



Yolo County Public Defender
Fighting for Justice

COUNTY OF YOLO

Public Defender's Office
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Jill Perez, Yolo County Assistant Chief Administrative Officer
Chad Rinde, Yolo County Chief Financial Officer

Dear Jill and Chad,

Thank you for meeting with me on January 12, 2023, to discuss the application of independent indigent defense workload studies to the current staffing requirements of the Yolo County Public Defender's Office. Per your request, please find herein my staffing proposal and the rationale to support it.

Proposal to phase-in staff positions

The proposal is to immediately allocate funding to the Yolo County Public Defender's Office to hire 2 new attorneys and 1 new support staff. Then, allocate funding in FY 2023-24 sufficient to add 2 more attorney and 2 more support staff positions. This would add a total of 4 attorneys and 3 support staff before the end of FY 2023-24. Subsequent additions to public defender staff will be assessed on an on-going basis. If it is not possible to immediately allocate positions, then I would request that we add 4 attorneys and 3 support staff in FY 2023-24.

Public Defender services are Constitutionally guaranteed (and an unfunded mandate)

According to the United States Supreme Court, the Sixth Amendment of the U.S. Constitution guarantees the right to the assistance of counsel for defendants in criminal matters. (See *Gideon v. Wainwright* (1963) 372 U.S. 335; *Argersinger v. Hamlin* (1972) 407 U.S. 25.) Furthermore, the duties of a public defender are codified in state statute. (See CA Government Code § 27706.) The level of legal defense services is also defined by the United State Supreme Court, which stated that the Sixth Amendment right to counsel means the right to "reasonably effective assistance of counsel pursuant to prevailing professional norms of practice." (*Strickland v. Washington* (1984) 466 U.S. 668, 688.)

Proper funding is essential

Historically, public defender offices have consistently been under resourced. The California Legislative Analyst's Office (LAO) recently studied this issue and confirmed that the amount spent statewide on district attorney offices is typically twice what is spent on public defender offices.ⁱ The report additionally found that "over the past decade, spending on district attorney offices has been consistently higher – and growing at a faster rate – than spending on indigent defense."ⁱⁱ

Recent legal challenges and publicity

Organizations such as the American Civil Liberties Union (ACLU) have been taking notice and taking action. The ACLU website prominently states that “[a]ccess to an attorney means little if they lack the time, resources, or skills to be an effective advocate.”ⁱⁱⁱ

For example, based on the chronic underfunding of the Fresno County Public Defender’s Office, in 2015 the ACLU filed a lawsuit against Fresno County and the State.^{iv} The lawsuit listed nine ways in which Fresno County’s indigent defense system failed to comply with minimal constitutional and statutory requirements to provide effective assistance of counsel to indigent persons. The nine were: (1) excessive caseloads, (2) deprivation of conflict-free and independent representation, (3) lack of continuous representation, (4) inadequate attorney-client contact and confidential communication, (5) insufficient or no training for attorneys, (6) inadequate factual investigation from loss of necessary investigator staffing, (7) grossly deficient number of support staff, (8) lack of parity with prosecutorial counterparts, and (9) failure to monitor and supervise Fresno County’s public defense system to ensure compliance with minimal statutory constitutional and statutory requirements. The lawsuit settled. Not only was additional funding provided to the Fresno County office, but funding was made available to other small to mid-sized counties across California in the form of the Indigent Defense Grant. Currently, the Yolo County Public Defender’s Office is a beneficiary of Indigent Defense Grant funds (which expire June 2023).^v

The ACLU’s interest in California’s indigent defense models is not limited to Fresno County. For example, in 2021, the ACLU began its campaign to ensure indigent individuals in Lassen County were afforded appropriate representation after deficits in funding and staffing were realized.^{vi}

Within the past year, over half of the Los Angeles County’s active public defenders asked the office to stop accepting new cases because of excessive workloads.^{vii} The Los Angeles Public Defender Union – Local 48 has also been vocal about the need to control excessive workloads, stating on one social media post that “[t]he single most existential threat to public defender offices around the country, including ours, is excessive workloads.”^{viii} While not as vocal, other offices are experiencing the same issues.

One news article dated January 4, 2023, entitled *The Relentless Mental Toll of Public Defense* described the longstanding culture of public defender offices as one that “prized tireless, almost martyr-like dedication to the work” and acknowledging that such a culture no longer serves the interests of staff or clients, pointing out that “[c]hronic underfunding compounds that toll....”^{ix}

The Yolo County Public Defender’s Office is disproportionately funded

According to Yolo County’s 2022-23 budget book, the Yolo County District Attorney’s annual budget is \$26,843,336 (including \$3.4 million for Consumer Protection). The Yolo County Public Defender’s annual budget is \$9,942,159. The Yolo Conflict Panel’s budget is \$941,920. The combined budget of the local indigent defense providers is therefore \$10,884,079.^x According to this same county document, in 2022-23, the Yolo District Attorney’s Office has 122 funded staff members; the Yolo Public Defender’s Office has 45.^{xi}

Since COVID began, eight attorneys have left the Yolo County Public Defender's Office, representing a departure rate that is unheard of in the almost 25-years I have worked for the office. Five of the eight retired - two earlier than expected - and one attorney left the profession altogether citing the impact of the work on their mental health.

Addressing systemic issues such as underfunding is of paramount importance.

Workload/caseload standards provide an objective means to evaluate required staffing levels

Multiple states have conducted indigent defense workload studies to assess necessary staffing levels. These states include: Oregon (2022), New Mexico (2022), Utah (2021), Indiana (2020), North Carolina (2019), Michigan (2019), Rhode Island (2017), Colorado (2017), Louisiana (2017), Texas (2015), Missouri (2014), Virginia (2010).

These indigent defense workload studies follow the same methodology, which is the use of weighted time-study methodologies that establish maximum caseload standards based on the amount of time attorneys should spend on case tasks, the number of work hours available to complete those tasks, and assumptions about attorney-to-staff ratios. These studies incorporate minimum quality standards that accord with prevailing professional norms of practice. Prevailing professional norms of practice include professional standards like those developed by the American Bar Association Standards for Criminal Justice for the Defense Function. The workload study results are used to determine appropriate staffing levels and to justify budget requests.

In 2021, AB 625 directed that California undertake a workload study and appropriated funds to complete it, with an expected completion date in 2024. The RFP to identify the group that will design and implement the study has not yet been released.

In the absence of a California study, the Kern County Public Defender Workload Committee issued a *Workload Standards: Report, Analysis and Policy Recommendations* which analyzed existing workload studies of multiple states and then mapped the data onto the analogous California case types to reach a reliable case weight for each California case type. The resulting California caseload standards per attorney can be found at pages 5-6 of the attached report. The required level of non-attorney staffing is expressed as a ratio between attorneys and non-attorneys. The accepted ratio, and the one embraced by the Kern report, is that there should be 3 support staff members for every 4 attorneys. (See pages 6-7.) If there is a lack of adequate support staff, then attorneys must handle fewer cases.

Workload study results applied to Yolo County Public Defender's Office

Applying the Kern report findings to the Yolo County Public Defender's Office 2022 caseload revealed that the public defender's office needs at least* 8 more attorneys to handle the adult felony and misdemeanor caseload assigned to it. Additionally, at least* 6 non-attorney support staff are required to support the added attorneys. Support staff include administrative staff, secretaries, investigators, paralegals, mitigation specialists (social workers), client advocates, and research personnel.

* The words “at least” are used because: (1) the local analysis has several underestimate factors built-in, (2) the local analysis has yet to analyze case types other than adult felony and misdemeanor, to include delinquency, violation of probation, writ, and mental health commitments, and (3) the Yolo County Public Defender’s Office has historically been and currently is out of compliance with the recommended support staff ratio of 4 attorneys to 3 support staff (the current operating ratio is closer to 4:2).

Emerging issues

Lastly, more new laws and the loss of grants will add to the under resourcing of the office. For example, Community Assistance, Recovery and Empowerment (CARE) Court is set to start by December 2024, with insufficient funding for legal representation allocated by the state. The Indigent Defense Grant (mentioned earlier and made possible by the ACLU lawsuit in Fresno County) expires in June 2023 and the current state budget threatens to cancel year-3 of the three-year Public Defense Pilot Program, which began in March 2022.

Addressing this systemic issue really must begin now. Thank you for your time and attention to this important matter. I sincerely appreciate your responsiveness.



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ⁱ *Assessing the Provision of Indigent Defense*, An LAO Report, dated September 2022, at page 9, <https://lao.ca.gov/Publications/Report/4623>.

ⁱⁱ LAO report, pages 9, 14.

ⁱⁱⁱ See <https://www.aclu.org/issues/criminal-law-reform/public-defense-reform/indigent-defense>.

^{iv} See <https://www.aclu.org/press-releases/aclu-sues-over-failing-public-defense-system-fresno-county-california>.

^v See https://www.bscc.ca.gov/s_indigentdefensegrant/.

^{vi} See <https://www.lassennews.com/aclu-urges-county-district-attorney-to-resolve-public-defender-issues-2/>.

^{vii} See <https://laist.com/news/criminal-justice/public-defenders-workload-cases>.

^{viii} See Facebook entry, January 8, 2023 at <https://www.facebook.com/LApubdefunion/>.

^{ix} See Slate article at <https://slate.com/technology/2023/01/public-defender-mental-health-trauma.html>.

^x See County of Yolo Recommended Budget 2022-23 at pages 138, 162 and 48, respectively at <https://www.yolocounty.org/home/showpublisheddocument/73651/637902117252600000>.

^{xi} See County of Yolo Recommended Budget 2022-23 at pages 138 and 162 (above).