non-expert.

California State Constitution

Article I, section 15 of the California Constitution provides in part: "The defendant in a criminal case has the right to a speedy public trial, to compel the attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with witnesses against the defendant..." The right to counsel includes the appointment of experts, investigators and mental health professionals.

California Rules of Professional Conduct

Public Defenders have a duty of confidentiality to their clients, not to accept clients or cases where they cannot provide competent and informed representation, to avoid at all cost interests adverse to their clients including conflicts of interest, to keep all clients informed of significant developments in their cases and to communicate all offers of settlement.

State Bar of California

The State Bar Rules state, in part, "Indigent defense providers shall not accept nor be burdened with excessive workloads that compromise the ability of the providers to render competent and quality representation in a timely manner, without the risk of damaging the mental/physical health and motivation of the providers."

American Bar Association (ABA) Ten Principles of a Public Defense Delivery System

1. The public defense function, including the selection, funding and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after client's arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until the completion of the case.
8. *There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.* (emphasis added).
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Professional Standards

The standards of practice and performance expected of attorneys in the Public Defender's Office are the same as those of any lawyer practicing law in California. This is true despite the reality that public sector defense counsel carry caseloads many times the size of their counterparts in the private sector.

Case law directs that, "The Public Defender stands in the same relation to the accused he/she is appointed to represent as an attorney regularly retained, and he (she) must investigate carefully all defenses of fact and of law which may be available to the accused and confer with him about them before he permits the accused to foreclose all possibility of defense and submit to conviction without a hearing by pleading guilty, particularly where a defendant is accused of a great number of serious crimes."

A complete listing of all of the duties which are imposed on defense counsel would be too voluminous for presentation in this document. However, The State Bar of California

Guidelines II has published standards which must be complied with to constitute competent representation by a criminal defense counsel. They include:

1. Thoroughly interview the client;
2. Obtain discovery;
3. Conduct an in-depth factual inquiry, including investigation;
4. Complete all necessary legal research;
5. Preserve all relevant evidence;
6. Secure and utilize necessary experts;
7. Inform clients of critical elements of case preparation;
8. Bring proper Legal Motions and doing whatever else is necessary to protect each client's legal rights;
9. Prepare for trial or disposition;
10. Be aware of and explore alternatives including possible and probable sentences;
11. Be aware of and investigate direct and collateral consequences of various dispositional alternatives;
12. Advise clients of appellate rights and maintain confidences in compliance with Rule 3-100 of the California Rules of Professional Conduct.

There are many collateral impacts of criminal defense responsibilities that have been added recently. Probably the most important development has come in the area of immigration consequences of criminal convictions. Recent changes in U.S. immigration law have dramatically increased the likelihood of deportation and other negative immigration consequences for non-citizen defendants who are convicted of criminal offenses. Today's criminal defense counsel must at a minimum, be competent with the intricacies of a substantial body of U.S. immigration law which did not exist previously.

The **American Council of Chief Defenders** (A.C.C.D.) has also identified that, "New and severe sentencing schemes have developed resulting in many mandatory minimum sentences, more life in prison sentences, and complex sentencing policies that require significant legal and factual research and time to prepare and present sentencing recommendations." Likewise, there was no sex offender registry at the time that the National Advisory Commission (N.A.C.) standards discussed below were initially promulgated.

The **American Bar Association** has recently taken greater interest in the crisis in indigent defense. They have issued, "The Ten Principles of a Public Defender Delivery System." (listed elsewhere in full). However, your Board may be interested in a few in particular:

- No. 5; "Defense Counsel's workload is controlled to permit the rendering of quality representation".

Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations; counsel is obligated to decline appointment above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e. caseload adjusted by factors such as case complexity, support services, and an attorney's non-representational duties), is a more accurate measure.

- No.8; "There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system."

No part of the Justice System should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system."

- "There should be parity of workload, salaries and other resources (such as benefits, technology facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense."

Identifying a representative sample of applicable standards does not address the dilemma which faces Public Defender Offices in California today. Defense Offices are required to represent the overwhelming majority of adult and juvenile cases that are prosecuted in our criminal courts. There is a constant pressure to meet the standards of practice while the case numbers and workloads are as significant and sometimes overwhelming as they are. *The specific data regarding those statistics in Monterey County and the other benchmark counties is presented in this document for your Board's review and analysis.*

Many different professional entities have reviewed the applicable caseloads and workloads standards in relation to the standards of practice. *Caseloads* are defined as the raw number of cases that are prosecuted in the court system. *Workload* addresses the complexity, severity and effort that must be invested in a case. For example, a petty theft and a special circumstance murder prosecution each count as one case but the work involved in competently

representing each case is radically different. Likewise, cases proceeding through Therapeutic Courts (i.e. Drug Court, Mental Health Treatment Court, etc.) that were formerly completed in three or four appearances now may require thirty or forty appearances over a time period of eighteen months or longer. This is a significant increase of workload without a corresponding increase in caseload.

A critical question arises regarding what comprises an excessive Public Defender caseload. Many different professional organizations have studied this issue extensively over the course of many years and in many different jurisdictions. The *American Bar Association* (A.B.A.), the *National Legal Aid and Defenders Association* (N.L.A.D.A.), the *American Council of Chief Defenders* (A.C.C.D.) and the *State Bar of California* have all issued written policy statements.

The A.C.C.D. has completed a comprehensive review of all of the applicable standards for acceptable Public Defender caseloads.

“A number of state standards, as well as recent ethics opinions from both the A.C.C.D and the *American Bar Association* accept the N.A.C. Standards and go on to require that when a defender organization’s ability to provide effective representation is threatened by excessive caseloads, the leadership of the office must act to obtain funding to increase staffing or to decline new cases.”

“The A.C.C.D. believes that in general, defender caseloads should not exceed the limits recommended by the National Advisory Commission. These numerical standards have proved resilient over the past 34 years because they have been found to be consistent with manageable caseloads in a wide variety of public defender offices in which performance was favorably assessed against nationally recognized standards, such as: N.L.A.D.A.’s Performance Guidelines for Criminal Defense Representation Through Indigent Defense Systems. [A.C.C.D. National Juvenile Defender Center, 2004]; and the Ten Principles of a Public Defense Delivery System [A.B.A. 2002].”

The N.A.C. published numerical caseload “standards” which were:

no more than 150 felonies per attorney per year; or no more than 400 misdemeanors per attorney per year; or no more than 200 Juvenile cases per attorney per year; or no more than 200 ‘Mental Health Act’ cases per attorney per year; or no more than 25 appeals per attorney per year.”

Report of the Task Force on the Courts,” National Advisory Commission on Criminal Justice Standards and Goals, Standard 13.12 (1973). (Emphasis added)

The A.C.C.D. has determined that... “[n]umerical caseload limits can be affected by many variables including the specific policies and procedures with a local jurisdiction. For example, a prosecution office which consistently overcharges, or one which refuses to plea bargain, can add substantially to attorney workload by increasing necessity and frequency of motions litigation and ultimately, the number of cases that go to trial.

Allocation of resources in law enforcement and prosecutor’s offices including for example, increased staff funding by grants, and establishment of ‘cold case’ prosecution units, can result in increased workloads for defenders.

It should be noted that some jurisdictions have lower standard numbers of cases due to developments in forensic science. In addition, new and severe sentencing schemes have developed, resulting in many mandatory minimum sentences, more life in prison sentences and complex sentencing practices that require significant legal and factual research and time to prepare and present sentencing recommendations.

These N.A.C. Standards are current and vital. A Federal Court in Washington State issued a stinging rebuke against the cities of Mt. Vernon and Burlington in the fall of 2013 which required defense counsel to handle caseloads in excess of the state’s 400 caseload cap. The central problem that the court pointed out was the lack of any meaningful representation. Lawyers often spent less than an hour per case, meeting clients for the first time in the courtroom, sometimes with a plea offer already in hand. There was no opportunity for the lawyers to interview the client, understand his or her side of the case, seek out witnesses, hire experts, utilize investigators or do any of the things that a defense lawyer ought to do in the process of representing a client. This is not an unheard of situation in Monterey County. The Washington State situation caught the attention of the U.S. Dept. of Justice which took the unusual step of intervening.

Of course, the Public Defender’s Office is an agency of the county government and cooperates with the Board of Supervisors which appoints him/her. See Government Code sec. 27703.

However, “The indigent defense provider’s ultimate and overriding obligation is to properly represent each individual client. Hence all other loyalties and concerns are subordinate to the best interests of each client.” State Bar of Calif. Guidelines on Standards of Indigent Defense, pg.4.

The State Bar and relevant case law direct that, “Institutional Public Defenders Offices are departments of county government in California and as such must be managed in many ways

in compliance with the provisions of county charters, county ordinances, county policies and practices and the California Government Code. Nevertheless, the most fundamental and overriding obligation of an institutional public defender, whether elected or appointed, is to properly represent each individual client. Should there develop an unavoidable conflict between the duties, responsibility or allegiance of an institutional public defender as a county manager or department of county government, and the role of said Public Defender in representing an indigent client, the duty to properly represent the client supersede all other loyalties.”

EXECUTIVE SUMMARY

The Office of the Public Defender submits this documented Caseload/Workload study at the request of the Board. You will read below a Comprehensive Study which describes the current situation utilizing the most recently available information and demonstrates the disparity which exists with other benchmark PD Offices. This results in annual budget augmentation requests which arise each June. There is a structural flaw which has existed for many years and has failed to account for mandated responsibilities of the PD.

The Monterey County Public Defender (PD) carries an extremely heavy caseload including a large number of murders, attempted murders, and gang cases with exposure to life in prison sentences with a minimum staff. In fact, it carries the highest attorney caseload of any PD's office among our benchmark counties. Counties may prioritize budgetary demands differently. For example, Santa Barbara County handles fewer cases annually than the Monterey PD, with nine additional PD lawyers. The population is the same, they are both coastal counties, they both rely on agricultural production and tourism, they both have prisons within the jurisdiction, they both have substantial minority communities and both have significant gang issues. Santa Cruz County processes less than one half the number of cases with almost the same number of defense attorneys as Monterey. It is not suggested that Monterey should do something simply because it is done that way in another county. However, counties regularly utilize benchmark studies to make informed decisions and such is the purpose of this submission.

There are simply not enough PD attorneys available here for the number and quality of cases that are appointed by the Superior Court. The same is true of the PD investigation staff whose growth is below the benchmark average. This is revealed by looking at all of the benchmark counties and comparing defense caseloads, attorney and investigator staff, number of administrators, growth rates and sources of funding. (This is a major contributing factor to the fact that felony cases are not processed as fast in Monterey County within 30 or 45 day measures as they are on average in our benchmark counties. This contributes to jail overcrowding and court backlogs.)

The Monterey PD attorney and investigation staffs are currently at the same levels they were in FY 2010/2011. This personnel allocation has not kept pace with the growth of other criminal justice agencies in this county or the staffing provided to other PD Offices in benchmark counties.

Your PD Office has instituted severe cost saving measures including the recruitment of volunteer attorneys, a revised conflict of interest policy to minimize the number of cases that it is unable ethically to represent, use of lead workers for mentoring and significant limitations on

travel for training. In addition, it has not replaced staff during prolonged absences due to medical and disability issues. Consequently, the turnover is high and we lose many of our best lawyers to other benchmark jurisdictions where caseloads are lower and salaries are higher. Monterey County's PD has far fewer administrators than benchmark county PD Offices and are also tasked with handling on-going cases and litigation in addition to their supervisory duties.

A number of proposals are suggested for consideration and action. They are designed to ensure that clients receive competent and professional representation and that staff are neither over-burdened nor over-whelmed by caseloads and workloads. This will allow the justice system to fairly do its job rather than coercively encourage guilty pleas. It will also permit defense participation in growing Therapeutic Courts which have proven to reduce recidivism more effectively than incarceration.

DUTIES OF THE OFFICE OF THE PUBLIC DEFENDER

- The authorization for the Public Defender's (PD's) responsibilities is found in California Government Code sec. 27706
- The Public Defender (PD) represents indigent persons accused of felony and misdemeanor crimes in the Adult and Juvenile Superior Courts of Monterey County.
- The PD staffs Adult and Juvenile Drug Courts, Probate and Conservatorship proceedings as well as Adult and Juvenile Mental Health Treatment Courts.
- The PD represents defendants in parole revocation proceedings, which is a new responsibility.
- The PD is appointed by the Superior Court in various civil matters.
- The PD has financial but not operational responsibility for the Alternate Defenders Office (ADO) which is appointed when the PD has a conflict of interest or is otherwise unable to provide requested services.
- The PD also has financial but not operational responsibility for the appointment of Panel Attorneys when necessary because of a disabling conflict with both the PD and the ADO.
- The PD is an Executive Council member of the Community Corrections Partnership responsible for implementation of Criminal Justice Realignment (A.B. 109).
- The PD is a board member of the Restorative Justice Commission.
- The PD is a member of the Children's Council.
- The PD sits on the Criminal Justice Collaborative made up of criminal justice department heads and the Superior Court.

FINDINGS

1. The Caseload of Monterey County Public Defender Attorneys exceeds those of any other benchmark county's institutional Public Defenders Office. (See chart *Criminal Filings Per Public Defender FTE – Fiscal year 2012/2013*, p11.)
2. The Monterey County PD presently has the same number of attorney staff as it had in FY 2010/2011. (See chart *Public Defender Full Time Equivalent Positions Fiscal Year 2010/2011-2013/2014*, p5.)
3. The Monterey County Public Defender has the same number of investigators as FY 2010/2011. (See chart *Public Defender Full Time Equivalent Positions Fiscal Year 2010/2011-2013/2014*, p5.)
4. The growth number of Monterey County Public Defender's Investigators is below the average of all benchmark institutional Public Defenders Offices. (See chart *Public Defender FTE Change - Fiscal Year 2010/2011-2013/2014*, p10.)
5. Monterey County PD attorney growth is below the average of all benchmark PD Offices since FY2010/2011. Only the Sonoma and Marin County Public Defenders have shown less attorney growth since 2010-2011. (See chart *Public Defender FTE Change - Fiscal Year 2010/2011-2013/2014*, p10.)
6. Between 2010-2011 and 2013-2014, overall funding for the Monterey Public Defender has increased by only 3.2%. (See chart *County Funding Analysis – Public Defender – Fiscal Year 2010/2011-2013/2014*, p24.)
7. The Monterey County Public Defender's budget change is one-half that of the benchmark county average since 2010-2011. (See chart *County Funding Analysis – Public Defender – Fiscal Year 2010/2011-2013/2014*, p24.)
8. The most similar benchmark county is Santa Barbara. It has an almost identical population with substantial gang problems. Both are coastal counties with agriculture as the primary economic factor followed by the hospitality industry. Both have substantial non-English speaking populations and both have prisons within their jurisdiction. Santa Barbara County had 704 fewer criminal cases filed in the most recent reported year than Monterey County. Monterey County has nine fewer Public Defender attorneys and does not receive any Prop. 172 funding. In FY 13/14, the Monterey County PD received \$2,842,430 less in appropriations than the Santa Barbara PD. (See chart *Criminal Filings Per Public Defender FTE – Fiscal year 2012/2013*, p11; *Public Defender Full Time Equivalent Positions - Fiscal Year 2010/2011-2013/2014*, p5.)

9. Monterey County disposed of less felony cases than the State average in both 30 and 45 day measures in large part due to Public Defender staffing limitations. (See chart *Criminal Case Processing Time – Fiscal Year 2012/2013*, p17.)

10. Monterey County has the highest ratio of line attorney and investigator staff to managers and supervisors among benchmark counties. (Public Defender Management Review, Harvey Rose Associates, LLC, Sonoma County Board of Supervisors, Agenda Item No. 32, Oct. 23, 2012, p8.)

RECOMMENDATIONS

An agreed upon methodology should be established to ensure that the PD's budgeting, staff, resources and office needs can be predictably allocated based upon facts and professional requirements. Both data and standards are addressed in this document.

There have been various methodologies for funding that have been advocated and utilized in various jurisdictions:

- The most realistic and achievable formula would be for the Public Defender's Office to maintain a legal staff sufficient to ensure that the average caseload for this county's deputy public defenders does not exceed the average caseload for deputy public defenders in Monterey County's benchmark counties. Thus, based on FY 2012/2013 data, this formula would call for 36.22 deputy public defender attorney FTEs, an increase of nine (9) lawyers from current staffing levels.¹ Monterey County deputy public defenders currently have the highest caseload among all benchmark PD Offices. Because of the impoverished socio-economic and cultural issues of the County, the PD bears an especially heavy burden of appointments.
- Another potential formula directs that the percentage of funding for the defense shall equate to the share of cases that are filed which it represents. The *California Commission on the Fair Administration of Justice*, chaired by former Attorney General John Van De Kamp, and including elected District Attorneys, Public Defenders, Academics, Police Chiefs and current Governor Jerry Brown acknowledged that Institutional Public Defenders generally handle 80% of the State's Felony filings. Under this formula, it would be logical to allocate 80% of the funds used to prosecute cases in Monterey County, to the indigent defense agencies. This formula would account for a defense appropriation of roughly \$15,000,000. This would be difficult to achieve since virtually all defense costs are derived from the County's General Fund. It would then be left to the PD and the ADO to devise a specific budget.
- Finally, Monterey County could adopt the caseload standards of the National Advisory Commission as a means of determining the appropriate staffing levels for the Office of the Public Defender. (National Legal Aid and Defender Association, (1973) *National Advisory Commission on Criminal Justice Standards and Goals: The Defense.*)

¹ The average caseload per deputy public defender FTE among the benchmark counties in Fiscal Year 2012/2013 was 418 cases per attorney FTE while the average caseload of Monterey County deputy public defenders was 560 cases per attorney FTE. (See chart *Criminal Filings Per Public Defender FTE – Fiscal year 2012/2013*, p11.)

According to the N.A.C., “the caseload of a public defender office should not exceed the following:

- [a] Felonies per attorney per year: not more than 150;
- [b] Misdemeanors (excluding traffic²) per attorney per year: not more than 400;
- [c] Juvenile Court cases per attorney per year: not more than 200;
- [d] Mental Health Act cases per attorney per year: not more than 200; and
- [e] Appeals per attorney per year: not more than 25.”

Applying these standards according to case filing data from Fiscal Year 2012/2013, the Office of the Public Defender would have required 20.68 felony Deputy Public Defenders, 13.39 non-traffic misdemeanor Deputy Public Defenders, and 16.7 traffic-misdemeanor Deputy Public Defenders.³ Thus, for Fiscal Year 2012/2013, in order to be in compliance with *maximum* caseload standards established by the N.A.C., the Office of the Public Defender would have required a minimum of 50.77 Deputy Public Defender Attorney FTEs.⁴

Editor’s Note

This study and the methodologies employed focus exclusively on the Public Defender’s Office and the defense services provided in benchmark counties. This was done at the request and direction of the County Administrator’s and Budget Director’s Offices. However, the *National Center for State Courts* has taken a different view. An interesting and valuable resource is available to document the changes and impacts of time and growth in the Monterey County criminal justice system. The National Center for State Courts issued a report on indigent defense services published in May of 1992. It was titled, “Indigent Defenders; Get the Job Done and Done Well”. Jurisdictions from around the nation were selected for in-depth study and were as

² “Traffic misdemeanors punishable by incarceration should be included in the misdemeanor case limit number; traffic misdemeanors not punishable by incarceration would not be counted.” (American Council of Chief Defenders, *American Council of Chief Defenders Statement on Caseloads and Workloads*.) In California, the right to counsel attaches where an individual is charged with a misdemeanor, regardless of whether the offense is traffic related or is punishable by incarceration.

³ In Fiscal Year 2012/2013, there were 3,103 felonies, 5,358 non-traffic misdemeanors, and 6,681 traffic misdemeanors filed in Monterey County. (Judicial Council of California, Table 7a, p112, *2014 Court Statistics Report: Statewide Caseload Trends*.)

⁴ This is the case notwithstanding the fact that there is reason to doubt whether “[d]efense lawyers, even if they have entirely adequate support services, including investigators, social workers, and paralegals, can effectively defend this many different clients over a twelve-month period and still furnish genuine quality representation.” (Norman Lefstein, (2011) *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, ABA Standing Committee on Legal Aid and Indigent Defendants.)

varied as Detroit, Seattle, Denver, Norfolk, Globe, Rhode Island, Oxford, Miss. and our own Monterey County. Ironically, both Dean D. Flippo and Michael Lawrence participated and were specifically acknowledged for their contributions. The National Center for State Courts felt that it was appropriate and relevant to compare the resources of the prosecutor and the public defender. "The extent of resource parity says much about whether indigent defenders are on equal footing with the prosecution and whether the indigent defenders claims to real professionalism are recognized and materially supported... A potentially fruitful way to examine the cost of indigent defense is to compare the degree of parity between indigent defenders and prosecutors."

Attorney staff size was almost identical between prosecutor's and defender's offices in Monterey County and other jurisdictions studied. In 1988 there were twelve (12) felony prosecutors and ten (10) felony defenders in Monterey County. There were six (6) prosecutor investigators and five (5) defender investigators. Twenty six years later the ratios have staggeringly changed. In 2014, the Public Defender's Office has seven (7) investigator positions although it has been over a year since all positions have been filled. "Funding for on- staff investigators was one investigator for every two or three attorneys...This statistic is expected, however, because the police department(s) will do the majority of the prosecutor's investigative work."

"Attorney staff size is almost identical among the three sets of prosecutor and public defender offices in this study... Public Defender Offices, however, tend to have slightly lower levels of administrative and clerical support. This pattern suggests that Public Defender Offices are allocating their budgets to achieve parity at the attorney level both in numbers and compensation".

The National Center for State Courts and the participants of the in- depth study understood and acknowledged the relationship between staffing and resources of the prosecution and defense offices. Updated data is available upon request.

METHODOLOGY

The information contained within, comes from a variety of public and accessible sources. It is designed to present a fact based, transparent and verifiable benchmark study with other similarly situated counties. The actual source materials are included as attachments.

CASE FILINGS

Case filings for several years are obtained from the Judicial Council of California in its annually published *Statewide Caseload Trends*. The Judicial Council is an arm of the Supreme Court which is mandated both constitutionally and statutorily to produce such reports. Cases of all types in any of the Courts in California are recorded and tabulated according to precise regulations issued by the Judicial Council. This process ensures that all counties count and report cases using the same methodology. This enables comparative review between counties, and over the course of time. Relevant source materials are attached to this report for easy access and review. The report of all of the California courts is acknowledged to be the key source document provided by the Courts to the Governor, Legislature, Judiciary and ultimately the people, about its work.

FULL TIME POSITIONS

Full time equivalent positions are derived directly from the published Annual Budget Books of the benchmark counties. These source documents are also attached to this report for review and verification. This method of reporting positions enables the Board to compare PD Offices staffing levels in all of the available benchmark counties. Figures for both attorneys and investigators are included since both are required for competent and effective representation.

Institutional PD offices are defined as internal, non-contracted legal services. The majority of California counties have institutional PD Offices. This has repeatedly been found to provide the most professional combination of competency of representation and cost efficiency. Counties such as Riverside and San Diego which at one time abandoned their institutional PD Offices for the lure of cost savings have returned to reform their institutional PD Offices upon reaching the realization that the PD system is most efficient in meeting the Constitutional mandate for representation and the competing pressure for financial efficiency. Counties which meet their constitutional mandates in other manners are noted with appropriate explanations.

Many of the Benchmark Counties allocate a portion of their Prop. 172 Public Safety Tax revenue to their PD's Office. This significantly reduces the pressure on the General Fund of the county for revenue. (Monterey County does not share these revenues with the PD). This can be important to a county in terms of demands on its general fund.

It is also significant to understand that PD Offices are wholly dependent on their counties for financial support whereas other criminal justice agencies receive substantial funding from

state and federal sources. However, from a defendant's and the PD's perspective, the source of law enforcement's funding is irrelevant and defense activities must be undertaken regardless of who is funding the opposition.

CONCLUSION

Monterey County is justifiably proud of its well-earned reputation for providing quality legal representation to the poor through its public defender programs. Continuing this tradition will require careful planning and thoughtful management of resources through a dramatic transition which is occurring in the criminal justice system. The very real and daily burdens which the PD is required to meet should be known to and understood by those who determine funding allocations. The reality caused by growth in other parts of the criminal justice system should be acknowledged for its impact on the Public Defenders staff. The balance of checks has been knocked askew by allowing inequitable resource allocation to impact the quality of justice. Facts and data contained in this report provide the evidence which will be of value to policy makers in returning balance and equity.