

Contracted to Fail:

*How Flat-Fee Contracts Undermine
the Right to Counsel in California*

**THE WREN COLLECTIVE | ACLU | ACLU OF NORTHERN
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UC BERKELEY LAW CRIMINAL LAW & JUSTICE CENTER**

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I. Introduction

A. California's Public Defense Crisis

California was once the nation's leader in public defense. In 1913, Clara Foltz, the first woman admitted to California's state bar, pioneered the nation's first public defender's office in Los Angeles. Long before the U.S. Supreme Court ruled that the state must provide a lawyer to poor people charged with crimes, many counties in California already did so.

Yet today, after years of neglect by the state, California is in the midst of a decades-long public defense crisis. California is one of four states that has never provided state-wide trial-level defense funding and oversight,¹ leaving the system at the whims of county politics and budgets. There are no uniform standards that trial-level public defense providers must meet to serve their clients. While the state is home to several counties with nationally-recognized public defender's offices, many of those offices face critical funding shortages and high caseloads, in part due to the lack of state assistance.² California spends roughly 70 to 80% more on prosecution than public defense.³

An under-resourced indigent defense system has far-reaching consequences. Everyone involved, from people accused of crimes to judges to prosecutors to victims of crime, wait longer for cases to reach a resolution when defense lawyers are overwhelmed or unprepared. The resulting rushed lawyering means more of those cases must be reopened years later, often in costly and lengthy court proceedings, sometimes because innocent people are locked away from their families and communities for decades. Black and brown Californians are disproportionately harmed because they are systematically detained, arrested, charged, and imprisoned at higher rates than white Californians.⁴ California's recent adoption of Proposition 36, which increases sentences for many crimes, will also place a greater burden on its public defense system.

That system is in need of many reforms, including a significant increase in state funding and support. But this report focuses on one particular area that has resulted from a lack of state funding and standards: Flat-Fee Contracts.

Free from any oversight, 24 counties have opted for sparsely-regulated, flat-fee contracts with for-profit private attorneys or law firms to represent people accused of crimes. These flat-fee contracts have allowed deeply flawed representation to flourish.

Flat-fee contracts give private attorneys a predetermined lump sum to handle all or a set proportion of a county's cases without regard to actual time or cost. Frequently, those same attorneys also represent paying clients. This system creates an inherent conflict where lawyers have a financial incentive to spend as little time on each appointed case as possible, freeing up time for private casework. It is unsurprising then, that flat-fee contracts are directly

24 counties

have opted for sparsely-regulated, flat-fee contracts with for-profit private attorneys or law firms to represent people accused of crimes.

connected to worse representation and higher incarceration rates by a variety of empirical studies, and have been sharply criticized for decades.¹ **The State Bar of California even called for their abolition 35 years ago.**⁵

In California, these contracts universally fail to follow national standards that limit the number of cases lawyers can handle at a time. They frequently do not cover basic costs of defending cases such as investigation, and very few contain any oversight or supervision requirements for attorneys.

8 of 10 counties

with the highest incarceration rates in the state rely on flat-fee contracts, including all of the top five.

Eight of the ten counties with the highest incarceration rates in the state rely on flat-fee contracts, including all of the top five.⁶ Those counties collectively have *double* the statewide disparity between prosecution and public defense funding—spending 159% more on the former.⁷

Although California needs to make major improvements to its indigent defense system, the most overdue and pressing starting point is to ban flat-fee contracts. In this report, we explore why many California counties rely on flat-fee contracts, analyze recent contracts in counties that do not have a dedicated public defender’s office, and explain how contract systems result in deeply problematic outcomes. Consistent with the longstanding recommendations of state and national experts, we recommend that these antiquated contracts finally be banned.

B. How California Structures Public Defense

Under the Supreme Court’s decision in *Gideon v. Wainwright*, when someone is arrested and charged with a crime, the state must provide a lawyer at no cost if that person cannot afford an attorney.⁸ Nationwide, about 80% of people charged with a crime meet that criteria and are appointed what is commonly known as a “public defender.”⁹ The manner in which governments provide those lawyers in criminal cases, from the amount of money they are paid, to how these lawyers are appointed, varies extensively between and within states.

On one end of the spectrum, institutional public defense offices have full-time lawyers who work exclusively on indigent defense. These offices often do not just have trial-level defense lawyers, but also may include immigration lawyers who can advise on the threat of deportation if a person takes a plea or elects to go to trial. They may include social workers who can help clients find housing or drug treatment, which may lead to a more favorable sentence. And they include investigators, who interview witnesses and gather evidence to help the defense challenge the government’s case. Institutional offices often also have structured supervision, training, and oversight of lawyers.

¹ For a summary of the research, see Section IV.

At the other end of the spectrum, the court appoints a private, for-profit attorney to take on the case for a fee that the government pays. Those attorneys work independently, without any regular oversight or supervision. Most contracts require that if the attorney wants to use investigators or social workers, the attorney must pay for them out of the flat fee, or seek additional approval for funding from a judge who is likewise watching the county's budget. Flat-fee contractors are almost always free to take on private cases, which can lead to or exacerbate unmanageable caseloads. The rest of this report discusses flat-fee models and the consequences of California's reliance on them.

II. Flat-Fee Contracts

In California, flat-fee contracts for private, for-profit lawyers are typically structured as a lump sum paid monthly or annually to each individual or firm, no matter how much time they spend on a case, or how many cases they are assigned. While there are committed and capable lawyers in all indigent defense systems, the structure of these contracts sets up attorneys and clients for an inevitable conflict, because lawyers' profits are directly tied to how little time they spend on each case.¹⁰ The more work the case requires, the less lucrative the flat-fee and the less time attorneys have to spend on paying clients.

To put it simply, whether an attorney spends five minutes explaining a guilty plea to a client, or dozens of hours researching and litigating a case, they are paid the same amount.

There are other problems with this system, discussed in greater detail later in this report. In many of California's flat-fee counties, the lump payments to lawyers must cover all costs, including investigators, social workers, and other types of legal support, which naturally discourages for-profit attorneys or law firms from seeking these necessary resources. If an investigation of a case requires talking to multiple witnesses and traveling to collect video footage, it could cost hundreds or thousands of dollars and flat-fee attorneys may make little to no money for that case if they hire an investigator.ⁱⁱ To put it simply, whether an attorney spends five minutes explaining a guilty plea to a client, or dozens of hours researching and litigating a case, they are paid the same amount.

All flat-fee contracts have a financial conflict, but some are worse than others. In some places, private contractors attempt to undercut each other in a bidding war because they know that the county will award the contract to the lowest bidder. Attorneys working for the least amount of money under a "low-bid" contract system, have long been tied to subpar representation.¹¹

There is, therefore, an inherent conflict between flat-fee contracts and quality representation. Across the country, other states have opted to take

ⁱⁱ *Infra* endnote 5.

action. They have rewritten ethical rules for attorneys to ban this practice or otherwise abolished flat-fee agreements, and several courts have recognized the deeply problematic conflict built-in to these contracts.¹² South Dakota, Nevada, Michigan, and Washington, have banned them outright in recent years.¹³ They continue to exist in California, with 24 counties using them as their primary public defense system.¹⁴

Example 1:

A flat fee contractor is assigned to a homicide case. If the specific case requires hundreds of hours of litigation preparation and consultation with various experts, but the lawyer is paid the same whether they do that work or merely the bare minimum on the case, it creates a strong financial disincentive to serve the client's best interests.

Example 2:

A lawyer is assigned a client on a low-level case who is being jailed with a bond. The next court date is set for two months away. The client will likely be offered a plea to "time-served" and immediate release at that time. However, the client has a serious substance use disorder and a social worker could arrange for them to be released directly into treatment in just a few weeks, which could convince the prosecutor to reduce the charge. Yet, doing so would require the lawyer to spend money out of a fixed fee, creating a financial disincentive.

These contracts suffer from other significant and predictable problems. They contain virtually no limits on caseloads for individual attorneys, nor do they require systems to monitor attorney workloads. They often fail to provide funding for necessary legal support services such as investigation and social work. There is hardly any independent oversight of attorneys functioning in these systems, and attorneys often receive no supervision from more experienced lawyers, despite handling cases where their clients' lives hang in the balance.

Research shows that these issues have real-life consequences, as flat-fee contractors perform worse than full-time public defenders.

In the next section, we go through each of these problems in-depth.

III. California’s Flat-Fee Contracts Show a Shocking Lack of Safeguards and Standardsⁱⁱⁱ

We reviewed contracts from the 24 counties that use flat-fee agreements as their primary means of providing public defense. For a detailed review of how the contracts were gathered and how we reviewed each metric discussed below, see [Appendix A](#).

A. Flat-Fee Contracts Do Not Limit Workload

Our review finds that **not a single county maintained any caseload cap in its flat-fee contracts**. This inevitably leads to attorneys having dangerously high caseloads. 25 years ago, the U.S. Department of Justice criticized the high caseloads of for-profit law firm contractors in California, pointing to one example where three lawyers were expected to **cover more than 5,000 cases in a year** [*over 11 times the existing national standards for felony cases*], by **“spend[ing] as little time as possible’ on each case.”**¹⁵ State and national experts have likewise documented the high caseloads of for-profit contract systems in California.¹⁶ And almost 20 years ago, the State Bar of California clearly recommended that counties institute caseload caps, warning that flat-fee contracts should not be used at all, absent “reliable statistical caseload data.”¹⁷

However, “reliable statistical caseload data” does not exist in California because the state does nothing to track county indigent defense performance metrics such as attorney caseload.¹⁸ Recent reviews of contract counties indicate that the extent of the issues with attorney workload cannot even be quantified because of the lack of reliable data that the State Bar called for in 2006.¹⁹ Over the last few decades, any time a reviewing entity did have access to county caseload data, the research revealed that lawyers had shockingly high numbers of clients.

Out of the 24 counties ...

Figure A



No counties had caseload limits.



Only 4 contracts included vague language about attorneys not maintaining “excessive” caseloads.

ⁱⁱⁱ Appendix A outlines the criteria used for evaluating the contracts as well as the process for obtaining them, details the metrics for our review, and links to the contracts used for analysis in this report.

Recently, California’s Office of the State Public Defender (“OSPD”) highlighted a for-profit contract county, Del Norte, where two out of the four contract attorneys **handled 245–305 felony cases at a time.**²⁰ **That is almost double the cap recommended by consensus national standards from the 1970s, and roughly five times the more recent revised standards for low-level felonies only,** published by the American Bar Association, the RAND Corporation, and the National Center for State Courts.^{iv}

And those standard caseload caps are for the *annual total* number of cases handled, not the number of cases open and currently pending all at once. In other words, an attorney with 305 open pending cases will take on many more cases throughout the year, as other cases resolve. 305 open cases could mean 500–600 cases, or more, were handled in a year. The current national standards for low-level felonies would require those contractors to handle 59 cases *per year* (this is assuming all of their felony cases are “low-level”).²¹ Even the outdated standards from the 1970s require cutting Del Norte County’s caseloads by more than half.²²

*One flat-fee contractor, in a 1999 deposition, “boasted that he pled 70% of his clients guilty at the first court appearance, after spending 30 seconds” on the case, in order to continue working in a system where lawyers handled thousands of cases a year.*²³

To make the absence of caseload caps worse, contract attorneys in 22 counties were permitted to take on additional, paying clients, which compete with the time those attorneys have to devote to defending the clients they are assigned by the courts. No counties had in their contracts an actual ban on private attorneys taking additional cases outside of their flat-fee agreements (although 1 does in practice) and 1 county limited attorneys to 5 private cases at a time.²⁴ In 22 counties, there is nothing stopping a lawyer who has 300 felony indigent defense cases under a contract, for example, from taking on another 100 paying clients.

Out of the 24 counties...

Figure B



No county, by the terms of its contracts, barred private flat-fee lawyers from taking other paying clients.



Only 7 included vague language that their contract work should be a “priority” or “preeminent,” while expressly allowing lawyers to take private paying clients.

^{iv} An annual caseload of 295 would be five times the national standard for *low level felonies only*, and over eight times the national standard for mid-level felonies, and more than fourteen times the national standards for higher level felonies—even when excluding life without parole cases. RAND Corp., *infra* endnote 15, at xii.

“Attorneys who have high caseloads, no supervision and are not paid sufficiently may spend less time than is needed on cases.”

As OSPD wrote about San Benito County, “attorneys who have high caseloads, no supervision and are not paid sufficiently may spend less time than is needed on cases because the more time they spend on their appointed cases, the less time they have for their retained clients.”²⁵

B. Flat-Fee Contracts Discourage Lawyers from Seeking Necessary Investigation and Expert Services

Most of the contracts we reviewed failed to provide money for necessary support services for legal cases. Part of an attorney’s core responsibilities are to access additional resources and specialized support services, referred to as “ancillary services,” when they are required for a competent defense. These include the use of investigators, expert witnesses, forensic analysts, mental health professionals, social workers or mitigation specialists, immigration counsel, and translators. According to the American Bar Association, these services are “essential components” of any public defense system, and investigator access has been a mandatory feature of public defense standards since the 1980s.²⁶ Contract lawyers themselves have long warned about a lack of resources for investigators in California.²⁷

A robust defense cannot happen without the availability of at least an investigator,²⁸ who can interview witnesses, locate surveillance footage, or track down vital records, amongst other things, all of which may be essential tasks to proving someone’s innocence and casting doubt on the government’s case. Even with infinite time, which they do not have, attorneys cannot conduct investigations on their own. Interviewing witnesses, gathering records, or even taking photographs of an important place in a case often means the person doing that work needs to be prepared to testify in that case, which lawyers cannot do.²⁹ Investigators are so important that 35 years ago, the State Bar recommended that any contracts for indigent defense must include “rapid access” to investigation.³⁰ Yet many of these contracts do not.

Indigent defense contract systems that lack separate funding for at least investigation create serious challenges. Without dedicated county funds, defense attorneys must either pay a significant portion of their fee for these essential services or, more likely, forgo them altogether.^v This creates a conflict of interest, where the attorney’s earnings are pitted against the client’s right to a thorough defense.³¹

^v For example, the hourly rate for defense investigators for conflict-panel attorneys in Los Angeles was \$58/hour in 2020. If an investigator takes a full 8-hour work day to locate and interview several witnesses and drive to multiple locations to collect surveillance footage, that would amount to \$464, excluding any travel costs, for only one case. Contractors who are handling hundreds of felonies, even if they only use an investigator on a small fraction, could easily end up paying thousands of dollars out of their contract fees. Superior Court of California, *County of Los Angeles, Private Investigator Panel Policies and Procedures: Adult Criminal*, at 1 (Sept. 2, 2020).

In 18 counties that use contract systems, there was no provision in the contract to fund investigator services without burdensome red tape. 7 of those counties provided funding, but only after attorneys sought a court order (a process that is always available under California law, regardless of whether it is in a specific contract).³² In a flat-fee arrangement where any additional time spent on a case reduces the profitability of the contract, time-consuming administrative hurdles such as drafting a motion and obtaining a court order, whether for an investigator or social worker, or even a vital expert witness, could discourage lawyers from seeking the assistance that their clients need. And, of course, judges may choose to deny those motions.

Even for the few flat-fee counties that provided funding, some counties nonetheless placed time-consuming barriers to accessing investigative services.³³ One example is a requirement that an attorney seek separate approval from the county with a 10-day processing period.³⁴ This time delay can have a drastic impact on the outcome of a case—witnesses with vital information are quickly lost if not contacted right after an arrest and many video surveillance systems auto-delete in mere days. Avoiding such risks is precisely why national standards for defense investigation require that “investigation should be conducted as promptly as possible.”³⁵

Along those lines, even when funds are available, the lack of on-staff investigators at-the-ready creates a barrier in and of itself. A study of indigent defense in Harris County, Texas, found that contract attorneys used less than one-tenth of the investigative resources as public defenders.³⁶

Out of the 24 counties...

Figure C



Only 6 provided funds for investigators in their contracts.*

Figure D



7 required a court order for investigative funds.

* Of the 6 counties that did provide investigation funds, 1 required an approval by the Executive Director of the program and 1 required a 10-day waiting period for county approval prior to court approval, but is counted in our metrics as providing investigation funding because it allowed for 5 hours of work to be done prior to that process.

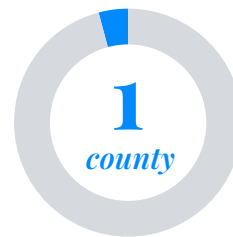
Furthermore, in 23 of the 24 counties, contracts did not provide any resources for social workers or mitigation specialists—professionals trained to collect evidence in favor of a reduced sentence.^{vi} Social workers and mitigation specialists are critical in gathering and presenting information about a client’s background, including family history, mental health, trauma, and other factors, which aid in plea negotiations and sentencing.³⁷ They are also essential to finding mental health or substance use disorder treatment services for clients, which defense attorneys can present to the court or prosecutor as an alternative to incarceration. Research shows that when public defense is well-resourced to address clients’ frequent needs for these types of services, it makes communities safer by helping get people on the right track, breaking the cycle of arrest and incarceration.³⁸ A review by OSPD found that only two contract counties in California use social workers, as opposed to 82% of counties with a full-time public defender’s office.³⁹

Out of the 24 counties...

Figure E



Only 2 provided for a social worker (with only 1 providing explicitly in the contract).



Only 1 provided ancillary service funds that theoretically could apply to a social worker or mitigation specialist, although they were not mentioned.

There are some outliers here. Counties like Placer and San Luis Obispo, for example, appear to provide more robust funding for investigative and ancillary services. But these are exceptions to the rule.

1/2

Almost half of California court findings of attorney ineffectiveness involved poor investigation.

The consequences of the current system are serious: almost half of all California court determinations that an attorney was ineffective involved inadequate investigation.⁴⁰

Immigration counsel is also a vital service that many counties fail to provide. The U.S. Supreme Court held, almost 15 years ago, that immigrants charged with crimes must be advised about the clear immigration consequences related to their criminal case so that they can make an informed decision about whether to accept a plea or go to trial.⁴¹ 12 years later, a study found that

^{vi} Placer county does not require a social worker in its contract but does have a full-time social worker on staff.

14 of the 24 contract counties we evaluated in this report still did not have an identifiable method for providing that constitutionally-required immigration advice to people facing criminal charges that could jeopardize their status in this country.⁴² In the second Trump administration, the federal government is exerting the maximum pressure on local law enforcement and the criminal legal system to sweep California immigrants away from their families and communities.⁴³ A failing public defense system where basic defense services are not even provided is directly tied to the federal government's ability to deport Californians and break apart families.

C. Flat-Fee Contracts Fail to Require Meaningful Attorney Oversight

25 years ago, the U.S. Department of Justice called for enforceable standards for contract defense attorneys, including a requirement that all lawyers receive some form of supervision and independent oversight.⁴⁴ Supervision tracks whether attorneys are meeting the basic requirements of adequate representation in their day-to-day practice. Independent oversight means that someone outside of the county's public defense system is monitoring the quality of its representation and holding its lawyers to established standards.

Important standards include, for example, requirements that lawyers regularly see their clients in jail, prepare for court, file the necessary legal motions for a particular case, or request necessary investigation services. Supervision and oversight ensure that lawyers are meeting those benchmarks. And if attorneys are not, those conducting the independent oversight can work to remediate the problem or ensure that the lawyers are no longer appointed to cases.

While many counties included brief, boilerplate, general practice standards, only 7 of the 24 counties we examined had provisions for independent oversight of contract lawyers. And only 4 counties' contracts provided for supervision requirements.

Out of the 24 counties...

Figure F



Only 7 mandated independent county oversight.

Figure G



Only 4 required some sort of attorney supervision process.

Indeed, only the Placer County contract demanded "a procedure for internal systematic supervision and evaluation of staff performance" that included the observations of supervising attorneys, judges, other defense attorneys, and clients.⁴⁵ Lake County tasked the contracting law firm with "monitor[ing] and tak[ing] corrective action" against underperforming attorneys, but the firm seemed to only be in charge of overseeing absences from court hearings and "unprofessional conduct."⁴⁶

One attorney contractor had 60 trials set over a 10-week period, in addition to 300 other pending cases.

Lake County, which has recently switched to an institutional defender model,⁴⁷ provided a cautionary tale of what can happen when a contract does not properly spell out both specific standards and the consequences for attorneys who do not meet them. Although the Lake County contract "contains numerous mechanisms by which the county can, if it chooses to do so, provide oversight," the county in practice declined to do so. Thus, Lake County attorneys went virtually unsupervised by their superiors or the county.⁴⁸ One attorney contractor had 60 trials set over a 10-week period, in addition to 300 other pending cases.⁴⁹

Absent supervision and meaningful oversight, contracts should at least include specific guidelines outlining the minimum requirements of representation. *But more than half of the flat-fee contracts we reviewed had no standards for when and how attorneys communicate with their clients after appointment.* Early client contact is essential to public defense.⁵⁰ Access to an attorney soon after arrest leads to much higher rates of pre-trial release,⁵¹ which in turn allows people to keep their jobs, avoid losing their children, and receive essential medical care, and saves the taxpayers considerable money in needless incarceration of individuals who would have eventually been released anyway.⁵² It also impacts case outcomes, because pre-trial incarceration has a well-known coercive effect where people plead guilty to get out of jail, including those who are innocent.⁵³

Only 10 out of 24 counties provided any requirement for prompt and reasonable client communication. And only 7 counties gave attorneys real deadlines for when they should meet with clients after appointment.

Out of the 24 counties...

Figure H



Only 10 had some standard governing attorneys' first communication with incarcerated clients.

Figure I



Only 7 gave an actual deadline for that communication.

IV. California's Indigent Defense Crisis Causes Real Harm

California's reliance on flat-fee contracts negatively impacts the quality of its indigent defense system. The human and financial costs of flat-fee contracts are immense, both for those accused of crimes and for the taxpayers who foot the bill for a broken system. People stay in jail longer, and needlessly, in flat-fee systems. Eight of the ten California counties with the highest incarceration rates rely on these contracts, including all of the top five.⁵⁴ The harm is particularly acute to Black and brown Californians who are consistently detained, arrested, and charged at higher rates than white residents, and therefore are also disproportionately impacted when a county fails to provide effective counsel.⁵⁵

Empirical studies have consistently shown that **flat-fee contractors perform worse than full-time public defenders:**

- Two separate wide-ranging studies using data from dozens of state court jurisdictions around the country found that **people represented by contract lawyers were more likely to be convicted**, for more serious offenses, and serve more time in prison, than those represented by public defenders.⁵⁶
- A study of juvenile court in Los Angeles found that, in comparison to public defenders, flat-fee contract lawyers were "consistently associated" with higher rates of delinquency (a finding of guilt in juvenile court), for more serious charges, with higher sentences—and were **more than twice as likely to have their clients transferred to adult court.**⁵⁷ **Public defenders were also far more likely to request pretrial release.**⁵⁸
- A study of homicide cases in Philadelphia found that clients represented by flat-fee contract lawyers had a **62% higher rate of receiving a life sentence** and overall **sentences that were 24% higher** than those represented by full-time public defenders.⁵⁹
- In Mississippi, clients represented by contract lawyers had **far lower rates of pretrial release** and those same lawyers conducted far less advocacy at sentencing than public defenders.⁶⁰
- When South Carolina and parts of North Carolina switched to flat-fee systems, **attorneys spent significantly less time on their cases.**⁶¹
- Studies from Utah and Maine showed that flat-fee lawyers spent far too little time on each case **and a report on Indiana's system found that they seldom, if ever, investigated their cases.**⁶²

The limited data available in California indicates that the flat-fee contract counties follow the same pattern as everywhere else in the country. In San Benito County, attorneys filed standard legal motions in just 0.6% of felony cases, according to a recent study by OSPD.⁶³ In Kings County, which has the highest incarceration rate in the state, attorneys filed *nearly seven times fewer* motions in felony cases than the neighboring Tulare County, with a similar crime rate and an institutional public defender's office.⁶⁴

53%

In San Benito County, 53 percent of clients reported that they spoke with their attorneys for less than five minutes during the entire case.

These motions allow the defense to explore whether the state violated the constitution during its investigation, and to challenge the evidence against the accused—they are a commonplace, essential tool in litigating criminal cases.

In Kings County, contract attorneys rarely visited their clients in jail.⁶⁵ In San Benito County, 53 percent of clients reported that they spoke with their attorneys for less than five minutes during the entire case.⁶⁶

These issues are not new. A wide-ranging study, released almost 15 years ago, found a stunning lack of investigation resources, particularly in flat-fee contract counties.⁶⁷ In federal litigation in the late '90s, one California county's contractor boasted about spending 30 seconds handling each case before a guilty plea.⁶⁸ In another California county, the "low bid" system allowed a firm to undercut a longstanding, competent provider by offering services on the cheap, with caseloads that are too high for competent representation.⁶⁹ One flat-fee firm, known for decades as the "Wal-Mart" of public defense for its use of astronomically high caseloads, still operates in five California counties.⁷⁰

This failed system has a real human toll. It affects crime victims, because poor lawyering can slow down cases, and lead to judges reversing convictions and re-opening cases years later. It disproportionately impacts Black and brown Californians.⁷¹ It harms families and communities who lose loved ones to needless incarceration. It hurts taxpayers who pay for that needless incarceration from prolonged cases.

California's carceral system is one of the most expensive, spending nearly \$133,000 per person in state prison per year, a 90% increase over the last decade, and nearly double the price of undergraduate tuition at the University of Southern California.⁷² With a county jail and state prison population of about 150,000 people, California is spending almost \$23 billion a year on its carceral system.⁷³

The poorer outcomes of flat-fee systems, be it lengthier sentences or a greater likelihood of detention, result in more people incarcerated for longer periods of time, and more taxpayer money spent needlessly.

Subpar attorney performance costs even more when mistakes need to be corrected in post-conviction (litigation that occurs after an appeal). In California, 74% of claims that defense counsel was ineffective assert that the attorney's alleged failures "went to the heart of guilt or innocence."⁷⁴ Nationally, wrongful convictions have cost taxpayers nearly four billion dollars⁷⁵ and innocent people nearly 33,000 years behind bars.⁷⁶

California has ignored decades of dire warnings about its defense system:

1981

The California Supreme Court overturns a conviction based on the conflict of interest created by a flat-fee contract⁷⁷

1984

The National Legal Aid & Defender Association (“NLADA”) publishes standards for contract systems, including many of the same provisions discussed in this report that California contract counties still lack⁷⁸

1985

The American Bar Association (“ABA”) House of Delegates excoriates San Diego’s flat-fee contract system as “one of the most compelling cases against low-bid contracts”⁷⁹

- San Diego, now home to a respected institutional defender’s office, ran the largest contract system in the country in the 1980s, which was embroiled in controversy, leading to lawsuits and harsh criticism from the State Bar⁸⁰

1989

NLADA publishes national standards for contractors that require hourly compensation instead of flat fees⁸¹

1990

The State Bar of California publishes guidelines that call for the abolition of flat fees for indigent defense⁸²

1992

The ABA’s updated standards say that flat-fee contracts “have conspicuously failed to provide quality representation” and should not be used⁸³

2000

The U.S. Department of Justice (“DOJ”) publishes a report with warnings about contract systems, in particular the use of low-bid, flat-fee contracts in California⁸⁴

2004

The ABA publishes a nationwide review of public defense and calls out California for spending less than \$61 on defense for every \$100 on prosecution, as well as a lack of state standards⁸⁵

2006

The State Bar of California publishes guidelines for counties that warn against the use of flat-fee contracts⁸⁶

2008

The California Commission on the Fair Administration of Justice publishes its final report, rebuking flat-fee contracts⁸⁷

A statewide survey conducted for the Commission shows a shocking lack of resources in flat-fee contract counties⁸⁸

2013

The Sixth Amendment Center admonishes California’s use of a “notorious” flat-fee law firm that still operates today in 5 separate counties⁸⁹

2020–24

Separate studies of flat-fee systems **find serious issues in 5 counties:** Lake, Santa Cruz, Del Norte, Kings, San Benito⁹⁰

2022

2022–California’s Legislative Analyst’s Office issues a report on systemic problems with indigent defense in California⁹¹

2023

California’s Office of the State Public Defender (“OSPD”) publishes a report correlating flat-fee contract systems with higher rates of per-capita prison commitments⁹²

The U.S. DOJ publishes its “Gideon At 60” report, which highlights the numerous problems with flat-fee contracts⁹³

2025

OSPD releases standards for contract counties that call for the abolition of flat fees⁹⁴

VI. We Can't Wait Any Longer to Move California Forward

40
years

Experts have warned California for 40 years that this system is broken.

A. Ban Flat-Fee Contracts

It is time for California to ban flat-fee contracts once and for all. The flat-fee system cannot be reformed. Safeguards in contracts for indigent defense, such as caseload caps, resources for investigators and social workers, and oversight and supervision, can help make a contract better, and the state should absolutely mandate their inclusion. But even those safeguards cannot eliminate the innate perverse financial incentives in a flat-fee arrangement. Experts have warned California for 40 years that this system is broken.⁹⁵

OSPD, which is not an enforcement agency but is statutorily required to provide training and technical assistance to indigent defense systems, has worked with critical stakeholders on this issue and just released new standards explicitly calling for counties to do away with flat-fee contracts that place no controls on workloads.⁹⁶ The agency tasked with fostering indigent defense improvement in the state has now joined the State Bar, the ABA, NLADA, California's own statewide commission from 2008, and a myriad of others who have called for banning flat fees.

Banning flat fees would show that California is finally taking decades of warnings seriously. It would also likely save taxpayer money.⁹⁷

As explained above, flat-fee contracts correlate to costly higher incarceration rates. Moving to a more robust system up front may mean significant long-term savings.⁹⁸

Of course, banning flat-fee contracts will not solve all of California's problems with indigent defense. Offices across the state need more funding, and additional structural reforms can help with that. But those recommendations are for another day.

At a bare minimum, California must get rid of the most problematic forms of representation and take seriously its commitment to ensure that everyone in California receives fair representation before losing their liberty.

VII. Conclusion

California pioneered the first public defender's office in Los Angeles County in 1913. Since then, 33 other counties have invested in institutional public defender's offices, and many are nationally recognized as model offices. But many counties have fallen behind because of California's refusal to invest in trial-level criminal defense.

California cannot wait any longer to make that investment. Banning flat-fee contracts is an important step in showing a real commitment to fixing a criminal legal system that privileges the wealthy. That system is already about to expand. California is implementing Proposition 36, which rolled back sentencing reforms for non-violent offenses, guaranteeing that many Californians charged with non-violent crimes will face lengthier prison sentences.⁹⁹ No doubt the state's indigent defense system, already on the brink of crisis, is at serious risk of collapsing under such strains if there is not a committed effort to bring that system up to code.

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Appendix A:

Methodology for Collecting and Reviewing County Contracts

We reviewed the flat-fee contracts from the 24 counties that use this system as their primary method of public defense.^{vii} Working in collaboration with the ACLU of Northern California and the ACLU, attorneys at Morgan, Lewis & Bockius LLP, obtained the contracts reviewed in this report by sending requests to the counties pursuant to the California Public Records Act, Gov't Code §§ 6250 et seq. These requests were sent to 54 of California's 58 counties between August 2021 and July 2022.^{viii} As a result, we received contracts from the counties analyzed in this report.

Our review focused on the metrics below: caseloads restrictions, limits on outside private practice, funding for investigators, social workers and/or mitigation specialists, standards for independent oversight and supervision of contractors, and requirements for prompt client visitation. A further breakdown of the counties is available [here](#). We compiled one representative contract for each county, available [here](#). For virtually all the counties, we were able to review multiple contracts from either different years or with various attorneys to ensure that they were consistent with the representative contract. The contracts, with the exceptions noted below, range in ratification year from 2016 to 2024, although many of the contracts expressly remained effective for several years. For three counties, the contracts were several years older: 2012 (Amador), 2013 (Madera), and 2006 (Sierra), but those counties continued to re-ratify their underlying contracts through recent years with limited amendments, which we also reviewed.

^{vii} Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, Glenn, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Modoc, Mono, Placer, Plumas (discussed *infra*, endnote 14), San Benito, San Luis Obispo, Sierra, Sutter, Tehama, Trinity, Yuba Counties. These are all the counties, save one, classified by OSPD as using either a "contract" or "managed assigned counsel" system. Our review of their contracts confirmed the use of flat fees. San Mateo County uses a "managed assigned counsel" system administered by the local bar association, and was not included in our analysis. The fees are based on specific case actions. See San Mateo County Bar Association, [Private Defender Program Attorney Fee Schedule](#), Effective July 1, 2023.

^{viii} As relevant to this report, the following information was requested: "Contracts or agreements, in effect at any time from January 1, 2015 to present, regarding the engagement of any private attorney, law firm, or other entity (including any conflict panel) for the provision of indigent criminal defense services."

Figure A

No counties had caseload limits. 4 contracts included vague language about attorneys not maintaining “excessive” caseloads or similar boilerplate language with a reference to *Martin v. State Bar*, 20 Cal. 3d. 717, (1978), a case where an attorney was disciplined for neglecting cases. This language merely requires attorneys to adhere to the bare minimum ethical standards to not face discipline from the Bar. That is not a caseload cap.

Figure B

No county, by the terms of its contracts, barred private flat-fee lawyers from taking other paying clients. Authors are aware that Placer County does so in practice. Amador County limited attorneys to 5 private cases at a time. While 6 counties included vague language that their contract work should be a “priority” or “preeminent,”¹ said that the other work should not be a higher priority, and 5 placed restrictions on narrow types of casework, such as criminal cases in the same county, those attorneys were still free to maintain a private law practice. And there was often no mechanism in those contracts by which counties could evaluate whether the attorneys were making their indigent defense cases a “priority,” even in light of the perverse economic incentives of flat-fee contracts.

Figures C and D

18 out of 24 counties did not provide funds for investigators in their contracts. 7 of those 18 counties required a court order for investigative funds. Those counties were included with those that made no provision for these funds in Figure C, because the existing law in California always makes funds available through a court order process upon a proper showing.^x As explained in Section III.B, the requirement to seek and wait for court approval for investigator funds could delay and deter vital investigation. Of the 6 counties that did provide investigation funds, 1 required approval by the Executive Director of the program and 1 required a 10-day waiting period for county approval prior to court approval, but is counted in our metrics as providing investigation funding because it allowed for 5 hours of work to be done prior to that process.

Figure E

Only 1 contract out of the 24 counties provided for a social worker and the remaining 23 included no mention of social workers or mitigation specialists at all. 1 other county, despite a social worker not being explicitly discussed in the contract, employs one.^x Another county provided ancillary service funds that theoretically could apply to a social worker or mitigation specialist,

^x See Cal. Evid. Code § 730. Furthermore, it is worth noting that when seeking a court order for ancillary services, those services may be denied when related to *sentencing*—which is often the role of a social worker and always the role of a mitigation specialist. See *People v. Stuckey*, 175 Cal. App. 4th 898, 913, 96 Cal. Rptr. 3d 477, 488 (Ct. App. 2009).

^x OSPD, *infra* endnote 39, at 29–30 (Table 11).

although they were not mentioned. The rest of the 20 contracts either did not mention social workers or mitigation specialists in the list of ancillary services the county would pay for (7), placed the cost of ancillary services on the contractor (6), or required a court order to access services (6).^{xi} This latter category was included with those that make no provision for these funds in Figure E, because the existing law in California always makes funds available for ancillary services through the same process.^{xii} Thus, a privately retained attorney whose client had run out of money could obtain a social worker by making the same legal showing in a court proceeding as those in counties that require a court order to access ancillary funds. And none of those counties are among the two contract-system counties that reported having a social worker on staff or contract (Placer and San Luis Obispo), nor did they ever mention those services in their contracts.^{xiii}

Figures F and G

Only 7 out of 24 counties mandated independent oversight of lawyers by the county, including those with only vague, cursory language.

Only 4 out of 24 counties required some sort of supervision process for attorneys.

Figures H and I

Only 10 out of 24 counties had even a general standard for attorneys' first communication with incarcerated clients.

But only 7 gave an actual deadline for that communication.

^{xi} There is also considerable overlap between counties that have exhaustive lists of what ancillary services the county will pay for and fail to include social work, and counties that require a court order before accessing those services.

^{xii} *Supra* footnote ix.

^{xiii} OSPD, *infra* endnote 39, at 29–30 (Table 11).

Endnotes

- ¹ California's Office of the State Public Defender ("OSPD"), which primarily handles capital appeals, was recently expanded to provide support and technical assistance to county defense systems, after litigation by the ACLU in *Phillips v. State of California*. See ACLU, [ACLU Settlement Agreement Secures Governor's Commitment to \\$14 Million in Added Support for Public Defense Systems Throughout California and Agency Expansion](#). OSPD has since conducted several reviews of county systems, cited in this report, but lacks the authority to force counties to adopt necessary changes and does not fund trial-level public defense. California is one of only four states that have no state-level oversight and no state-level funding of trial-level public defense. See David Carroll, [Right to Counsel Services in the 50 States: An Indigent Defense Reference Guide for Policymakers](#), Sixth Amendment Center, at 104 (Mar. 2017); South Dakota and Washington now provide some funding and, in the case of Washington, standards. See Oskar Rey and Drew T. Pollom, [Public Defense Standards Are Changing: What Counties and Cities Need to Know](#), MRSC Insight (May 6, 2024); C.J. Keene, [Millions allocated to counties to fund public defense efforts](#), SDPB Radio (Sept. 19, 2024).
- ² ACLU of Southern California, [Los Angeles Lags Behind National Standards on Public Defense](#), ACLU SoCal Press Release (Sept. 14, 2023); Brendon Woods, [Prosecutors have nearly \\$1 billion more than public defenders. That's not a fair fight](#), S.F. Chron. (Oct. 30, 2022).
- ³ OSPD, [Data and Research: Public Defense Services Design & Funding](#), (last visited Feb. 2025); Gabriel Petek, [Assessing the Provision of Indigent Defense](#), Legislative Analyst's Office, at 14 (Sept. 2022).
- ⁴ LAO Report, *supra* note 3, at 6.
- ⁵ The State Bar of California, [Guidelines on Indigent Defense Services Delivery Systems](#), at 19 (1990) (on file with author, available from the State Bar via public records request).
- ⁶ Committee on Revision of the Penal Code, [Annual Report and Recommendations](#), at 21 (Dec. 2021); Office of the State Public Defender, Indigent Defense Improvement Division, [A Report On The Status Of Public Defense In Del Norte County](#), at 18 (2022) (on file with the author).
- ⁷ OSPD Data, *supra* note 3.
- ⁸ 372 U.S. 335 (1963).
- ⁹ Marea Beeman, [Using Data to Sustain and Improve Public Defense Programs](#), American Bar Association, at 2 (Aug. 2012); Caroline Wolf Harlow, [Defense Counsel in Criminal Cases](#), U.S. Dep't of Justice, Off. of Just. Programs, Bureau of Just. Stat., NCJ 179023, at 1 (Nov. 2000).
- ¹⁰ California Commission on the Fair Administration of Justice, [California Commission on the Fair Administration of Justice Final Report](#), at 93 (2008).
- ¹¹ *Id.*, at 93-96.
- ¹² See *State v. Smith*, 681 P.2d 1374 (Ariz. 1984); *State v. A.N.J.*, 225 P.3d 956 (Wash. 2010); *Simmons v. State Pub. Defender*, 791 N.W.2d 69 (Iowa 2010).
- ¹³ Eve B. Primus, [The Problematic Structure of Indigent Defense Delivery](#), 122 MICH. L. REV. 205, 223 (2023); Sixth Amendment Center, [The Right to Counsel in Lake County, California](#), at 104-06 (2023).

- ¹⁴ Plumas County has a flat-fee contract with a provision where an attorney can get additional compensation at an hourly rate for trials that last longer than five days (starting at the fifth day) or for cases that require more than 20 hours of preparation because they are “extraordinarily complex,” but only at the discretion of the court. This exceedingly narrow carve-out does little to alter the inherent financial conflict built into flat-fee arrangements. The entire county court in Plumas had zero felony jury trials in 2022–2023. Judicial Council of California, 2024 Court Statistics Report: Statewide Caseload Trends 2013–14 Through 2022–23, at 126 (2024); Plumas County Contract at 3 (on file with author).
- ¹⁵ The Spangenberg Group, Contracting for Indigent Defense Services: A Special Report, U.S. Dep’t of Justice, Off. of Just. Programs, Bureau of Just. Assistance, at 1 (Apr. 2000); Nicholas M. Pace et al., National Public Defense Workload Study, RAND Corp., at viii (July 27, 2023).
- ¹⁶ California Commission on the Fair Administration of Justice, *supra* note 10, at 92–95; American Bar Association, Report to the House of Delegates, Criminal Justice Section (July 1985); Providing Defense Services, 3d ed., at 45 (1992).
- ¹⁷ The State Bar of California, Guidelines on Indigent Defense Services Delivery Systems, at 24, 33 (2006).
- ¹⁸ LAO Report, *supra* note 3, at 8–9.
- ¹⁹ Office of the State Public Defender, Indigent Defense Improvement Division, Indigent Defense in Kings County: A report on the state of the public defense delivery system in Kings County, at 17 (2022) (on file with the author); Sixth Amendment Center, *supra* note 13, at 9–10.
- ²⁰ OSPD Del Norte Report, *supra* note 6, at 10.
- ²¹ *Id.*; RAND Corp., *supra* note 15, at viii, xii.
- ²² *Id.*
- ²³ California Commission on the Fair Administration of Justice, *supra* note 10, at 95.
- ²⁴ Amador County Contract 2021 Amendment at 3 (on file with author). While Placer County does not place a ban on outside practice in its contracts, our investigation did reveal that sub-contracting attorneys are not permitted to take on additional cases.
- ²⁵ Office of the State Public Defender, Indigent Defense Improvement Division, Indigent Defense in San Benito County: A Report on the State of the Public Defense Delivery System in San Benito County, at 18 (2023).
- ²⁶ American Bar Association, Ten Principles of a Public Defense Delivery System, at 3, 6 (Aug. 2023), Providing Defense Services, *supra* note 16, at 20–23 (1992); National Legal Aid & Defender Association, Performance Guidelines for Criminal Defense Representation (Black Letter), at 4.1(a) (2006), Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (Black Letter), at III-8, -9, -13 (1984).
- ²⁷ Laurence A. Benner, The Presumption of Guilt: Systemic Factors that Contribute to Ineffective Assistance of Counsel in California, 45 CAL. W. L. REV. 263, at 301–02 (2009).
- ²⁸ See generally *Wiggins v. Smith*, 539 U.S. 510, 522–23 (2003).
- ²⁹ American Bar Association, Model Rules of Professional Conduct, R. 3.7 (1983).
- ³⁰ State Bar Guidelines, *supra* note 5, at 17.
- ³¹ State Bar Guidelines, *supra* note 17, at 32–33; California Commission on the Fair Administration of Justice, *supra* note 10 at 93, 95–96; Primus, *supra* note 13, at 217.
- ³² See Cal. Evid. Code § 730.
- ³³ Alpine County Contract at 2 (on file with authors).
- ³⁴ Del Norte County Contract at 4 (on file with authors).
- ³⁵ NLADA, Performance Guidelines, *supra* note 26, at 4.1(a).

- ³⁶ Dr. Tony Fabelo et al., *Improving Indigent Defense: Evaluation of the Harris County Public Defender, Council of State Governments Justice Center*, at 2 (Sept. 30, 2013).
- ³⁷ American Bar Association, *Criminal Justice Standards for the Defense Function*, 4th ed., Standard 4-8.3(d) (2017).
- ³⁸ Committee on Revision of the Penal Code, *Annual Report and Recommendations*, at 44 (Dec. 2022); Paul Heaton, *Enhanced Public Defense Improves Pretrial Outcomes and Reduces Racial Disparities*, 96 Ind. L.J. 701, 704 (2021).
- ³⁹ Office of the State Public Defender, Indigent Defense Improvement Division, *A Snapshot of Indigent Defense in California*, at 9 (Nov. 2023).
- ⁴⁰ Benner, *supra* note 27, at 324-27.
- ⁴¹ *Padilla v. Kentucky*, 559 U.S. 356 (2010).
- ⁴² Ingrid Eagly et al., *Restructuring Public Defense After Padilla*, 74 Stan. L. Rev. 1, at 31-33 (2022).
- ⁴³ David Lightman, *Trump signs law making it easier to deport undocumented immigrants. Is California affected?*, *Sacramento Bee* (Jan. 29, 2025); Ana B. Ibarra, *Trump wants to break California's sanctuary state law: 5 things to know*, CalMatters (Jan. 28, 2025); ACLU, *Trump Promises to Militarize Police, Reincarcerate Thousands, and Expand Death Penalty*, ACLU News (Oct. 27, 2023); Wendy Fry, *'What's going to happen to my kids': California prepares to resist Trump deportations*, CalMatters (Nov. 25, 2024).
- ⁴⁴ Spangenberg Group, *supra* note 15, at 19.
- ⁴⁵ Placer County Contract, at 11 (on file with author).
- ⁴⁶ Lake County Contract, at 9 (on file with author).
- ⁴⁷ Lake County has recently transitioned to an institutional public defender model. Elizabeth Larson, *Board of Supervisors hires Daly City mayor as new chief public defender*, (Sept. 20, 2023).
- ⁴⁸ Sixth Amendment Center, *supra* note 13, at 7.
- ⁴⁹ *Id.* at 90.
- ⁵⁰ American Bar Association, *Providing Defense Services*, *supra* note 26, at 4-3.1.
- ⁵¹ National Legal Aid & Defender Association, *Access to Counsel at First Appearance*, at 21 (Feb. 2020).
- ⁵² OSPD Del Norte Report, *supra* note 6, at 8.
- ⁵³ Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, at 1 (Mar. 2017).
- ⁵⁴ Committee on Revision of the Penal Code, *supra* note 6, at 21.
- ⁵⁵ LAO Report, *supra* note 3, at 6.
- ⁵⁶ Michael A. Roach, *Indigent Defense Counsel, Attorney Quality, and Defendant Outcomes*, 16 Am. L. & Econ. Rev. 2, 32 (2014); Thomas H. Cohen, *Who's Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes* (2011). Because the studies used data from dozens of jurisdictions, they do not differentiate between flat-fee and hourly or salaried contractors. However, we know flat fees are the most common form of contract compensation. Andrew J. Lee, *Flat Fee Compensation, Lawyer Incentives, and Case Outcomes in Indigent Criminal Defense*, at n.5 (2021); see generally Primus, *supra* note 13, at 272 (Appendix A, documenting the prevalence of flat fees in every state) and 229 (explaining how many hourly systems come with caps that create a functional flat-fee system).
- ⁵⁷ Warren Institute on Law and Social Policy, *Los Angeles County Juvenile Indigent Defense System*, UC BERKELEY SCHOOL OF LAW, at 56 (Mar. 2016); see also Cyn Yamashiro et al., *Kids, Counsel and Costs: An Empirical Study of Indigent Defense Services in the Los Angeles Juvenile Delinquency Courts*, 49 CRIM. L. Bull. 1351, 1351-77 (2013).

- ⁵⁸ Warren Institute, *supra* note 57, at 16.
- ⁵⁹ James M. Anderson and Paul Heaton, [How Much Difference Does the Lawyer Make?](#) 122 YALE L.J. 154 (2012). The study expressly discusses the inherent conflict in the flat-fee compensation scheme in Philadelphia, on pages 193-95. See also Cohen, *supra* note 56, at 32.
- ⁶⁰ Miriam S. Gohara et al., [The Disparate Impact of an Under-funded, Patchwork Indigent Defense System on Mississippi's African Americans: The Civil Rights Case for Establishing a Statewide, Fully Funded Public Defender System](#), 49 HOW. L.J. 81, n.7, 88-89, 94-95 (2005) (discussing how Mississippi counties use both traditional flat fees for contractors, or set a low cap for hourly fees to create a functional flat fee).
- ⁶¹ Primus, *supra* note 13, at 224; Benjamin Schwall, [More Bang for Your Buck: How to Improve the Incentive Structure for Indigent Defense Counsel](#), 14 OHIO ST. J. CRIM. L. 553, at 577 (2017); Lee, *supra* note 56 at 4.
- ⁶² Sixth Amendment Center, [The Right to Counsel in Utah: An Assessment of Trial-Level Indigent Defense Services](#), at vi-vii (Oct. 2015); [The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services](#), at 82 (Apr. 2019); [The Right to Counsel in Indiana: Evaluation of Trial Level Indigent Services](#), at 168, 184 (Oct. 2016); see also Primus, *supra* note 13, at 218-20.
- ⁶³ OSPD San Benito Report, *supra* note 25, at 12.
- ⁶⁴ OSPD Kings Report, *supra* note 19, at 24.
- ⁶⁵ *Id.* at 32.
- ⁶⁶ OSPD San Benito Report, *supra* note 25, at 15.
- ⁶⁷ Benner, *supra* note 27, at 327; Laurence A. Benner et al., *Systemic Factors Affecting the Quality of Criminal Defense Representation* (on file with the author).
- ⁶⁸ California Commission on the Fair Administration of Justice, *supra* note 10, at 95.
- ⁶⁹ *Id.* at 93-95.
- ⁷⁰ *Id.* at 95; [Website of The Law Offices of Fitzgerald, Alvarez, & Ciummo](#).
- ⁷¹ LAO Report, *supra* note 3, at 6.
- ⁷² Kristen Hwang and Nigel Duara, [As California closes prisons, the cost of locking someone up hits a new record at \\$132,860](#), CalMatters, (Jan. 23, 2024).
- ⁷³ *Id.*; Heather Harris and Sean Cremin, [California's Prison Population](#), Public Policy Institute of California (Sept. 2024); *Id.*; Brandon Martin and Magnus Lofstrom, [California's County Jails](#), Public Policy Institute of California, (Feb. 2025); Legislative Analyst's Office, [The 2024-25 Budget, California Department of Corrections and Rehabilitation](#), (Feb. 2024); California State Controller's Office, [Detention and Correction broken down by County](#), (2023) (last visited Feb. 2025).
- ⁷⁴ Benner, *supra* note 27, at 324.
- ⁷⁵ Hannah Fitzsimons and Christina Swarns, [How Much Do Wrongful Convictions Cost Government Entities?](#), American Bar Association (Aug. 2, 2024).
- ⁷⁶ [The National Registry of Exonerations](#), (Review of Exonerations Since 1989) (last accessed Feb. 14, 2025).
- ⁷⁷ *People v. Barboza*, 29 Cal.3d 375 (1981).
- ⁷⁸ NLADA, *Guidelines* (1984), *supra* note 26.
- ⁷⁹ ABA Report to the House of Delegates, *supra* note 16.
- ⁸⁰ Jim Schachter, [Contract System May Put Lawyers at Odds With Clients](#), L.A. Times (Dec. 8 1985); Jim Schachter, [Lawyers, County Break Contract to Defend Poor, Deflecting Suit](#), L.A. TIMES (Dec. 31 1985).
- ⁸¹ National League Aid & Defender Association, [Standards for the Administration of Assigned Counsel Systems](#) (1989).
- ⁸² State Bar of California, *Guidelines* *supra* note 5.
- ⁸³ ABA, *Providing Defense Services*, *supra* note 26, at 6.

- ⁸⁴ Spangenberg Group, *supra* note 15.
- ⁸⁵ American Bar Association, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, at 9, 14 (Dec. 2004).
- ⁸⁶ State Bar of California, *supra* note 17, at 24, 33.
- ⁸⁷ California Commission on the Fair Administration of Justice, *supra* note 10 at 93–95.
- ⁸⁸ Laurence A. Benner et al., *Systemic Factors Affecting the Quality of Criminal Defense Representation* (on file with the author).
- ⁸⁹ David Carroll, *Why the State of California Is Responsible for the Public Defense Crisis in Fresno County*, Sixth Amendment Center (Sept. 29, 2013); Website of The Law Offices of Fitzgerald, Alvarez, & Ciummo.
- ⁹⁰ See Parts III and IV for a fuller discussion of these studies.
- ⁹¹ LAO Report, *supra* note 3.
- ⁹² OSPD, *supra* note 39, at 9.
- ⁹³ Marea Beeman and Claire Buetow, *Gideon at 60: A Snapshot of State Public Defense Systems and Paths to System Reform*, U.S. Dep't of Justice, Off. of Just. Programs, Nat'l Inst. of Just., Off. of Access to Just., at 13 (Nov. 2023).
- ⁹⁴ OSPD, *California Standards for Contract and Panel Systems & Guide to Implementation for County Administrators and Panel Leaders*, (Feb. 2025).
- ⁹⁵ *E.g.*, *supra* notes 3, 10, 27, 79, 89.
- ⁹⁶ OSPD, *California Standards for Contract and Panel Systems & Guide to Implementation for County Administrators and Panel Leaders*, (Feb. 2025).
- ⁹⁷ Alan Abrahamson, *S.D. to Get \$14 Million Legal Bill*, L.A. Times, (Mar. 12 1990).
- ⁹⁸ Primus, *supra* note 13, at 240.
- ⁹⁹ Legislative Analyst's Office, *Proposition 36: Allows Felony Charges and Increases Sentences for Certain Drug and Theft Crimes, Initiative Statute* (Nov. 2024).

All documents listed as “on file with the author” can be found [here](#).



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