

Santa Cruz Civil Grand Jury

2018-2019 Consolidated Final Report



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County of Santa Cruz

Grand Jury
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June 28, 2019

TO: The Hon. John M. Gallagher, Supervising Judge
Santa Cruz County Superior Court

FROM: Peggy Flynn, Foreperson
2018–2019 Santa Cruz County Civil Grand Jury

RE: Consolidated Final Report of the 2018–2019 Santa Cruz County Civil Grand Jury

Dear Judge Gallagher,

It is my honor to present the Consolidated Final Report of the 2018–2019 Santa Cruz County Civil Grand Jury. The four reports contained herein represent the culmination of thousands of hours of dedicated effort by 19 members of our community. This year's Grand Jurors have demonstrated commitment, curiosity, and integrity in carrying out their duty to oversee the workings of our local government.

We could not have succeeded this year without the many individuals who supported and guided us. We are thankful to Ryan Thompson, of the County Counsel's Office, for his thorough and careful review of each report. Ryan also made himself available, often on short notice, every time that we requested his guidance and review of the Penal Code. Justin Braun and his colleagues in General Services helped us with logistics and provided guidance on working with the County government. We appreciate the time and assistance that CAO Budget Analyst David Brown gave us; he was always patient and helpful in explaining budget details and processes. The same is true of Danita Gonzales in the CAO's office, who cheerfully answered all of our questions—even more, she taught us how to use various county systems. Tim Newman, Brian Santos, and Joanna Parrot in the Superior Court provided support and assistance at various points in our process.

Lastly, it was a pleasure working with you. We benefited from your guidance and wisdom, and I personally appreciated your candor, calm demeanor, and wonderful sense of humor. I look

forward to continuing our joint efforts to increase public awareness of the Santa Cruz County Civil Grand Jury. We are all moved by your deep appreciation of, and support for, the Grand Jury and its role as watchdog.

Due to the timing of publication, most of the responses to our reports will be submitted to the Grand Jury that succeeds us.

This year's investigations covered a wide and diverse range of issues. They allowed us to delve into the inner workings of our civic institutions, to observe the tremendous talent and commitment of our public employees, and to suggest ways to continue to evaluate and improve local governmental operations. We value the opportunity to have played this unique and important role in the civic life of our community.

Sincerely,

Peggy Flynn, Foreperson

2018–2019 Santa Cruz County Civil Grand Jury

A handwritten signature in cursive script, appearing to read "Peggy Flynn". The signature is written in dark ink and is positioned below the typed name.

2018-19 Santa Cruz County Civil Grand Jurors



Back Row: Ken Grunstra, Judy Patterson, Thomas Pistole, Nelson Crandall, Megan Dawson, Chris Hofmann, Peggy Flynn, Alan Allwardt, David Heintz

Front Row: Mark Merritt, Lloyd Stephenson, Gail Wingert, Jove Shapiro, Jo Ann Allen, Anita Sjoberg

Absent: Alan Belanger, Sergei Kagno

Juror photo: Jason Hoppin

Cover photo: Abra Allen



2018–2019 Detention Facilities Inspection Report

Summary

The 2018–2019 Santa Cruz County Civil Grand Jury’s inspection of detention facilities within Santa Cruz County included tours of the facilities listed below, discussions with staff and management, and a review of reports, policies, and procedures. California Penal Code Section 919(b) requires the Grand Jury to “inquire into the condition and management of the public prisons” within the County.

The Grand Jury toured and inspected the Main Jail, Blaine Street Women’s Facility, Rountree Detention Facility, Juvenile Hall, the Court Holding Facility in Santa Cruz, and Conservation Camp #45 in Ben Lomond. The Santa Cruz County Sheriff runs all of these facilities except for Juvenile Hall (run by the Probation Department) and Conservation Camp #45 (run by the State of California). Table 1 shows the dates of the Grand Jury’s tours.

Table 1: Detention Facility Tours

<i>Detention Facility</i>	<i>First Tour</i>	<i>Second Tour</i>
Main Jail	8/27/18	2/5/19
Blaine Street Women’s Facility	8/27/18	
Rountree Detention Facility	8/27/18	2/21/19
Juvenile Hall	8/21/18	
Court Holding Facility	11/15/18	
Ben Lomond Conservation Camp #45	12/6/18	

Source: Grand Jury records.

Background

The California Board of State and Community Corrections (BSCC) establishes standards for the construction, operation, and administration of local detention facilities administered by a county or city. The BSCC defines a jail as a locked adult detention facility, which holds both non-sentenced and convicted adult criminal offenders. A temporary holding facility holds inmates for up to 24 hours in a locked room or secure enclosure under the control of a peace officer or custodial officer, primarily for the temporary confinement of those recently arrested. A court holding cell, located in a courthouse, is used to hold inmates for a court appearance for as long as 12 hours. The BSCC defines two types of detention facilities for juveniles: a Juvenile Hall, which is a locked facility that holds both non-sentenced and convicted juvenile offenders; and a Juvenile Camp, which is a minimum to maximum security facility for sentenced juvenile offenders. Santa Cruz County has one Juvenile Hall.

Scope

In meeting its responsibility to inspect the County's detention facilities, the Grand Jury toured each physical property. Management and staff were questioned regarding inmate care, services, diet, access, and availability of programs and opportunities for community engagement. We reviewed policies, procedures, logs, and documentation. Facility areas that were inspected included: entry, intake, processing, holding, safety cells, medical, food prep, serving, kitchen, dining, recreation, classrooms, outside patios, grounds, and restrooms. The Grand Jury also viewed courts and hearing rooms.

Document Review

Following are the main documents that the Grand Jury obtained from the Sheriff's Department and reviewed in relation to this report:

1. **Policies, procedures, and protocols** related to the operations of Santa Cruz County detention facilities.
 - Inmate searches for drugs and other contraband
 - Visitor searches for drugs and other contraband
 - Drug testing of inmates
 - Proposed staffing plans for all detention facilities
 - Inmate screening and housing classification for males and females
 - Policy for, and list of, officer training topics
 - Schedules for training and retraining for detention facility assignments
 - Administrative segregation of inmates (removal from general population, solitary confinement, etc.)
 - Use of force: when, why, and how administered
 - Inmate grievances on restrictions/control of inmates
 - Inmate disciplinary plan

2. Reports

The following reports include actions, incidents, and follow-ups for the calendar year 2018:

- Results of inmate drug testing
- Results of searches
- Incident reports of drug use within facilities
- Current detention facility staff (filled and unfilled positions)
- Copies of Board of Supervisors (Board) requests for additional funds for staffing and other detention facility safety needs
- Detention facilities officer injuries by cause
- Detention facility profile survey
- Results of inmate screening and classifications
- Daily census report
- List of administrative inmate segregation by cause
- Daily Facility Risk by incident
- After-action reports regarding the use of force protocols
- Inmate grievance reports by issue
- Disciplinary actions on inmates report by incident

Discussion

Main Jail (259 Water Street, Santa Cruz)

Because of the close proximity of the two facilities, the Grand Jury toured the Main Jail and Blaine Street on the same day.

The Main Jail is a maximum security facility that opened in 1981 at a cost of \$8.5 million. The original structure totalled 47,000 square feet and housed 92 inmates. A renovation in 1986 added 23,000 square feet, increasing the capacity to 230 inmates of both genders. Further modifications in 1999 allowed for a capacity of 319 inmates.

Inmate Population

The inmate population was 370 on the first day that the Grand Jury toured and 369 on the second visit, which is 16% above rated capacity. Staff reported that the facility has an average daily inmate population of 375 inmates (17.5% above rated capacity). The jail handles overpopulation with the use of bunk beds and temporary plastic beds known as "boats." Overpopulation is a continuing problem at the Main Jail, exacerbated in part due to the passage of AB 109, the Public Safety Realignment Act (Realignment). AB109 was passed in 2011 to alleviate the problem of overpopulation in the California state prison system by allowing non-violent, non-serious, and non-sex offenders to serve their sentences in county jails instead of state prisons. Realignment has also contributed to

overpopulation in our Main Jail—resulting in inmates who are detained for crimes with longer sentences serving in a facility intended for shorter stays.

Undetected Drugs

Staff at the Main Jail were candid about the problem of controlled substances coming into the facility, sometimes with visitors, other times hidden in an inmate's body cavities. The Grand Jury was told that if staff suspects a person has drugs in their possession, during the Intake process their clothes and possessions are searched; if they suspect drugs are hidden in body cavities, the individual is kept in a separate cell with a toilet that does not flush, until drugs are passed.

Recovery Center

In 2015 the Sheriff's Department established the Recovery Center, a 10-bed facility, often referred to as the "Sobering Center." Initially established as a program to handle only drunk-in-public arrests, the program now includes those arrested for being under the influence of drugs, and those arrested for first time DUI offenses. The Recovery Center is adjacent to the jail and admits an average of 20–30 people a day, and 40–60 per day during summer weekends with an average stay of 4–6 hours. Prior to being released offenders are connected with a referral specialist who can provide them with resources, including: opioid overdose prevention kits, drug and alcohol treatment referrals, and other community resources. The facility is managed by a contract with Janus of Santa Cruz, a drug and alcohol recovery center. The Grand Jury did not tour inside this facility, but only observed it from outside.

Medical Services

Since 2012, all medical services for the correctional facilities have been contracted with the California Forensic Medical Group (CFMG). Nurses at the Main Jail are available at all hours. There is a Physician's Assistant (PA) available five days a week. There is a medical doctor on call who is available to see at-risk inmates within 72 hours. Mental health services are provided by the County Health Services Agency. The Medical Unit is an area with two holding cells for inmates waiting for a medical appointment. Generally inmates are accompanied by a Corrections Officer (CO); however when there is a staff shortage, which is often, the inmate is left alone. These holding cells are inside the Medical Unit, which houses all medications, medical equipment, and medical staff.

Staffing Issues

The Grand Jury was concerned to learn of the distances that many staff travel to work (to all detention facilities), primarily due to local shortages of affordable housing. As a result they drive from nearby areas and counties (Santa Clara, San Benito), and some even drive in from Tracy and other Central Valley communities. When questioned, several staff acknowledged that it adds stress to an already demanding job. In addition, because of ongoing staff shortages, mandatory staff overtime has been in effect for quite some time. This is another element that many staff acknowledged adds stress to

their lives. Both staff shortages and unfilled positions are often the result of nearby counties offering higher salaries than Santa Cruz County.

Blaine Street Women's Facility (141 Blaine Street, Santa Cruz)

This facility closed in 2016 for renovations and reopened in early 2018 as a women's minimum-security facility rated for 32 beds; 17 women were there on the day of our tour. Blaine Street also offers job training skills. The facility was below capacity during our visit, as many women in the Main Jail are not suited for this facility due to their risk assessment or crimes committed. The facility is in a residential neighborhood without a high level of security at its perimeter fencing. Contraband can enter the facility by anyone throwing something over the fence into the outside inmate area.

Rountree Detention Facility (90 Rountree Lane, Watsonville)

The Rountree Detention Facility consists of two medium security units, and the newly renovated, minimum security Rehabilitation and Re-entry facility that opened in July 2018. While the Grand Jury toured all facilities, the main focus (and second visit) was on the Re-entry facility. Originally known as "The Farm," the building opened in 1968 as a minimum security facility, then closed in 2008 due to structural issues. The Sheriff's Department received a grant of \$24 million from BSCC for extensive remodeling and redesign. There are now 64 additional beds for selected male inmates. There is a strong emphasis on reducing recidivism with case management services, using programs to understand the factors leading to criminal behavior and reduce those risks. Vocational programs are available for inmates to choose one of three tracks: hospitality, agriculture, and construction. Educational and other support programs are offered by local community partners, including classes on domestic violence prevention, parenting, and anger management. Technical skills can be gained through writing and computer literacy programs. Personnel described job fairs where inmates can learn about potential jobs when they are released, but employers make no commitments to hire former inmates. The Grand Jury was impressed by the array of classes and training programs offered, and hopes that personnel are able to obtain commitments from local businesses to hire inmates after release.

The Rountree facility is open and spacious and has family visiting rooms that are light and airy and include games, toys, and books for visiting children.

Juvenile Hall (3650 Graham Hill Road, Felton)

This facility is for juvenile offenders. The focus is on temporary custody of youth who are referred by local law enforcement agencies, Juvenile Court, and the Probation Department. Youth are assessed for counseling, crisis intervention, substance abuse, and psychiatric needs. Classes and tutoring are offered for educational and behavior-modification needs. The goal is to assist the youth while at Juvenile Hall and then release them to parents and guardians. Once released, a juvenile is eligible to receive supportive services that will reduce the likelihood of reoffending.

Their current capacity is for 42 youths; there were significantly fewer on the day the Grand Jury toured the facility.

The staff described in detail many of the educational and support programs available to the juveniles. The Grand Jury questioned staff about the efficacy and long-term impact of some programs, especially those focused on behavioral change, for youth who are there for relatively short times (an average of three weeks). Juvenile Hall personnel did not clearly answer juror questions about the effectiveness of behavioral change programs.

Court Holding Facility (701 Ocean Street, Santa Cruz)

This facility is located in the basement of the Court House. Inmates are transported by vehicle from their custodial facilities by Sheriff's Deputies to a Court Holding room before and after their court appearances. There is a maximum capacity of 75 inmates, and their average occupancy ranges from 35 to 60. There are four multi-person cells, and several single cells used for inmates who, for various reasons, cannot be mixed in with general population inmates.

Ben Lomond Conservation Camp #45 (13575 Empire Grade, Santa Cruz)

This facility, located in the Santa Cruz Mountains, is colloquially referred to as the "Fire Camp." It is a minimum security institution whose inmates volunteer for the program and must have a minimum security status. Inmates volunteer and their applications are reviewed and screened for acceptance into the program. While it is part of the California Department of Corrections and Rehabilitation (CDCR) and staffed by Correction Officers, several key staff also come from the California Department of Forestry and Fire Protection (CAL FIRE).

Inmates are trained at the California Correctional Center in Susanville and then sent to the Fire Camp. The camp houses a maximum of 113 inmates (96 were there the day of our tour), all of whom are minimum security with no convictions for violent or sex-related offenses, arson, or escape. Most of the inmates are serving time for alcohol or drug offenses or property crimes. Their sentences are reduced two days for every day they work at the Camp. Inmates earn \$1.45 per day and skilled inmates (plumbers and welders, for example) earn \$2.56 per day. Firefighter trainees earn \$1 per day and \$1 per hour when on fire fighting assignments.

Inmates work on fire crews and assist in maintaining fire equipment. They also work as kitchen staff, mechanics, and gardeners (the Camp grows much of its own food). Fire crews assist with fires, fuel breaks, floods, landslides, and rescues. They restore hiking trails and streambeds in Santa Cruz and nearby counties, and when needed in more distant places within California.

Staff were proud to note that Fire Camp inmates contribute to society at the same time that they are learning life skills and discipline required for successful rehabilitation.

Areas for Future Investigation

The Grand Jury recommends that future Civil Grand Juries consider further investigation into the effects of overcrowding at the Main Jail, safety issues for inmates and staff related to drugs coming into the facilities, and the budget for Juvenile Hall.

Findings

- F1.** Drugs continue to come into all facilities undetected.
- F2.** Overcrowding continues to be an issue at the Main Jail with no-long term solution in place. (See Grand Jury reports from 2013–2014, 2014–2015, and 2016–2017.)
- F3.** Ongoing staff shortages and unfilled positions result in mandatory overtime.
- F4.** Many detention facility staff commute long distances because local housing is unaffordable, increasing staff stress.

Recommendations

- R1.** The Sheriff's Department should research and evaluate body scanning equipment to detect drugs coming into facilities. (F1)
- R2.** The Sheriff's Department and Board of Supervisors should evaluate long-term solutions to the overcrowded Main Jail, including bond measures to replace or renovate the facility. (F2)
- R3.** The Sheriff's Department and Board of Supervisors should address the effects of mandatory staff overtime. (F3)
- R4.** The Sheriff's Department and Board of Supervisors should explore options for subsidized housing to reduce the number of staff commuting long distances due to unaffordable local housing. (F4)
- R5.** The Sheriff's Department should, within the next six months, set a target date for implementing the recommendations in this report.

Required Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Santa Cruz County Board of Supervisors	F1–F4	R1–R5	90 Days September 17, 2019
Santa Cruz County Sheriff	F1–F4	R1–R5	60 Days August 19, 2019



Patron Privacy at Santa Cruz Public Libraries

Trust and Transparency in the Age of Data Analytics

Summary

Libraries are one of the most trusted institutions in our country. People place librarians in the same class as doctors, nurses, firefighters, and teachers.

– Erin Berman, Library Privacy Advocate^[1]

The quotation from Berman reflects the importance of libraries as sanctuaries of intellectual freedom. In the Digital Age, however, the role of libraries is evolving. In an attempt to satisfy perceived patron demand, some libraries, including Santa Cruz Public Libraries (SCPL), have started using data analytics tools similar to those used by businesses to market products to consumers. Using these tools in libraries is a potential threat to patron privacy and trust.

This report examines SCPL's use of third-party data analytics in relation to current California law pertaining to confidential patron data; industry best practices for patron privacy; current SCPL privacy policy and staff concerns regarding privacy, transparency, and patron consent; and the perceived usefulness of these analytical tools. The Grand Jury has concluded that SCPL management did not recognize the importance of

- informing patrons how SCPL uses their personal data;
- giving patrons the opportunity to consent to use of their personal data;
- explaining patron data use in proposed privacy policy and online documents;
- adopting best practices outlined by the American Library Association;
- carefully evaluating risks versus rewards when using data analytics;
- staying abreast of state laws concerning library use of patron data; and
- resolving the disagreements among staff regarding the use of data analytics and its implications for patron privacy.

Background

Although Santa Cruz County library services began in 1916, the current structure of the Santa Cruz Public Libraries (SCPL; the Library) system, created in 1996, consists of a network of ten neighborhood library branches distributed county wide, a web-based digital library, a bookmobile, and community-based programs.

Last year, SCPL expenditures were about \$12M (\$7.6M in salaries and \$4.2M in operating costs). SCPL employs about 90 full-time equivalents and serves roughly 135,000 registered patrons. All SCPL employees are City of Santa Cruz employees. The Watsonville library system is not part of SCPL and is not a subject of this Grand Jury investigation.^[2]

SCPL is governed by the Library Joint Powers Authority (JPA), the agreement for which was last amended in 2015. The JPA board is currently composed of the County Administrative Officer and the city managers from Capitola, Santa Cruz, and Scotts Valley. Among other responsibilities, this board chooses the Library director and votes on approval for budget and library policies.

SCPL is also guided by the Library Advisory Commission (LAC). The LAC represents the community by providing advice and feedback to the JPA board and the Library director. The LAC reviews programs and services and makes necessary recommendations as they pertain to the provision of these programs and services. The LAC consists of seven members:

- Three residents of unincorporated Santa Cruz County appointed by the County Board of Supervisors.
- Two Santa Cruz city residents appointed by the Santa Cruz City Council.
- One Capitola resident appointed by the Capitola City Council.
- One Scotts Valley resident appointed by the Scotts Valley City Council.

In early 2019 the LAC recently agreed to participate in the review of library policies, including privacy policies.^[3]

As prescribed by Measure S, approved by voters in 2016, SCPL is in the midst of a massive infrastructure upgrade, which will dramatically affect all of the branches in the system.

SCPL's "Strategic Plan 2017-2021: Premise and Process," published on the SCPL website,^[4] stresses the importance of finding better ways to connect with patrons. This planning document quotes former Santa Cruz Museum of Art and History Director Nina Simon's book, *The Art of Relevance*:

*The most powerful way to gain access to a new community is **not by creating programming or marketing campaigns you think might fit their interests. Instead it starts with networking.** ... Listen to their interests and concerns. The more you understand what matters to them and what experiences they seek, the better you can assess whether and how you can connect with them. [emphasis added]*

Using this premise of community relevance, in 2016 SCPL initiated conversations with individuals, small groups, and organizations to explore new potential directions for the Library.^[5] However, the concluding paragraphs of the SCPL's "Premise and Process" document describe the proposed use of a data analytics tool called Gale Analytics on Demand (AoD) that "allows the Libraries to have access to detailed analysis of SCPL household level data to better understand communities' and patrons' needs."

There is a disconnect within the SCPL's "Premise and Process" document. The document suggests that the best way to understand patrons' interests and concerns is to ask patrons directly. Contrarily, the document advocates obtaining patron information by using a data analytics tool, which does not involve any direct interaction with patrons.

There is also a conflict between how SCPL protects patron privacy and how SCPL uses patron data to "better understand communities' and patrons' needs."^[6] The Grand Jury found that SCPL did not adequately research protection of patron information when using data analytics tools.

The Grand Jury also found that SCPL did not inform patrons what additional information about them was gathered and retained in the library's computer system, nor were they allowed a choice about whether they consented to SCPL gathering this information.

Scope and Methodology

The Grand Jury interviewed staff and management of SCPL, as well as representatives of the JPA board and the LAC.

The Grand Jury also interviewed representatives of external library organizations with expertise in patron privacy and data analytics.

Grand Jury members attended JPA board and LAC meetings.

The Grand Jury sought legal advice in understanding specific State laws governing library mandates and requirements for handling confidential patron information.

The Grand Jury reviewed the SCPL public website, budget and planning documents, internal documents and reports, operational procedures, and contracts with third parties.

The Grand Jury reviewed documents from external organizations including the American Library Association (ALA), Pacific Library Partnership (PLP), Califa Group (a state-wide purchasing consortium supporting regional consortia like PLP), and the State Library Board.

The Grand Jury compared and contrasted the online privacy policies of selected American libraries and conducted additional internet research concerning data analytics and library patron privacy.

Investigation

What is Gale Analytics on Demand?

Gale Analytics on Demand (AoD) is a service provided by Cengage Learning since 2014 that allows libraries to conduct socio-economic analysis of the communities they serve.^[7] AoD includes a suite of analytical tools for

- evaluating and visualizing patron demographics, branch activity, and collection usage;
- planning marketing campaigns; and
- targeting voting patrons ahead of elections that could benefit the library.^[8]

These tools are powered by Mosaic, Experian's proprietary system of 71 socio-economic profiles ("lifestyle segments") for categorizing households in the community.^{[9] [10] [11]} Appendix A illustrates the Mosaic system and includes a description of "Silver Sophisticates" (C-13), a well-represented lifestyle segment in Santa Cruz.

To use AoD, the library exports patron information—such as physical address, date of last checkout, and number of books checked out—from its internal database to the AoD cloud service. AoD blends and augments this patron information with the Experian Mosaic profile and U.S. census data for each household. AoD then delivers the resulting aggregate data file and illustrated summary reports to the library for further analysis. The library uses this information to plan programs and services. As a result, the library holds significantly more household-level data in its computer system than patrons originally provided.

A Timeline of AoD Use at SCPL

SCPL first considered using AoD in late 2015, under a previous Library director. Library staff voiced concerns about patron privacy at that time.

In early 2016, SCPL obtained free access to AoD through its membership in PLP, a regional library consortium in the San Francisco and Monterey Bay areas.^[12] SCPL started AoD training with the goals of gaining insights into patron demographics and assisting in library strategic planning.

In 2017 SCPL released a strategic planning document that briefly mentioned that AoD would provide "access to detailed analysis of SCPL household level data to better understand communities' and patrons' needs."^[13]

In 2017 and 2018, SCPL staff members experimented with the program to assist in marketing and library planning work.^[14] In late 2018 or early 2019 SCPL suspended its use of AoD. Staff concerns about the use of AoD triggered a series of steps to review and update the Library's privacy policies and practices. After a succession of proposed drafts dating back to November 2018, the JPA approved an update to SCPL's privacy policy on June 6, 2019.^[15]

Issues Raised by the Library's Use of Data Analytics

Disclosing Use of Patron Data

The Grand Jury found that the undated “Information We Keep About You” document on the SCPL website^[16] is inaccurate and incomplete. It does not describe the data returned to the Library by AoD. This tool aggregates more than 300 data factors at the household level—information not provided to the Library by the patron. These factors include household income, education levels, number and age of children, number of years at residence, spending habits, and web browsing behavior.^[17] As discussed above, the tool then assigns one of 71 “lifestyle segments” to the household, which infer patron behaviors and interests based on socio-economic status and other factors. National standards classify these data as personally identifiable information (PII).^{[18] [19]}

Less significant are inconsistencies between “Information We Keep About You” and the information actually gathered during the library card application process. Contrary to what is published on the website, the application process does not require a patron’s Social Security number or the expiration date of the patron’s driver license, but it does require home library branch and mobile phone carrier.^[20]

Furthermore, the “Information We Keep About You” document doesn’t accurately reflect the fact that SCPL retains patrons’ borrowing data in the form of total number of checkouts and date of last checkout; AoD uses these two data points in addition to patron address as inputs for its data analysis process.^[21]

In the April 15, 2019 meeting of the LAC, SCPL staff disclosed the use of AoD. However, the topic was not agendaized, did not appear in the minutes, and the discussion did not address how the use of data analytics might impact revision of the library privacy policy. After disclosing use of AoD, Library staff informed LAC that SCPL had stopped using the tool. However, there was no discussion about how privacy concerns introduced by the use of data analytics tools could be resolved—or if they had been resolved, whether the Library would consider resuming use of AoD.^{[22] [23] [24]}

Gaining Consent from Patrons

As the Library began to acquire a wide array of information on each of its patrons, and as data privacy issues appeared more frequently as headlines in the news, some of the staff were increasingly concerned that the patrons were unable to consent to this gathering and examination of additional patron information.^[25]

Staff made suggestions to develop a comprehensive system to clarify for patrons what data is collected by SCPL, and to allow patrons to “opt out” if they so choose. To date, these suggestions have not been implemented.^[26]

As will be examined in more depth in the next section of the report, California laws and regulations are silent on the need for libraries to obtain patron consent when engaging third parties. However, European Union General Data Protection Regulations (GDPR)^[27] and California Consumer Privacy Act (CCPR),^[28] which apply to businesses, could also provide guidance for libraries as they develop patron disclosure and consent policies

and practices. These legislative efforts provide key insights that would allow patrons to stay in control of their data, which is the key element of many of these new privacy initiatives.

Management at the Library has not yet acted on staff suggestions to build a consent system for patrons. Such a system would clearly advise patrons about the data collected and how it is used, and would solicit patron consent as appropriate.^[29]

The SCPL privacy policy update approved on June 6, 2019, includes the following section on the topic of choice and consent:

SCPL will only collect personal information for the administration of library services. Administrative services includes creation of hold records, fine billing and collection, marketing of library programs/services and creation of organizational statistics such as SCPL circulation, website visits and Wi-Fi use.

Patrons may choose to provide additional data such as preserving their circulation records to maintain personal reading lists or receive reading suggestions. If a patron voluntarily chooses to provide additional information, this information will be considered confidential.

SCPL will not sell, license or disclose personal information to any third party without patron consent, unless SCPL is compelled to do so by law.^[30]

Even with these changes, many questions remain. In the context of this investigation, two questions are especially important: Does “marketing of library programs/services” include data analytics that targets specific patron groups? If so, is patron consent required? These and related questions need to be answered before a comprehensive consent policy can be developed and used by both Library staff and its patrons to make informed choices.

A consent system is useful if the library performs some action the patron might not otherwise know about. For instance, if the library gathers information about patrons from third parties to inform library planning efforts, patrons should be allowed to opt-in or opt-out of that data collection and use.

In such situations, the library should explain that personal data is part of the system, how the data will be processed, and how it will be used, *in clear and concise terms*. An overly detailed and technical presentation can lead to patrons simply clicking through to complete the choice; an oversimplified presentation can result in patrons not actually understanding the potential consequences of participating. The privacy policy of the San Jose Public Library is a good example of how to handle this delicate balance, in the way that it addresses patron consent.^[31]

Understanding California Law Regarding Confidential Patron Information

The Grand Jury initiated its investigation amid concern that SCPL may have violated State law by uploading patron data to the AoD cloud. As explained below, recent changes to the California Government Code should put this concern to rest.

The California Public Records Act, or CPRA, requires public disclosure of governmental records upon request, with certain exceptions (California Government Code, sections 6250 through 6276.48). One set of exceptions, related to the confidential records of public library patrons, is covered by Section 6267, last amended in 2011–2012 by Senate Bill No. 445 (SB 445). SB 445 defines “patron use records” (in this context, equivalent to “personally identifiable information”) and clarifies the responsibilities of “private actors” (third-party vendors) employed by public libraries (Appendix B). The bill analysis of SB 445 by the Senate Judiciary Committee includes the rationale for amending Section 6267:

*Due to the public’s increased use of electronic library resources, libraries are increasingly utilizing third parties to store and maintain electronic library records. This bill would clarify that written or electronic patron use records, as defined, stored or maintained by public libraries **or third parties on behalf of public libraries** should not be publicly disclosed, with certain exceptions.^[32] [emphasis added]*

The State Senate Judiciary Committee recognized that, in the current electronic environment, California public libraries and their third-party vendors share responsibility for protecting confidential patron records. However, the law as amended by SB 445 does not state whether libraries are legally responsible for the actions of third parties that they employ. Absent guidance from the law, California libraries can turn to best practices in the library community to guide them in their interactions with third-party vendors. These best practices will be discussed below.

Another issue that the law does not address directly is the responsibility for managing and safeguarding confidential information that a library might acquire *from* a third party; an example is the Experian Mosaic profiles included in the aggregate data files that AoD returns to the library. This is an area where patron privacy law has not caught up with advances in technology.

This review of California law is relevant to SCPL in several respects. When SCPL began using AoD in 2016, the Library’s privacy policy, “Confidentiality of Library Records,”^[33] (revised November 2010) referenced an obsolete version of Section 6267. As noted earlier, this may have contributed to concerns that the Library’s use of AoD violated State law. However, the Grand Jury has concluded that the use of AoD is permitted under the 2011–2012 version of the law, provided that the third-party vendor is working in service of the library.

If SCPL had been aware of the 2011–2012 changes to the law, staff and management would have also understood what constitutes “patron use records” and how libraries and third-party vendors share responsibility in protecting patron privacy. For example, AoD requires the entry of a patron’s physical address; however, the law specifically includes “address” in the definition of “patron use records,” requiring the Library and third parties working on its behalf to keep this information confidential. This knowledge is essential to the Library’s policies and practices regarding patron privacy, patron consent, and third-party contracts.

Understanding the Terms of Use for AoD

The Pacific Library Partnership (PLP), a consortium of 42 libraries, holds a contract with Cengage Learning allowing PLP to provide AoD to its member libraries, including SCPL. Because the contract was executed by the consortium, the member libraries using this analytical tool would not have seen the contract unless PLP shared it or individual libraries requested it. In the case of SCPL, our interviews have confirmed that the Library leadership did not obtain the actual contract until April 2019 and until then could not have been aware of the presence or absence of language protecting the interests of the Library and the privacy of its patrons.^[34] Instead, the Library relied on PLP to conduct due diligence in its negotiation of the contract.

When the Grand Jury requested “any licenses, agreements, or contracts for AoD,” SCPL provided a link to Gale Cengage Terms of Use for all of their web-based services and related apps.^[35] The Grand Jury was unable to determine how or why SCPL came to believe these terms applied specifically to AoD.

The Grand Jury has obtained the contract between PLP and Cengage Learning^[36] and concluded that it fails to explain several key points in clear and simple language, and does not address the following areas:

- The confidentiality clause in the contract does not clearly state whether PLP member libraries should have access to contract’s terms and conditions.
- The contract does not clearly state that the PLP, its member libraries, and Cengage Learning share responsibility for understanding and applying State laws pertaining to the protection of confidential patron information.
- The contract does not acknowledge that PLP member libraries retain ownership of the information they provide to the service.
- The contract does not clarify ownership and sharing of the aggregate data products produced by the service.
- The contract does not explain the responsibilities of Cengage Learning in the event of a data breach.
- The contract does not explain how PLP or its member libraries can terminate the agreement with the assurance that all data has been removed from the system.
- The contract does not provide for the removal of individual patron records, should any patrons choose to opt out.

Adopting Industry Best Practices and Standards

The American Library Association (ALA) is recognized as the authoritative source of best practices and standards for the library community in the United States. The *Library Bill of Rights*^[37] and *Intellectual Freedom Manual*^{[38] [39]} are general resources that are continually updated. Another document, ALA “Privacy Tool Kit,” provides detailed guidance on implementing policies to protect patron privacy. The recommended practices include designating a privacy officer with authority to administer privacy policies, review privacy clauses in contracts with third-party vendors, and conduct privacy audits.^[40]

ALA recommends that contracts with third-party vendors contain language that explicitly protects the interests of the library and the privacy of its patrons. In “Privacy: An Interpretation of the Library Bill of Rights,” ALA explains in more detail:

*Libraries should not share personally identifiable user information with third parties or with vendors that provide resources and library services unless the library has obtained the permission of the user **or has entered into a legal agreement with the vendor. Such agreements should stipulate that the library retains control of the information, that the information is confidential, and that it may not be used or shared except with the permission of the library.***^[41] [emphasis added]

A case study from the Seattle Public Library (SPL) provides even more specific guidance on contract language. SPL attaches an addendum to the “boilerplate” contracts typically provided by third-party vendors, with language to protect confidential patron information and indemnify the library against willful violations or negligence by the third party (Appendix C).^[42]

The ALA “Privacy Tool Kit” recommends that library privacy policies emphasize *choice and consent*, typically by allowing patrons to opt-in or opt-out of library services that use their personal data.^[43] ALA considers patron consent to be especially important in the case of emerging technologies:

It is important for libraries not to take the attitude that patrons no longer care about privacy. ... Patrons may not possess the discursive language or technology terms to articulate their complaint; however, it doesn't mean that they do not care about data harvesting, data mining and sharing of their personal information behind the scenes with third parties. The lack of transparency in consent, data sharing and terms of service changes is a barrier to patron-centered service.^[44]

ALA policies provide little specific guidance about the use of data analytics tools. However, the following excerpt from the “Privacy Tool Kit” indicates that “big data” tools should be used with caution:

It's too easy to make incorrect correlations when personally identifiable information sits side by side with other data. Unless a patron opts-in, reading records should never be correlated with patron conduct, database usage, meeting room signups, etc. Libraries should also be aware of what information may be publicly visible. Data may exchange many hands with third parties, using libraries as conduits, allowing more opportunity for privacy breaches and data mining. As stewards of patron privacy, libraries should steer away from the practice of creating aggregate data without legitimate purposes.^[45]

In order to better understand best practices of library use of data analytics, the Grand Jury consulted the writings of an expert in the field. In her article entitled “Big Brother is Watching You: The Ethical Role of Libraries and Big Data,” library privacy advocate Erin Berman describes the enticements for libraries to use data analytics:

These [data analytics] companies are telling libraries that our patrons are demanding personalized services, that we are facing a future of irrelevance. Luckily for us, their products have all the answers. By tracking patron behavior we can give them the experience they have come to expect from this new digital world. Libraries can segment out our patrons, sending targeted marketing based on their behaviors, customizing our services based on what they read and what programs they attend. We will finally be able to use real data to tell our stakeholders why we are of value, so they won't withdraw our funding. This messaging is a classic anxiety stick, followed by a marketing carrot.^[46]

Berman summarizes her concerns as follows:

Do not jump into big data without being intentional, transparent, and having a comprehensive understanding of how the products work. Utilizing different datasets to drive decision making and analyze the work done in libraries is extremely important, but it must be done with careful attention paid towards protecting our patrons' privacy.^[47]

The Library and Information Technology Association (LITA, a division of ALA) offers a number of practical steps^[48] that can be taken by libraries to improve patron privacy in the area of digital content. In particular, LITA reviews practices designed to assist in the prevention of, and response to, a possible data breach.

Effectiveness of Gale Analytics on Demand in Library Planning

SCPL staff relied on vendor information to conclude that AoD could be an effective tool for library planning.^[49] The purported benefits of using AoD included the following:

- Justifying a grant request that would help a library better serve its community
- Supporting funding requests
- Deciding where to open a branch
- Understanding where nonpatrons are located so that the library is more likely to reach them
- Communicating more effectively with patrons
- Making community-oriented collection and program decisions

The ALA “Privacy Tool Kit” casts doubt on the effectiveness of data analytics because “it’s too easy to make incorrect correlations when personally identifiable information sits side by side with other data.”^[50]

Recently, SCPL staff demonstrated the real-time use of AoD to the Grand Jury.^[51] Members cross-checked information they knew to be correct with data returned by AoD, and found that the AoD data was incorrect.

The demonstration gave rise to many questions, particularly regarding underserved populations, such as the poor and homeless. AoD generated reports that indicated there is no Experian data on approximately 30% of the total patron population. These are individuals with no credit cards or credit history. There is no evidence that the AoD analysis compensates for this skewing of data.

Homeless individuals frequently give the Homeless Service Center at 115 Coral St. as their address. The individuals who follow this practice all have the same physical address. A similar situation occurs with P.O. box holders, jail inmates, and children who receive library cards at school. The Grand Jury found it difficult to come up with a scenario where treating these clusters of unrelated individuals as households would produce meaningful data.

On one occasion, SCPL staff used AoD to generate a report that showed the number of years patrons had lived at their current residence. The goal of this effort was to market a neighborhood history program to long-term residents of a neighborhood. But staff did not investigate the accuracy of the assumption that long-term residents are more likely to be interested than newcomers in the history of their neighborhoods. SCPL staff stated that this use of AoD did not yield the desired results.^[52] Alternatively, staff might ask patrons directly about their interest in library programs.

Explorations like those described above trigger the gathering and aggregation of patron data. These actions pose a risk to patron data, regardless of whether the data produced leads to successful planning exercises or marketing campaigns for the Library.

Library Staff Concerns About the Use of Data Analytics

Grand jury interviews indicated that Library staff have had ongoing concerns about several aspects of using AoD and data analytics in general: inconsistencies with Library's privacy policy; failure to inform patrons and gain their consent; and legal and ethical issues concerning confidential patron information shared with third parties.

As early as 2015, SCPL staff voiced concerns that AoD use constituted a possible violation of patron privacy.^[53] These concerns were brought to the attention of three successive Library directors but have not been resolved.

SCPL typically responded to these concerns by referring staff to the vendor. In June 2018, for example, the vendor answered a SCPL inquiry as follows:

- *Gale does not personally handle the library data. There is no need for someone outside the library to manually review, handle, or receive files, like there is with other services. All data is submitted to the tool directly by the library. In other words, there is no data being "exchanged with third parties," as the statement from ALA cautions against.*
- *When the tool generates reports, the library can delete the report at their discretion. There is nothing maintained by us or a 3rd party.*
- *The only information AOD requires to function, is an address. We do not require a name or any other identifiable information that is not public record.^[54]*

The Grand Jury and some of the SCPL staff disagree with this assessment and believe that Gale Cengage is a third party that receives and augments patron personal information. AoD proponents among the staff accepted and relied on the above explanation of patron data use without performing an independent investigation into whether these statements were accurate. SCPL management also acknowledged that some risk associated with AoD use might be necessary to remain competitive in the marketplace.^[55]

SCPL staff also expressed concerns that patrons were not informed or given a choice regarding AoD use of patron data. Some questioned whether the Library should be run like a commercial venture vying for patron market share.^[56]

The Grand Jury concluded that these differences of opinion were not adequately addressed within the Library, and the lack of resolution contributed to difficulties in developing and implementing a relevant and timely privacy policy and practice.

Conclusion

SCPL faces many complex challenges in the years ahead. These include rebuilding infrastructure, accommodating potential budget and staffing shortfalls, and satisfying rapidly changing patron needs and expectations. Despite the stresses of these circumstances, and differing visions for the Library, SCPL staff uniformly demonstrated professionalism, dedication, passion for their institution, and unflagging service to patrons.

Public libraries like SCPL are sanctuaries of intellectual freedom. In response to the Digital Age, however, the role of libraries is evolving. People can now use internet search engines to get information, rather than visiting the library or calling a reference librarian. To stay relevant yet true to one of their core missions, *servicing the underserved*, libraries have begun placing more emphasis on services such as computer training and access to electronic media, educational programs and community meetings, and referrals for at-risk patrons to social and government programs.

In an attempt to satisfy perceived patron demand, some libraries, including SCPL, have also started using data analytics tools similar to those used by businesses to market products to consumers. Using these tools in libraries is a potential threat to patron privacy and trust.

This report has examined SCPL's use of third-party data analytics in relation to current California law pertaining to confidential patron data; industry best practices for patron privacy; current SCPL privacy policy and staff concerns regarding privacy, transparency, and patron consent; and the perceived usefulness of these analytical tools.

The Grand Jury has concluded that SCPL management did not recognize the importance of

- informing patrons how SCPL uses their personal data;
- giving patrons the opportunity to consent to use of their personal data;

- explaining patron data use in proposed privacy policy and online documents;
- adopting best practices outlined by the ALA;
- carefully evaluating risks versus rewards when using AoD;
- staying abreast of state laws concerning library use of patron data; and
- resolving the disagreements among staff regarding the use of AoD and its implications for patron privacy.

Findings

- F1.** The use of Gale Analytics on Demand by Santa Cruz Public Libraries was inconsistent with the Library's long-standing policy on Confidentiality of Library Records (policy 303, adopted February 2006; revised November 2010) and companion document, "Information We Keep About You."
- F2.** The use of Gale Analytics on Demand, or any other data analytics tool, by Santa Cruz Public Libraries is not clearly addressed in the Library's newly revised policy, Confidentiality of Library Records & Patron Data Privacy Policy (policy 303, adopted June 6, 2019).
- F3.** Santa Cruz Public Libraries did not adequately inform its patrons about the Library's use of Gale Analytics on Demand or obtain their consent for this use.
- F4.** Santa Cruz Public Libraries used Gale Analytics on Demand without adequately considering the patron privacy aspects of current California law.
- F5.** Santa Cruz Public Libraries used Gale Analytics on Demand without examining the contract for this service, thus raising potential liability issues related to data ownership, data breaches, and patron privacy.
- F6.** The contract is unclear and does not contain language that protects the interests of the Pacific Library Partnership, its member libraries, and their patrons.
- F7.** The use of Gale Analytics on Demand by Santa Cruz Public Libraries is inconsistent with best practices in the library community regarding patron privacy.
- F8.** Santa Cruz Public Libraries used Gale Analytics on Demand without adequately evaluating the effectiveness of the tool.
- F9.** The use of Gale Analytics on Demand by Santa Cruz Public Libraries has created disagreement among Library staff concerning the traditional responsibility of libraries to protect patron privacy, the validity of data analytics as a planning tool, and potential security vulnerabilities of the system.

Recommendations

- R1.** Santa Cruz Public Libraries (SCPL), in coordination with the Library Advisory Commission (LAC) and Library Joint Powers Authority (JPA) board, should revisit the Library's revised privacy policy (adopted June 6, 2019) to specifically address the use of data analytics and other tools utilizing patron information. (F1–F4, F7)
- R2.** SCPL should implement a system for obtaining and managing patron consent for data analytics and other tools that use patron information. (F3)

- R3.** SCPL management and staff, in coordination with LAC and the JPA board, should stay abreast of changes to state law, especially as it concerns patron privacy and evolving technology, and update Library policies and practices in response to such changes. (F4)
- R4.** SCPL should review the contracts for all third-party digital services used by the Library, including those provided by library consortia. (F5, F6)
- R5.** SCPL should adopt guidelines and practices suggested by the American Library Association with regard to patron privacy and data analytics services. (F7)
- R6.** SCPL should designate a data privacy officer and give this officer full authority and responsibility to implement and enforce the privacy policy, and to periodically report to the SCPL director, JPA board, LAC, and the public. (F7)
- R7.** SCPL should perform a meaningful evaluation of any tool that uses patron information to determine if the benefits outweigh the risks to patron privacy. (F8)
- R8.** SCPL should offer workshops for patrons to explain how the Library uses patron information and to explore related privacy issues. (F3, F4)

Required Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Director, Santa Cruz Public Libraries	F1–F9	R1–R8	90 Days September 23, 2019
Library Joint Powers Authority Board	F1–F5, F7	R1, R3, R6	90 Days September 23, 2019

Requested Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Library Advisory Commission	F1–F4, F7	R1, R3, R5	90 Days September 23, 2019

Abbreviations and Acronyms

- **ALA:** American Library Association
- **AoD:** Gale Analytics on Demand
- **JPA:** Joint Powers Authority
- **LAC:** Library Advisory Commission
- **PII:** Personally Identifiable Information
- **PLP:** Pacific Library Partnership
- **SCPL:** Santa Cruz Public Libraries

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Site Visits

- Joint Powers Authority meetings (various locations): 12/6/18; 1/10/19; 2/7/19; 3/7/19; 5/2/19; 6/6/19
- Library Advisory Commission meetings (various locations): 11/19/18; 2/11/19; 4/15/19; 5/20/19
- SCPL CyberSecurity Class (Aptos branch library): 10/30/18
- Felton Library Open House 3/16/19

Websites

- American Library Association: <http://www.ala.org>
- Pacific Library Partnership: <http://plpinfo.org/>
- Santa Cruz Public Libraries: <https://www.santacruzpl.org/>

Appendix A

Experian Mosaic Groups and Segments with Nationwide Percentages⁵⁷

Mosaic USA group and type structure

A	Power Elite 7.17%	A01	American Royalty	2.02%
		A02	Platinum Prosperity	1.25%
		A03	Kids and Cabernet	0.89%
		A04	Picture Perfect Families	0.98%
		A05	Couples with Clout	1.11%
		A06	Jet Set Urbanites	0.93%
B	Flourishing Families 4.30%	B07	Generational Soup	1.29%
		B08	Babies and Bliss	0.87%
		B09	Family Fun-tastic	0.85%
		B10	Cosmopolitan Achievers	1.29%
C	Booming with Confidence 6.96%	C11	Aging of Aquarius	2.39%
		C12	Golf Carts and Gourmets	0.60%
		C13	Silver Sophisticates	2.68%
		C14	Boomers and Boomerangs	1.30%
D	Suburban Style 4.57%	D15	Sports Utility Families	1.15%
		D16	Settled in Suburbia	1.25%
		D17	Cul de Sac Diversity	0.58%
		D18	Suburban Attainment	1.59%
E	Thriving Boomers 5.95%	E19	Full Pockets, Empty Nests	1.39%
		E20	No Place Like Home	2.17%
		E21	Unspoiled Splendor	2.38%
F	Promising Families 3.80%	F22	Fast Track Couples	3.00%
		F23	Families Matter Most	0.80%
G	Young, City Solos 3.08%	G24	Status Seeking Singles	1.38%
		G25	Urban Edge	1.70%
H	Middle-class Melting Pot 3.52%	H26	Progressive Potpourri	1.60%
		H27	Birkenstocks and Beemers	0.93%
		H28	Everyday Moderates	0.53%
		H29	Destination Recreation	0.46%
I	Family Union 5.27%	I30	Stockcars and State Parks	1.63%
		I31	Blue Collar Comfort	1.16%
		I32	Steadfast Conventionalists	1.41%
		I33	Balance and Harmony	1.07%
J	Autumn Years 6.96%	J34	Aging in Place	3.15%
		J35	Rural Escape	1.89%
		J36	Settled and Sensible	1.92%

Experian Mosaic Groups and Segments with Nationwide Percentages (cont.)

K	Significant Singles 4.74%	K37	Wired for Success	1.10%
		K38	Gotham Blend	1.37%
		K39	Metro Fusion	0.41%
		K40	Bohemian Groove	1.86%
L	Blue Sky Boomers 5.55%	L41	Booming and Consuming	0.92%
		L42	Rooted Flower Power	2.36%
		L43	Homemade Happiness	2.27%
M	Families in Motion 2.69%	M44	Red, White and Bluegrass	1.47%
		M45	Diapers and Debit Cards	1.22%
N	Pastoral Pride 4.62%	N46	True Grit Americans	1.31%
		N47	Countrified Pragmatics	1.14%
		N48	Rural Southern Bliss	1.56%
		N49	Touch of Tradition	0.61%
O	Singles and Starters 11.16%	O50	Full Steam Ahead	0.56%
		O51	Digital Dependents	4.24%
		O52	Urban Ambition	1.25%
		O53	Colleges and Cafes	0.84%
		O54	Striving Single Scene	2.68%
		O55	Family Troopers	1.58%
P	Cultural Connections 4.71%	P56	Mid-scale Medley	0.85%
		P57	Modest Metro Means	0.69%
		P58	Heritage Heights	0.51%
		P59	Expanding Horizons	1.29%
		P60	Striving Forward	0.91%
		P61	Humble Beginnings	0.47%
Q	Golden Year Guardians 8.77%	Q62	Reaping Rewards	1.79%
		Q63	Footloose and Family Free	0.45%
		Q64	Town Elders	4.63%
		Q65	Senior Discounts	1.89%
R	Aspirational Fusion 2.47%	R66	Dare to Dream	1.50%
		R67	Hope for Tomorrow	0.97%
S	Economic Challenges 3.72%	S68	Small Town Shallow Pockets	1.24%
		S69	Urban Survivors	1.62%
		S70	Tight Money	0.19%
		S71	Tough Times	0.67%

Description of Experian Mosaic Silver Sophisticates Segment^[58]

Silver Sophisticates are a mix of older and retired couples and singles living in suburban comfort. All but a small percentage of households are empty nests. Members of Silver Sophisticates live in upscale neighborhoods located near big cities and are highly educated. Typically, there is at least one retiree in the household, and those who are still in the workforce have well-paying technical and professional service jobs. They can afford to buy older, stylish homes worth upwards of half a million dollars.

With the luxury of both time and money, these households pursue leisure-intensive lifestyles. They like to dine out, go to plays and concerts and shop for decorative antiques. They travel often, both on cruises and flights abroad to experience other cultures. These are fitness-minded households whose members typically belong to health clubs where they can be found walking, using cardio machines and pedaling stationary bicycles. Relaxation at home typically involves a book or Kindle.

Silver Sophisticates describe themselves as brand loyal in the marketplace. They like to buy clothes and housewares in high-end stores as well as through catalogs and online. Acknowledging their technological anxiety, they rarely buy trendy consumer electronics. They do, however, like to buy premium cars, typically new imported models. Self-described “smart greens”, they also look for products that are made or packaged using recycled materials.

This is a segment where traditional media still reigns supreme. Silver Sophisticates are into news; they are avid newspaper readers and tune in to radio newscasts. They subscribe to specialty magazines that cover cooking or cars. They have an above-average interest in TV and are particularly fond of news broadcasts, history programs, movies and political commentary. The internet is their first place they turn for practical activities like travel planning, researching stocks and doing medical research. Just don't ask them to send a tweet, update their status or play a video game.

Unlike other older segments, Silver Sophisticates are relatively liberal in their views, although they have a fairly equal split in support for the Republican, Democrat and Independent parties. Silver Sophisticates support environmental causes, equal rights for women and other progressive social issues. They are also active in the community and see themselves as members of the global village. They worry about international issues and volunteer for community groups. They also donate to a variety of charities involved with health, social services, education, politics, the environment, the arts and public broadcasting.

Silver Sophisticates can afford to be philanthropic. These folks have amassed large nest eggs from diversified portfolios. They have high rates for owning retirement accounts like IRAs and Keoghs. They carry a number of credit cards, in part to take advantage of the rewards programs. After all, they never know when they might come across the perfect offer for a cool restaurant or a hot ticket to a Broadway show.

Appendix B

California Government Code, Section 6267, as Amended by SB 445 (2011–2012)^[59]

6267. All patron use records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed by a public agency, or private actor that maintains or stores patron use records on behalf of a public agency, to any person, local agency, or state agency except as follows:

(a) By a person acting within the scope of his or her duties within the administration of the library.

(b) By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.

(c) By order of the appropriate superior court.

As used in this section, the term “patron use records” includes the following:

(1) Any written or electronic record, that is used to identify the patron, including, but not limited to, a patron’s name, address, telephone number, or e-mail address, that a library patron provides in order to become eligible to borrow or use books and other materials.

(2) Any written record or electronic transaction that identifies a patron’s borrowing information or use of library information resources, including, but not limited to, database search records, borrowing records, class records, and any other personally identifiable uses of library resources information requests, or inquiries.

This section shall not apply to statistical reports of patron use nor to records of fines collected by the library. [emphasis added to indicate changes from SB 445]

Appendix C

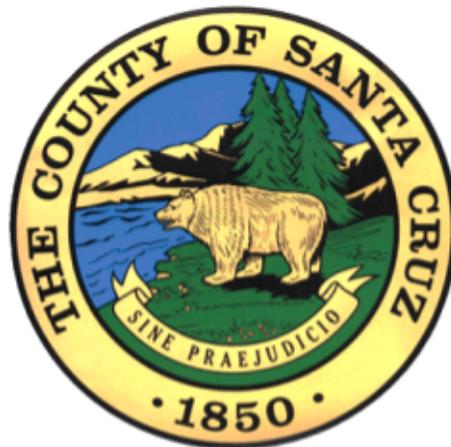
Sample Contract Addendum from the Seattle Public Library (SPL)^[60]

A provider of services to SPL will not reveal or disclose any data or records, either physical or electronic, which are designated as confidential by the Library or which pertain to SPL patrons when such data or records could be used in any manner to identify a Library patron or any references or materials that a specific Library patron accesses.

A provider of services to SPL must treat all the designated or individually identifiable SPL records as confidential and protected. Encryption of such data while in motion or at rest, and restricting access to confidential data, are typical methods of data protection. No SPL records or data shall be released by the provider to any third party without the prior written consent of the SPL.

In the event that the provider violates this addendum, then said provider agrees to indemnify, defend and hold harmless SPL and its employees from and against any losses, costs, expenses, liabilities (including attorney's fees), penalties and sanctions arising out of or relating to such violation. This addendum does not limit the provider's liability as specifically established under law.

The Parties hereto agree that this amendment modifies, changes, amends and has precedence over any contradictory language in the contract between the Parties. [emphasis added]



Santa Cruz County Probation

Officers Inadequately Equipped and At Risk

Summary

The role of the Probation Department (Department) in Santa Cruz County, as in other counties, has changed significantly in recent years due to legislation and voter-approved propositions. As a result, former prison inmates with a higher level of criminal sophistication now require supervision at the community level. Many of them have prior felony criminal histories.

This Grand Jury report identifies concerns about the dangers and unnecessary risks Adult Division Deputy Probation Officers (DPOs) face in supervising some high-risk offenders. Inadequate or faulty safety equipment, lack of training, limited law enforcement support, and lack of an armed unit all contribute to an unsafe working environment.

The Department has received state, federal, and foundation grants in support of its rehabilitative programs as well as for improved internal data collection and reporting systems. But the Department has not adequately responded to the complaints and concerns of DPOs whose caseloads have increased and who now supervise an increasing number of violent offenders.

While the Department has not experienced any fatalities, violent offenders have injured Adult Division DPOs attempting to supervise them in the field. Equally concerning is that rather than risk injury or death, DPOs often do not visit offender's at work or home, leaving them unsupervised and the community unaware of the potential dangers posed by high-risk offenders in our neighborhoods.

Background

The Santa Cruz County Probation Department (Department) consists of three divisions: Adult Services, Juvenile Services, and Juvenile Hall. This Grand Jury focused on the Adult Division Deputy Probation Officers (DPOs). These officers play two roles, social worker and enforcement officer. In the first role they assist the offender to rehabilitate and reintegrate into society. In the enforcement role they focus on protecting the public and enforcing probation terms.

Fieldwork, which is a required component of a DPO's duties, includes visits with offenders in their homes, places of employment, education facilities, and treatment centers. Field visits are used to verify addresses, and search for guns, drugs, and other prohibited possessions. DPOs help local law enforcement with the arrest of probation violators, and as members of the County [Task Force Unit](#) they patrol the streets in high crime areas.

Recent legislation has impacted the role of DPOs throughout California, including changes in policy, procedures, and tactics to supervise higher level felons entering our communities.

Prison Realignment

In 2009 the U.S. Supreme Court mandated a massive reduction in California's prison population. Governor Jerry Brown signed AB 109 into law (November 2011). Commonly referred to as Prison Realignment (Realignment), AB 109 transferred responsibilities of state parole officers to county deputy probation officers who now supervise felony offenders and many state parolees.^[1]

Proposition 47

In 2014, Proposition 47, the Reduced Penalties for Some Crimes Initiative (Safe Neighborhood and Schools Act) was passed.^[2] Crimes classified as "non-serious, non-sexual and non-violent," which had previously been felonies, were now classified as misdemeanors. Offenders who had already been sentenced under previous rules could apply to have their convictions reduced to misdemeanors. In January 2015, as many as 1 million Californians became eligible to change past felony convictions.

Impact of Legislative Changes

Legislative changes have increased reclassified probation cases at the county level. The state allocates funds to each county based on a formula to cover some of the additional expenses counties now incur.^[3] Each county has developed an implementation plan that includes funding formulas, programs, practices, personnel needs, infrastructure changes, or a combination of all, to deal with the added caseloads.^[4] Santa Cruz County has embraced a progressive approach to implementing Realignment, with an emphasis on rehabilitation programs.^[5]

Use of Risk Assessments

Several probation departments in California, including Santa Cruz, use a risk and needs assessment tool that categorizes offenders by their need for supportive and therapeutic services (housing, substance abuse, mental health, etc). The tool evaluates the risk to recidivate, but not the risk to harm a DPO. Offenders with both moderate and high risk needs may have unassessed violent behaviors, placing DPOs in potentially dangerous situations when supervising them. Only cases involving domestic violence or sexual offenses have separate risk assessment tools that measure the risk for future domestic violence or potential for sexual re-offending.^[6]

Safety of DPOs

DPOs are fully aware of the inherent risks of their jobs. But they also believe that to deliver effective community supervision to the highest risk offenders in the community, they should be equipped with the training and equipment needed to walk into dangerous situations with confidence and do their jobs safely.

Lack of sufficient training and safety equipment impacts DPOs when conducting [field visits](#), a necessary component of supervision. In many instances it is not safe for DPOs to perform field visits alone. Low staffing levels make it difficult to partner with other DPOs for field visits. In addition, local law enforcement is not always available to assist DPOs, due to their own priorities. Without adequate support or assistance DPOs are at personal risk in dangerous settings.

Scope

For this report, the Grand Jury interviewed Department administration and staff, law enforcement administrators and officers, and members of the probation officers union. The Grand Jury reviewed the Department's Strategic Plan and annual reports, newspaper articles, other counties' grand jury reports, and papers by experts in the fields of probation and law enforcement.^{[7] [8] [9]} We analyzed published reports evaluating AB 109 and Prop 47 to understand structural changes that have occurred in the last several years and their ramifications for the Department.^{[10] [11] [12] [13]}

We requested and reviewed documents to understand caseloads, organizational structure, budgets, policies, procedures, and protocols of the Department and the Adult Division.

Investigation

The focus of this report is on the risks faced by DPOs in the Adult Division, who do not have adequate safety equipment, training, an armed unit, and support of the Department to safely perform their jobs. DPOs and the Department acknowledge that probation work is inherently dangerous and accept those risks. However, the changing population of felons in the community puts DPOs at a higher level of risk without the support and equipment to safely supervise probationers.

The Grand Jury heard a consistent message from DPOs: a passion and a desire to do their jobs, but also a deep concern for their own safety and that of the community. One interviewee stated that sitting in court witnessing the level of felons being released into our community “terrifies me,” because DPOs are ill-equipped to supervise them.

The Grand Jury learned that Realignment has profoundly impacted DPOs. However, the impact of legislation is not the core reason for DPOs concerns about their safety and ability to perform their jobs. Through interviews and documentation reviews, the Grand Jury discovered key factors affecting the performance and morale of DPOs: the lack of (or faulty) safety equipment, the lack of department-wide training, heavy caseloads, and chronic understaffing. In addition, the unavailability of armed law enforcement to accompany DPOs on field visits, the policy prohibiting DPOs from being armed, and finally, their belief that Department management is not listening and responding to their concerns are other factors negatively impacting their ability to perform assigned duties.

Witnesses from the Department and local law enforcement expressed concerns about the high-risk offenders now on probation in the community. Under Realignment, low-level felony evaluation only applies to the most current offense and does not look at prior offenses. Thus, offenders with prior criminal histories of serious, violent, and/or sexual offenses can qualify for county probation. This is particularly concerning for DPOs supervising offenders who commit new felonies, which should render them ineligible for probation in Santa Cruz County; under Realignment these offenders are still eligible for local supervision.

SCCPOA: Documenting Concerns

In interviewing Department staff, we learned that their safety issues and concerns predate Realignment. Recently (October 2018), the Santa Cruz County Probation Officers’ Association (SCCPOA) sent a letter to the Chief Probation Officer, judges of the Superior Court, the Board of Supervisors, and the County Administrative Officer, which reads in part:

No probation officer should have to endure unnecessary stress that follows with involuntarily jeopardizing their personal wellbeing in the event of a physical threat. We demand a revision of current policies and procedures of field supervision. We call for the County of Santa Cruz to adopt full measures of safety for our Deputy Probation Officers to promote values of life and to preserve the integrity of community supervision. Absent of these considerations we request the County of Santa Cruz Probation Department suspend all mandated field contacts.

In March 2019, a survey of union members indicated 87% favored suspending field visits until DPO safety needs are addressed. The Grand Jury learned the SCCPOA had not received a response to their letter as of June 2019.

The March 2019 *Adult Division Report* shows that DPO interaction and field visits with offenders decreased by 49% between March 2018 (371) and February 2019 (183), with

a 62% decline from October 2018 to December 2018.^[14] The Grand Jury was informed by Department staff that the following factors contribute to lower field visits: low morale, stress, lack of training, understaffing, absences, and vacation days.

Witnesses stated that an additional field visits report, which was recently produced and shared among Department management team, showed even fewer field visits by DPOs during the last year. Although the Grand Jury requested a copy of this report, one was not received as of the writing of this report.

Safety Concerns: Feeling Unsafe and Unheard

The Grand Jury received testimony and was provided with documentation indicating that DPOs are being exposed to unpredictable and dangerous situations without the benefit of adequate safety equipment and training, thus leaving them at higher levels of vulnerability than necessary.

Many witnesses testified that the Department's management team does not prioritize or take DPO safety issues seriously enough. Multiple DPOs noted that because some members of the management team have never worked as adult DPOs, they feel that management is not sensitive to the risks associated with supervising certain offenders living in the community today.

The Department has an internal Safety Committee composed of two department managers, two SCCPOA representatives, and a supervising DPO.^[15] The purpose is to review incidents and responses and discuss policy revisions, safety issues, training status, audit of safety equipment, and equipment needs. Witnesses reported that many of the safety issues and concerns are not taken seriously by the Department. Witnesses believe that management truly doesn't understand the position in which they are putting DPOs.

The Grand Jury interviewed a Department official who testified that there had been no legitimate threats or injuries to DPOs, and recalled only one recent event, describing it as "a tussle with no visible injuries sustained by an officer." The Grand Jury, however, received testimony and documentation for the same event, as summarized below.

The purpose of the field visit was to verify an address for an offender who was on probation for an assault with a deadly weapon involving an axe and a knife. DPOs were confronted by an agitated and noncompliant probationer who assaulted them. The DPOs' fear escalated when, during the assault, they saw a machete within reach of the offender. DPOs requested emergency assistance from Watsonville Police Department and the Santa Cruz County Sheriff's Office; multiple officers were needed to gain control of the situation and to detain the probationer. During a follow-up search of the home, more weapons were discovered.

There were other incidents reported during our investigation. Other less dramatic but equally dangerous situations were reported to the Grand Jury. The dismissive response by the Department of these threatening incidents adds to the DPOs feeling unsafe and unheard.

Safety Equipment

The Department's position is that not all DPOs need the same level of safety equipment. DPOs, however, believe that for their personal safety and ability to supervise offenders in the field they need more comprehensive safety equipment.

The Grand Jury learned of the following problems with safety equipment:

1. Inadequate Vests. Under current Department policy, properly fitted bullet-proof and tactical vests are only issued to DPOs who supervise specialized units—that is, caseloads including Post Release Community Supervision (PRCS) probationers and those with serious mental health issues and violent sex offenders. But witnesses also noted that DPOs in non-specialized units now face the same dangers when conducting field visits with high-risk offenders and other previously violent offenders who are now classified as low- to moderate-risk offenders.

DPOs not assigned to specialized units are expected to share multi-sized vests, many of which do not fit. A too-small vest does not cover the body sufficiently, leaving the wearer vulnerable to injury; a too-big vest can ride up and impede one's ability to access safety equipment.

In addition, witnesses noted that the shared vests are not properly maintained, are often dirty and sweaty, and are not easily accessible to DPOs in the event of emergencies. According to best practices, a vest must be maintained to function properly.^[16]

2. Malfunctioning Radios. Handheld radios are a lifeline to safety for a DPO experiencing danger during a field visit. DPOs and Department staff reported to the Grand Jury that the radios currently in use are limited in number and substandard. When conducting contact visits in remote areas of the County, DPO's handheld radios rarely function. In addition to handheld radios, DPOs and the SCCPOA have requested car radios with GPS capabilities that would transmit to Netcom (the County 911 dispatch center).
3. Lack of Tasers. After several years of administration opposition, tasers were finally approved for use by DPOs. We were unable to verify whether tasers are included in the proposed FY 2019–2020 budget.
4. Ineffective Oleoresin Capsicum (OC) Spray, known as pepper spray, is approved by the Department for DPOs to carry. Testimony from DPOs and law enforcement indicates that they do not believe OC spray is the best tool for keeping DPOs safe in the field. In fact, DPOs' statements regarding OC spray included the following: "It's good for dogs," and, "It's messy and gets in DPOs' eyes," and, "It's not always practical."
5. Restricted Use of Identifiable Clothing and Badges. Under current Department policy, DPOs are required to cover up all markings and equipment that identify them as probation officers: clothing, badges, handcuffs, and any safety equipment must

be covered with a jacket before going out into the field. (There are some specialized units and situations that allow for identifiable clothing.) The majority of witnesses, however, agreed that DPOs who are easily identifiable on scene, especially in a chaotic or dangerous situation, are safer from potential harm. According to a law enforcement website article,

Where you place your badge—at your beltline or hanging from your neck—may directly affect your chances of surviving when you’re confronted by a responding law enforcement officer.^[17]

6. Lack of Narcan™. In 2015, the Drug Enforcement Agency issued a public warning to law enforcement and others to alert them to the potential for a lethal exposure from fentanyl, a white powdery narcotic that resembles cocaine and is 40 to 50 times stronger than heroin.^[18] DPOs have requested that Narcan™ (a medication designed to rapidly reverse opioid overdose) be placed in their field visit [search kits](#) because of DPOs’ potential exposure to fentanyl in the field.^[19]

The request was initially approved by the Department in March 2018, but to date Narcan™ is not in the DPO search kit. DPOs were told to obtain Narcan™ from Janus of Santa Cruz or request a prescription from their private physicians for personal use in the field.

Training

The Grand Jury heard from DPOs about the lack of Department-wide training, the inadequacy of existing training, and the need for continuous, ongoing training that focuses on the realities of their field work. They feel unprepared and unsafe when visiting offenders in the field. Newly hired DPOs may be assigned high-risk case loads after only six months on the job, with no specialized training.

While staff were pleased that a pilot field safety training program was recently approved and implemented by the Department’s Safety Committee, they still identified concerns, including that only new hires are required to participate in the field safety training. Although the training is open to all DPOs, most find it challenging to participate in any non-mandatory training because of their other duties. Documents received by the Grand Jury show that as of January 2019, two DPOs have completed the new field safety training, two DPOs are currently enrolled with an expected completion date in Summer 2019, and three are on a waitlist to begin training in Fall 2019.

The Department offers 40 hours a year of ongoing education, including CPR/first aid, skill development, and classes on legislative changes impacting probation. An interviewee felt that 40 hours of ongoing education is not enough and shared that some probation departments have a weekly training day with a focus on “trained to serve and trained to survive.” There is no additional training for DPOs tasked with a higher risk caseload.

Field Visits and Staff Shortages

DPOs' fear for personal safety prevents them from supervising all offenders in the field according to their probation terms. Because DPOs are fearful when making field visits to high-risk offenders, they often don't make the required visits or merely leave a card at a home, rather than risk dangerous encounters and being injured.

The Grand Jury received testimony from interviews, reviewed documents, and Department policies and procedures related to DPO field visits. The testimony indicated that field visits are conducted based on practice not policy. For their safety, DPOs try to be accompanied by either another DPO or local law enforcement when conducting field visits with potentially volatile offenders. DPOs are conducting [contact visits](#) at the homes of known gang members, drug dealers, violent sex offenders, and those known to have a history of firearms and/or weapons possession.

As noted earlier, chronic staff shortages within the Department mean that two DPOs are often not available at the same time to make these required visits. Relying on law enforcement is not realistic due to their own heavy workloads and priorities. The end result is that a DPO must choose between conducting these visits without assistance, or leaving many offenders unsupervised, limiting their success at reintegration and rehabilitation, and potentially placing the community at risk.

Pressure to Adhere to Standards While Risking Personal Safety

The field visit situation presents a real quandary for DPOs who care about their professional responsibilities to the offenders and to the community. Many reported that there is pressure from within the Department to conduct field visits on high-risk populations, despite the risks they present. In contrast, supervisors advise DPOs to choose personal safety over a risky field visit.

Witnesses reported, however, that their fear of being labeled non-compliant will lead to negative personnel evaluations.

Caseloads, Standards, and Risks

Caseload size is also of concern to DPOs. The Grand Jury heard testimony that caseloads range from "too high" to "dangerously high." One staff member noted that domestic violence caseloads are "ridiculously high." Many DPOs reported that domestic violence offenders who are assessed with some of the highest risks receive little to no supervision.

The Adult Probation Division Annual Report: 2018 (see note 6) shows an increase of 31% in the AB 109 population between 2017 and 2018. In addition to caseload supervision, DPOs are expected to be more active in pre-trial cases, which have increased 300% over the past 10 years.

The American Parole and Probation Association (APPA) caseload standards recommend no more than 20 per DPO for offenders requiring intensive supervision; 50

per DPO for moderate- to high-risk offenders; and 200 per DPO for low-risk offenders.^[20] Documents obtained by the Grand Jury show very few of the DPOs carry caseloads that fall within these guidelines. The highest numbers were noted in the areas of domestic violence and general supervision. The following are the average caseloads for Santa Cruz DPOs based on an April caseload report:

- Intensive supervision: 36 moderate- to high-risk offenders
- Moderate- to high-risk general supervision: 129 offenders (one DPO had 175 moderate- to high-risk offenders)
- Moderate- to high-risk Domestic violence: 111 total offenders

Table 1 depicts the caseload totals reported to the Grand Jury as of April 12, 2019. Currently 34 DPOs supervise 2,046 active cases and 477 [bench warrants](#). The assessed moderate- to high-risk cases were or approximately 64% of the total active cases.^[21]

Table 1. Adult Division Caseload Assignments

Unit	Active Caseload	Moderate- to High-Risk Active Cases	Bench Warrants	Assigned DPOs
General Supervision	645	69%	161	5
Domestic Violence	558	49%	193	5
*PRCS/Intensive	209	88%	44	5
*1170(h) Intake	205	73%	128	4
Mental Health/ Sex Offender	195	52%	47	5
Pre-Trial	135	80%	0	6
Investigations	99	52%	10	4
Totals	2,046	64%	455	34

Source: Santa Cruz County Probation Department, April 2019.

*PRCS: Post Release Community Supervision

*1170(h): non-serious, non-violent, and non-sexual felony offenders

Figure 1 shows over 1,300 offenders assessed as high to moderate risk, requiring field visitations; over 500 low risk offenders require monitoring, but no field visitation.

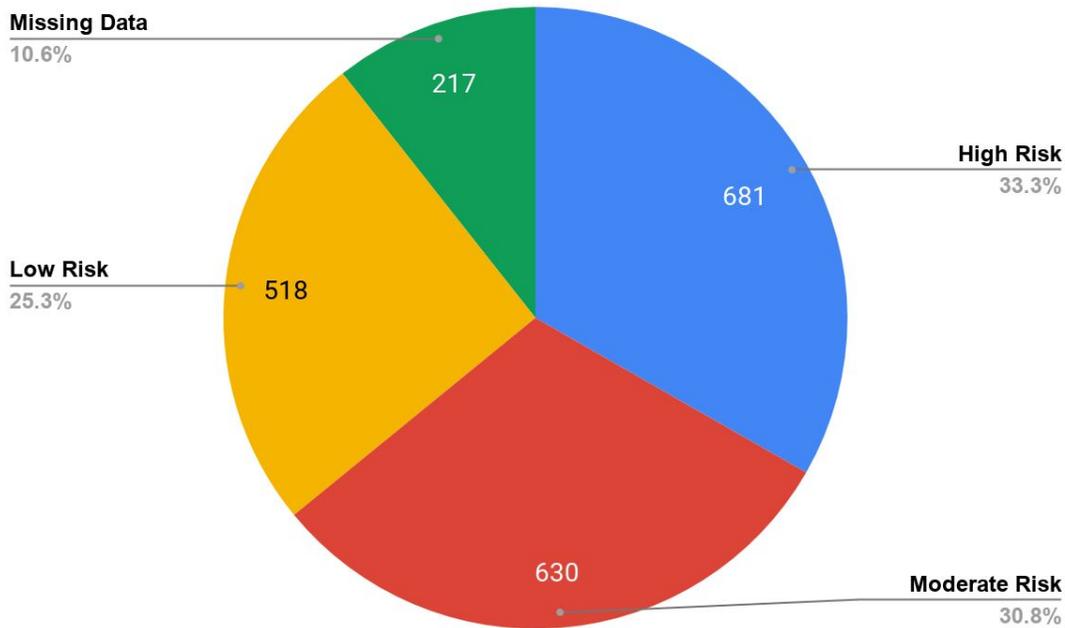


Figure 1. Adult Division Caseload Risk Assessment
 Source: Santa Cruz County Probation Department, April 2019

To Arm or Not to Arm

There has been a history of philosophical differences debated in the United States between arming or not arming DPOs. Current Department management believes that DPOs are not first responders and thus should not be armed. Many DPOs, however, believe that Santa Cruz should respond to the changing environment posed by Realignment, which mandates local supervision of high-risk felony offenders. A law enforcement officer stated, “We don’t go out to that house without five guys (for back-up), why are unarmed DPOs going out alone?”

According to SCCPOA, every county in the State, except Santa Cruz, has an armed DPO unit.

Santa Clara County, like many others in California, decided to form armed DPO units in anticipation of post AB 109 offenders released into their communities. DPOs who choose to be armed require both initial and subsequent arms training; no DPOs are forced to carry arms. A DPO union representative said that the change made Santa Clara’s DPOs more confident in doing field visits and less worried about being surprised by an offender’s attack.

In addition, the Grand Jury learned that SCCPOA representatives met with some Santa Cruz County Supervisors to discuss arming DPOs. Union representatives estimated that if armed, their safe supervision of offenders would increase 30–60 percent, thus eliminating the need to wait for law enforcement.

Witnesses acknowledged to the Grand Jury that not all DPOs want to be armed, nor do the witnesses think that they should be. They do believe that DPOs who supervise high-risk offenders, want to be armed, and are willing to adhere to training standards should have the option to be armed. In a recent survey by the SCCPOA, 95% DPOs agree there should be an armed unit within the Department.

Unarmed DPOs: Liabilities, Not Assets

Numerous witnesses, including law enforcement administration and officers, told the Grand Jury that unarmed DPOs are viewed as liabilities rather than assets in dangerous or risky situations. Law enforcement has to be concerned for their own safety as well as that of DPOs. In dangerous encounters with offenders, the DPO's only course of action is to find shelter, hide behind a car or behind an armed law enforcement officer, or run.

A Culture of Fear and Low Morale

Many Department staff who spoke to the Grand Jury shared their feelings of hopelessness, low morale, and frustration with not fulfilling all their duties. They also expressed fear of retaliation from management when asking for support. The issues identified in this report support these allegations, including the sense that DPOs are not listened to and their concerns for safety are either not heard or dismissed. We also heard that DPOs who raise safety issues may receive negative evaluations or be overlooked for promotions. This culture has led to or exacerbated an already stressful job for many DPOs.

Conclusion

Santa Cruz County Probation Department Adult Division DPOs are dedicated professionals who care deeply about their mandate to assist offenders in reintegrating into society. They also care about the safety of the community they serve, as well as their own personal safety when carrying out their duties. Unfortunately, many DPOs believe and told the Grand Jury that the "appearance and standing [of the Department] in the community" is of more importance to Department management than the concerns and safety needs of DPOs who are on the front lines.

The Grand Jury heard testimony that paints a picture of an environment where Department staff do not feel they can depend on management to support them or to provide them with the safety equipment and training needed for safe field work.

In light of extensive documentation and testimony the Grand Jury has developed the following findings and recommendations for the Santa Cruz County Probation Department, the Santa Cruz County Board of Supervisors, and the Santa Cruz County Administrative Officer.

Findings

- F1.** Deputy Probation Officers' (DPOs') lack of safety equipment impedes their ability to do their assigned field visits without jeopardizing their own safety.
- F2.** The Department collects and stores, but does not track serious incident reports involving DPOs with offenders.
- F3.** The Department meets the minimum state requirements for annual DPO training, but does not provide sufficient safety training for DPOs in the field.
- F4.** Law enforcement is not always available to accompany DPOs in high-risk situations, resulting in fewer contact visits by DPOs.
- F5.** The failure of the Department to include an armed unit supporting DPOs increases safety risks to DPOs in the field.

Recommendations

- R1.** The Department should provide Deputy Probation Officers (DPOs) with standardized safety gear (individually fitted vests, functioning radios, tasers, OC spray, identifiable clothing, and Narcan™) for their field visits. (F1)
- R2.** The Department should provide all DPOs with mandatory initial and ongoing field safety training in collaboration with the Safety Committee. (F3)
- R3.** The Department should coordinate with local law enforcement to develop policies and procedures for law enforcement officers to accompany DPOs during field visits. (F4)
- R4.** The Department should commission a needs assessment by an independent consultant to ascertain the potential harm to unarmed officers doing field work with high-risk offenders, with a focus on developing an armed unit. (F2, F5)

Commendations

The Grand Jury commends the dedication and passion of the Santa Cruz County Probation Officers who work to keep themselves and our community safe while facing multiple challenges in fulfilling their duties.

Required Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Santa Cruz County Board of Supervisors	F1–F5	R1–R4	90 Days September 23, 2019
Santa Cruz County Chief Probation Officer	F1–F5	R1–R4	90 Days September 23, 2019
Santa Cruz County Sheriff	F4	R3	90 Days September 23, 2019

Requested Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Santa Cruz County Administrative Officer	F1–F5	R1–R4	90 Days September 23, 2019

Defined Terms

- **APPA:** American Probation and Parole Association
- **Department:** Santa Cruz County Probation Department
- **DPO:** Deputy Probation Officer
- **OC:** Oleoresin capsicum (the active ingredient in pepper spray).
- **PRCS:** *Post release community supervision* (supervision of an offender who has been released from a California Department of Corrections and Rehabilitation institution by a county agency, pursuant to the *Post Release Community Supervision Act of 2011* whereby convicted felons are released from prison to county probation).
- **Realignment:** AB 109, commonly known as the Public Safety Realignment Act of 2011, and codified in Penal Code Title 2.05 as the Postrelease Community Supervision Act of 2011.
- **SCCPOA:** Santa Cruz County Probation Officers' Association

Glossary

- **Bench warrant:** A written order issued by a judge authorizing the arrest of a person charged with some contempt, crime, or misdemeanor.
- **Field contact / field visit:** An interaction by a DPO supervising the probation terms of an offender, including office visits, phone calls, home visits, site visitation at employment, educational and therapeutic programs, or reports from external providers.
- **Felony:** a crime, sometimes involving violence, regarded as more serious than a misdemeanor, and usually punishable by imprisonment for more than one year.
- **High risk:** an assessment score given to an offender with the highest need for services (treatment and control techniques) and potential to reoffend without intensive supportive supervision.
- **Low risk:** an assessment score given to an offender with needs that do not require the same level of intensive services as an offender assessed moderate to high risk.

- **Mandatory supervision:** through a process called “split sentencing,” a judge can split the time of a sentence between a jail term and a period of supervision by a county probation officer.
- **Moderate risk:** an assessment score given to an offender whose needs do not require the same level of intensive services as an offender assessed as high risk.
- **Offender:** a person who commits an illegal act.
- **Penal Code 1170(h):** a post AB 109 classification of non-serious, non-violent, and non-sexual felony offenders being sentenced to local probation terms, rather than state prison, including drug offenders and a variety of personal property crimes with less than a \$950 value.
- **Pre-trial:** a proceeding held by a judge, arbitrator, DPO, etc. before a trial to simplify the issues of law and fact and stipulate certain matters between the parties, in order to expedite justice and curtail costs at the trial.
- **Rehabilitation:** the action of restoring someone to health or normal life through training and therapy after imprisonment, addiction, or illness.
- **Search Kit:** A supply bag or kit used by DPOs that contains first aid, trauma kits and other specialized tools and equipment needed for emergency response.
- **Task Force Unit:** The Santa Cruz County Anti-Crime Team is a local multi-agency task force comprised of personnel and other resources from law enforcement agencies. It combines, coordinates, and focuses the resources of city, county, state, and federal law enforcement agencies in Santa Cruz County to prevent and reduce violent crimes and major narcotics trafficking, and to apprehend those suspected of such crimes.

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- Santa Cruz County Department Job Descriptions
- Santa Cruz County Probation Department Safety Committee Agendas and Minutes: March 3, 2015 through April 10, 2019
- CAIS (Correctional Assessment and Intervention System) Women's Assessment Template
- Santa Cruz County Probation Department Officer Caseload Assignments, April 12, 2019
- Santa Cruz County Probation Department Caseload Totals by Assignment, April 12, 2019
- Santa Cruz County Probation Department Equipment Tracking Logs
- Santa Cruz County Probation Department 2018–2019 STC Training Hours Spreadsheet
- Email responses from Santa Cruz County Department regarding case management system; training policies; and staff completion of Field Safety Training
- Santa Cruz County Probation Department Adult Division Monthly Blast, March 2019
- Public Safety Realignment Santa Cruz County Implementation: A Report From the Santa Cruz County Probation Department, 2011–2013
- Santa Cruz County Public Safety Realignment and Post Release Community Supervision 2011 Implementation Plan, Oct. 4, 2011
- Santa Cruz County Probation Department Strategic Plan 2016–2012
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Santa Cruz County's Public Defense Contracts

How Complex Contracts Mised County Leaders

Summary

When a county does not track contractor performance, and the contractor is a highly skilled professional negotiator, costs rise.

The 2018–2019 Santa Cruz County Grand Jury investigated why the cost of the County's public defense contracts has risen more than the rate of inflation over the past 20 years. The Grand Jury considered whether caseloads, numbers of felony jury trials, and minimum staffing requirements explain the increase. The Grand Jury also investigated how well the County's leaders understand the contracts, whether the contracts follow the County's contract rules, how the County administers the contracts, and how perceptions about the County's public defense system may influence decisions.

The Grand Jury found that the County pays the public defense contractors large separate overhead subsidies that County leaders tend to overlook and that the County has not appreciated the expense of the contracts in the long term. Because the County does not track the case assignment data it collects, the County has not noticed that the main contractor's compensation has risen on average 4.12% per year for 20 years while total case assignments for the same period have fallen on average 1.09% per year.

The Grand Jury recommends that the County revise its contract rules to include specific new requirements and prohibitions, adjust the way it processes and administers contracted services, and change the words it uses to describe public defense services.

The Grand Jury did not investigate the County's public defense contractors. Nothing in this report is intended as criticism of any public defense contractor.

Background

Public Defender, Public Defense Contractor, or Unit 59? A Note on Word Choice

Some people in Santa Cruz County government will be surprised to learn that Lawrence P. Biggam is not, and has never been, the County’s Public Defender. The Public Defender is a person elected or appointed to an office of public defender. An office of public defender exists only if a county’s board of supervisors establishes it. Instead of establishing an office of public defender, a county may contract with attorneys in private practice to provide the services that the public defender would otherwise provide.^[1] Santa Cruz is such a county.

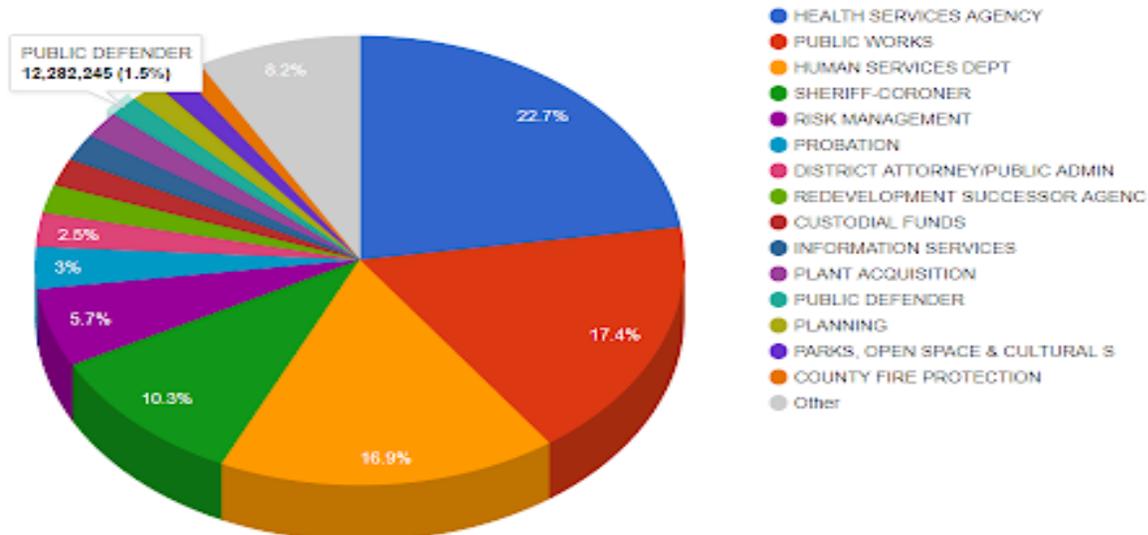
When County documents refer to the “Public Defender,” the documents frequently mean County Budget Unit 59, which is titled “Public Defender” (Unit 59).^[2] Unit 59 is an accounting category. Unit 59 only exists on paper. Unit 59 has no employees.^[3] Unit 59 is just a category the County uses to identify the money it spends to provide legal services to the “indigent” (that is, anyone who cannot afford an attorney) when the government threatens to take away their freedom.

The County normally refers to these services as “Public Defender” services.^[4] The professional literature, however, refers to these services as “public defense services.”^{[5] [6] [7] [8] [9] [10]} This report will also use the term “public defense services” and will refer to the attorneys who provide these services as “public defense attorneys” or, if they are under contract to provide these services, “public defense contractors.”

The County’s Public Defense Services

In fiscal year 2018–19 (FY2019), Unit 59’s budget represented 1.9% of total County budgeted expenses.^[11] The recommended FY2020 Budget for Unit 59 (Figure 1) is down slightly.

Figure 1: 2019–20 Recommended Expenditures



Source: Interactive Budget Tool^[12]

Unit 59's major function is to pay private attorneys to represent those persons whom a public defender would represent if the County had a public defender. The County Administrative Office assigns responsibility for Unit 59 to one Assistant County Administrative Officer and one Analyst. Personnel in the County Administrative Office are trained in public administration, but otherwise have no education, training, or experience in providing public defense services.^[13]

Unit 59 also pays for the non-attorney services and costs necessary to provide a defense. An attorney on County Counsel's staff reviews and approves payment for all non-attorney services and costs.^[14]

The Public Defense Attorneys

The Main Public Defense Contractor

Mr. Biggam, the founder of Biggam, Christensen and Minsloff (BCM), has contracted to provide public defense services to the County since 1975.^[15] For the past 44 years, Santa Cruz County courts have appointed BCM as defense counsel unless to do so would conflict with the interests of one of BCM's existing clients.^[16]

Who is the main public defense contractor? As this report will discuss, the identity of the main public defense contractor is ambiguous. The contract did not mention BCM by name until 2018.^[17] The contract does not even contain a pronoun to suggest whether the contractor is a "he" or an "it." The Auditor-Controller identifies the contractor as Lawrence Biggam in the Budget and on the Continuing Agreements List (CAL).^[18] Past Grand Jury reports, memoranda from the County Administrative Officer (CAO) to the Board of Supervisors (Board), and even Mr. Biggam himself, have identified BCM as the contractor.^{[19] [20] [24]} The Grand Jury has not made a finding as to which interpretation is correct. This report will refer to the contractor as Mr. Biggam.

The Alternative Public Defense Contractors

When BCM has a conflict, the court will appoint another law firm (Conflicts Firm) as alternative public defense counsel. The County's records indicate that the County has always retained two firms to provide alternative public defense counsel, allocating the conflicts cases between them.^[22] Page & Dudley (Page) has provided alternative public defense services since 1979. Wallraff & Associates (Wallraff) has provided alternative public defense services since 1989.^[23] In fiscal years 1977 and 1978, Fox & Popin (Fox) and Caspe & Germain (Caspe) served as alternative public defense contractors.^{[24] [25]}

The Fourth-Party Criminal Defense Conflicts Program (CDCP)

If BCM and both Conflicts Firms have a conflict, the judge will appoint an attorney in private practice to take the case. Such an attorney is sometimes referred to as "fourth party counsel." There was no formal procedure for selecting fourth party counsel until December 2014, when the County created the CDCP. County Counsel administers the

CDCP panel, which includes approximately 26 independent attorneys and law firms.^[26] The CDCP administrator is often able to identify an attorney who is available to appear before the Court for appointment on the same day as requested.^[27]

Criminal Justice Developments Affecting Santa Cruz County

Juvenile Offender Diversion

Almost two-thirds of young people who come in contact with law enforcement in Santa Cruz County are now diverted from the formal juvenile justice system and connected to education, counseling, and mental health services. In the 1990s, Santa Cruz County held more than 65 young people in a 42-bed facility. In June 2018, only 18 young people were in custody at Santa Cruz County Juvenile Hall.^[28] Fewer young people in the formal juvenile justice system reduces the need for public defense services.

Proposition 47

In 2014, Proposition 47 reclassified several categories of felonies as misdemeanors. The consequences of a misdemeanor conviction are less serious for offenders than the consequences of a felony. Misdemeanor defense is less demanding than felony defense, reducing the need for public defense resources.^[29] Proposition 47 has some retroactive features that temporarily increase the need for post-conviction legal assistance.^[30]

Proposition 64

In 2016, Proposition 64 decriminalized possession of marijuana for personal use by adults, eliminating an entire category of criminal offenses. Fewer marijuana arrests reduces the need for public defense services. Proposition 64 has some retroactive features that temporarily increase the need for post-conviction legal assistance.^[31]

Performance Budgeting and Public Defense Metrics

In September 2017, the County adopted a strategic planning initiative that includes, among other things, performance measure management.^[32] The County was also proposing to extend, and on June 12, 2018 did extend, the existing public defense contracts in anticipation that the County would implement a new model of public defense services.^[33] The 2017–2018 Grand Jury’s report, “Our Public Defender System: Anticipating Structural Change,” identifies several ways in which the County could measure public defense performance.^[34] The report observed that the County has chosen not to measure the performance of public defense contractors and recommended that the County choose which performance measures the County should collect. The report further recommended that the County start measuring the performance of the existing public defense contractors. That would create a baseline for assessing the performance of whatever new system of public defense services the County implements. The County rejected these recommendations as unnecessary.^[35]

What is a Fiscal Year? A fiscal year is the 12-month period that an organization uses for financial purposes. A calendar year always ends on December 31, but a fiscal year can end on any date. Most governments, like the County, use a fiscal year than ends on June 30. The County’s current fiscal year began on July 1, 2018 and will end on June 30, 2019. The County budget refers to this as “Fiscal Year 2018–19.”

For convenience, this report will distinguish a calendar year from a fiscal year with the designation “FY”. Thus, “FY2019” will refer to the fiscal year ending on June 30, 2019 but “2019” by itself will refer to the calendar year ending on December 31, 2019.

2018 Pay Increases for Public Defense Contractors

On June 12, 2018, the Board approved a recommendation to extend the contracts of the County’s public defense contractors for four years. The extension included significant pay increases in each of the four years. The largest element of compensation is an annual fee paid in monthly installments. The extension increased the annual fees paid to the three public defense contractors by 3.5% in each of FY2019 and FY2020, 4% in FY2021, and 5% in FY2022. A June 12, 2018 memo from the CAO to the Board (2018 Memo) recommended that the Board approve the extensions as part of restructuring the way the County provides public defense services, with full transition being accomplished by the end of FY2022. The 2018 Memo is reproduced as [Appendix 1](#). The 2018 Memo did not otherwise explain the specific amounts of the increases or why the increases are greater in the third and fourth years than in the first and second years.

Scope and Methodology

Sources

Public Defense Contracts and Quarterly Reports

The Grand Jury reviewed copies of public defense contracts and quarterly reports of case assignments and felony jury trials for as far back as the County Administrative Office was able to find records. There are no quarterly reports for fiscal years 2005–2007, but a 2008 memo from the CAO to the Board reports total case assignments for those years. [Appendix 2](#) indicates the contracts and quarterly reports that the Grand Jury examined for the period FY1975 through FY1998. [Appendix 3](#) indicates the contracts and quarterly reports that the Grand Jury examined for the period FY1999 through FY2018.

1978 Board Minutes

The Grand Jury asked the Clerk of the Board to provide a copy of any record of the Board establishing the office of public defender or appointing an individual as public defender. In response to the Clerk’s request to narrow the search, the Grand Jury suggested that the events might have happened in 1962 or 1975. The Clerk produced two bankers boxes of documents from those years. The documents were sorted into subject matter folders, one of which was labeled “Public Defender.” The Grand Jury only

reviewed the “Public Defender” folder. All the documents in that folder were dated 1978, although some included attachments dated 1977.

The County’s OneSolution™ Software

Two Grand Jurors received training in making financial inquiries using the County’s OneSolution™ software program. The County expressed willingness to give the Grand Jury view-only access to the software’s contract module but was unable to determine whether the software offered that capability. The Grand Jury declined to seek access to the contract module other than on a view-only basis.

Other Service Contracts

The Grand Jury requested copies of the service contracts identified below. The selection was intended to provide a preliminary overview of the County’s service contracts. In two cases, the Grand Jury only received copies of amendments to the contracts and did not review the entire contract as amended. Of the eight remaining contracts, all appeared to be based on a County template.

**Table 1: Service Contracts Reviewed
(In Addition to the Public Defense Contracts)**

Contractor	Service	FY2019 Amount
BI Incorporated	Ankle bracelet monitoring	\$184,000
Central Coast Landscape and Maintenance, Inc.	Landscape maintenance and water management	\$38,565
Discovery Tours	Bus services	\$55,816
Encompass Community Services	Child abuse preventive services	\$866,583
Encompass Community Services	Mental health services	\$7,190,308
First Alarm	Building security	\$62,000
Janus of Santa Cruz	Sobering Center	\$634,731
Sloan, Sakai, Yeung & Wong LLP	Public law attorneys	\$192,500
Salvation Army	Shelter services	\$485,000
Sobriety Works	Addiction treatment	\$1,065,785

[The report continues on the next page.]

The Continuing Agreements List (CAL)

Each year the County Administrative Office assembles a list of contracts that continue in effect through the coming fiscal year or that the County desires to renew. The County refers to this list as the Continuing Agreements List or the CAL. The CAL shows the amount of money the contract encumbered in the previous fiscal year and the coming fiscal year. When the Board adopts the budget, the Board also approves each contract on the CAL that is not being amended and does not increase by more than 10%. A contract that is being amended or that increases by more than 10% requires separate approval. The Grand Jury obtained copies of the CAL for the past ten fiscal years in spreadsheet format.

What does “encumber” mean? “Encumber” means to designate funds as available for a specific use. For example, assume the Board has appropriated (authorized the expenditure of) \$200,000 for parks improvements. The Parks Department proposes a contract to spend \$100,000 on a specific improvement. When the contract is approved, \$100,000 of the appropriation is encumbered and only an additional \$100,000 is available unless the Board increases the appropriation.

Interviews and Inquiries

The Grand Jury interviewed individuals who were or might have been involved in generating or approving contracts. The Grand Jury also made email inquiries.

No Institutional Memory of the Public Defense Contracts

The County’s contracts with Mr. Biggam and the Conflicts Firms are so old that the Grand Jury could not identify a current employee who was personally involved in the contracts before 2016. None of the personnel the Grand Jury interviewed were able to help the Grand Jury understand the reasons behind the provisions. Similarly, the Grand Jury learned little about the negotiations between the public defense contractors and the County in 2018.

Methodologies

Sifting the CAL

The Grand Jury combined the data from 10 years of the CAL into a single spreadsheet and sorted the data to identify other long-time County contractors.

Payments to, and Performance of, the Public Defense Contractors

The Grand Jury compiled the following material to evaluate the rate at which compensation for public defense contractors increases.

- Payment Records. The Grand Jury compiled the County’s records of payments to the public defense contractors for the past 20 years. Older payment records were not readily available. The Grand Jury obtained pre-1999 annual fee amounts from the public defense contracts.

- Inflation Since 1989. The Grand Jury used the California Consumer Price Index - All Items - Urban Wage Earners and Clerical Workers (CPI) to determine the rate of inflation.^[36]
- Case Assignments. The Grand Jury compiled the public defense contractors' quarterly case assignment reports to determine trends in case assignments.
- Felony Jury Trials. The Grand Jury tracked the number of felony cases the contractors tried before a jury in the past 17 years. Information for 20 years was not available.
- Minimum Staffing Requirements. The Grand Jury tracked the public defense contracts' requirements for staff attorneys, investigators, and paralegals for 20 years.

The results of this analysis appear in [Part 1](#) below.

Structure and Evolution of the Public Defense Contracts

The Grand Jury identified each provision in the public defense contracts that entitles a contractor to a payment. The Grand Jury tracked these payments for the past 20 years (and in one case, 30 years) to identify trends. The Grand Jury also compared each of Mr. Biggam's contracts and each of one Conflicts Firm's contracts with the previous year's contract, to see how each set evolved over time. (The Conflicts Firms' contracts are substantially identical.) The Grand Jury also compared Mr. Biggam's contracts to one Conflicts Firm's contracts. Some of the results of this analysis appear in [Eleven Elements of Compensation for Public Defense Contractors](#) below.

The Public Defense Contracts Compared to ...

The Grand Jury compared the public defense contracts to

- the contracts of eight other service providers;
- the largest Encompass Community Services (Encompass) contract;
- the Model Agreement for Public Defense Services (Model Agreement) published by the National Legal Aid & Defenders Association (NLADA);^[37]
- the contract descriptions in the CAL;
- relevant County policies and procedures;
- the Budget's presentation of Unit 59's uses of funds; and
- descriptions of the contracts in memoranda from the CAO to the Board.

The Grand Jury used Google Sheets to generate the graphs in this report. Google Sheets generated any trend lines that appear in the graphs based on the data entered.

Investigation

Part 1: Available Data Does Not Explain Why Compensation of the Public Defense Contractors Over the Past 20 Years Has Increased Faster than the Rate of Inflation

Figures 2 through 6 below show that none of the factors the Grand Jury tracked— inflation, juvenile case assignments, total criminal case assignments, felony jury trials, and minimum staff levels—account for the increasing compensation for public defense contractors for the past 20 years.

Figures 2 and 3 show that both "total" compensation and "total" compensation per assigned case rose steadily during the past 20 years. The Figures also show what those amounts would have been if the amounts for FY1999 had only increased at the rate of inflation.

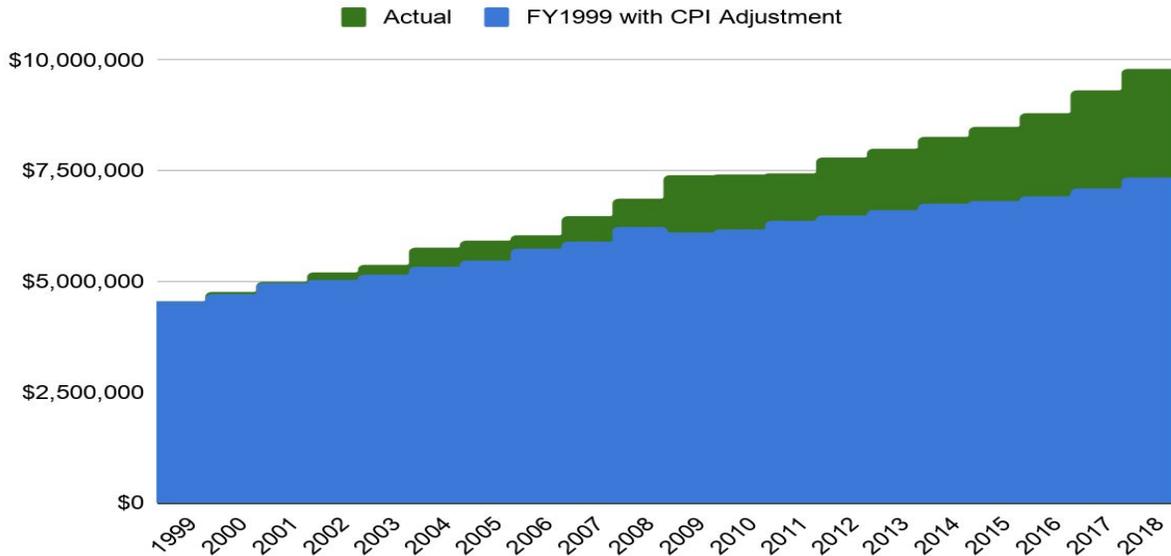
The "total" compensation is the portion of compensation for public defense contracts that the Grand Jury could determine. As this report will explain, the County does not know exactly how much money it pays the public defense contractors as compensation. [Table 3](#) indicates which elements "total" compensation includes.

Figure 4 shows that total case assignments declined dramatically in the past 20 years. Figure 5 shows that the number of felony jury cases tried has remained flat. Figure 6 shows that the number of full-time equivalent (FTE) attorneys, investigators, and paralegals the County has required the contractors to employ has also remained flat.

None of these factors explain why compensation for public defense contractors has risen faster than the rate of inflation.

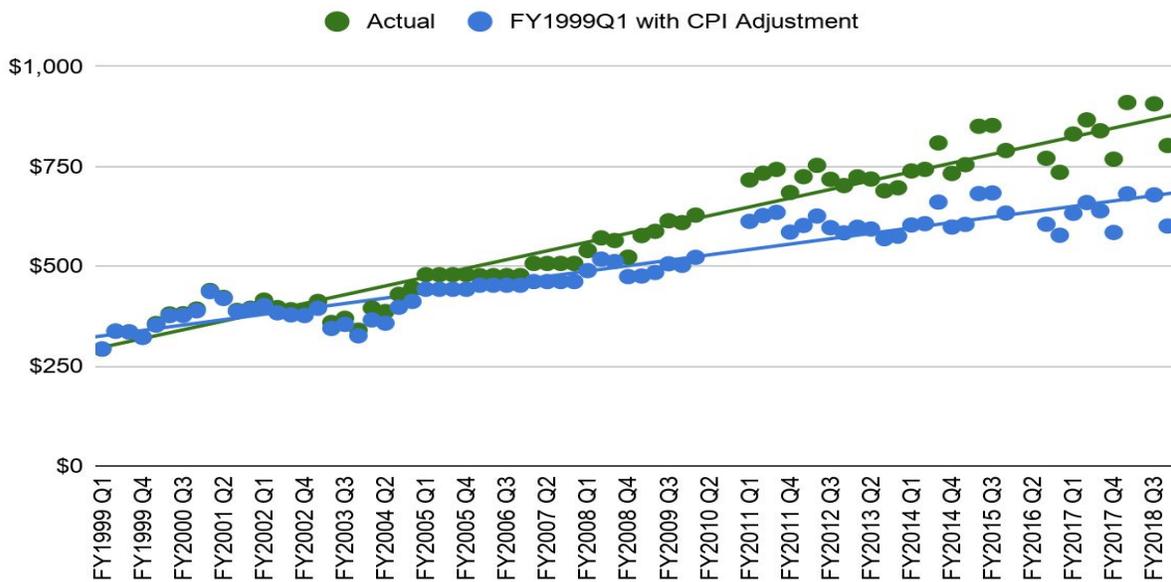
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Figure 2: 20 Years of "Total" Compensation for the Public Defense Contractors Compared to Inflation



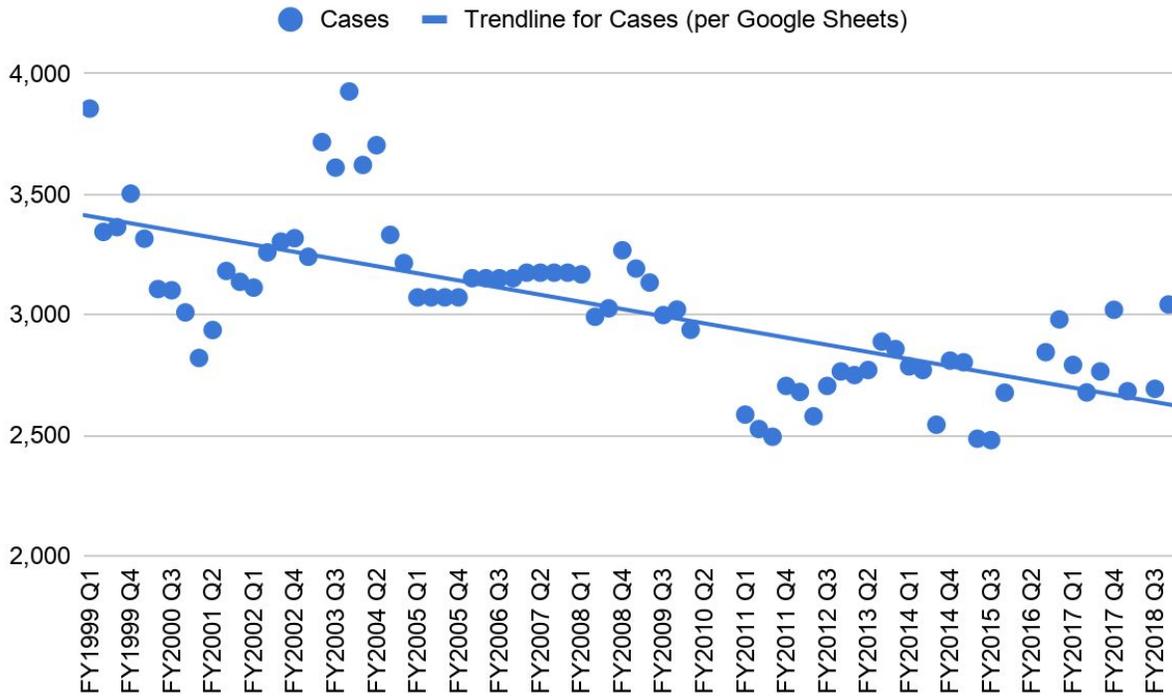
Sources: Public defense contracts; County Controller records; California Division of Industrial Relations.

Figure 3: 20 Years of "Total" Compensation per Case Assignment Compared to Inflation



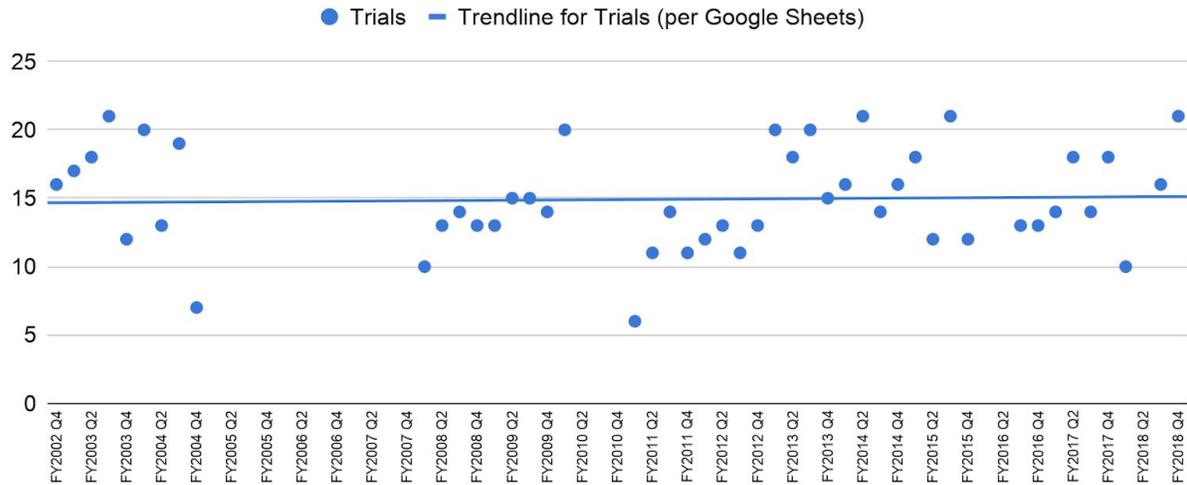
Sources: Public defense contracts; public defense contractor quarterly reports; Memorandum of Susan Mauriello to the Board dated June 12, 2007 (2007 Memo);^[38] County Controller records; California Division of Industrial Relations website.

Figure 4: 20 Years of Total Case Assignments per Reported Quarter

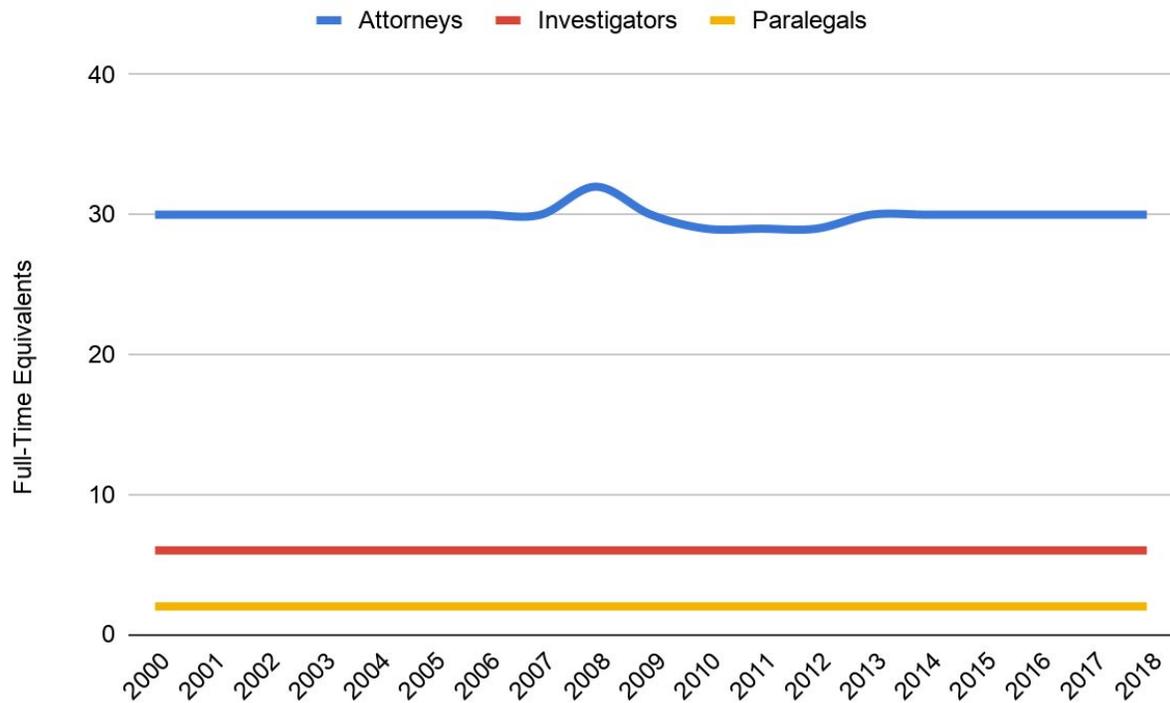


Source: Public defense contractor quarterly reports; 2007 Memo.

Figure 5: 17 Years of Felony Jury Trials per Reported Quarter



Source: Public defense contractor quarterly reports.

Figure 6: 19 Years of Minimum Staff Requirements

Source: Public defense contractor quarterly reports.

[The report continues on the next page.]

Part 2: The Public Defense Contracts Highlight Deficiencies in the County's Contract Rules

Summary of the Existing Rules and Tools

- County Code Chapter 2.37. County Code Chapter 2.37 is the County's purchasing ordinance (Ordinance).^[39] The Ordinance establishes the position of Purchasing Agent and designates the Director of the General Services Department as the Purchasing Agent.^[40] The Ordinance grants the Purchasing Agent authority to enter into personal service contracts subject to limitations on the dollar amount and subject matter of the contract.^[41] The Ordinance also requires the Purchasing Agent, with the approval of County Counsel and the Auditor, to develop standard forms, including contracts.^[42] A contract that violates the Ordinance is void and of no effect.^[43]
- The Policies and Procedures Manual (PPM) Contract Rules. The County has a set of written administrative policies and procedures approved by the Board of Supervisors, commonly referred to as the PPM. The portions of the PPM that concern contracts (Contract Rules) are:
 - PPM Title I, Section 300 (Section 300). Section 300 focuses on what a County department (Department) must do to submit a contract for Board approval. Section 300 also includes statements about provisions a contract must or should contain.^[44]

Section 300 lacks page numbers. With a few exceptions, Section 300's paragraphs lack individual numbers and headings. This makes it difficult for anyone to use or reference specific provisions of Section 300.

[Appendix 4](#) to this report replicates Section 300, but adds paragraph numbers and headings, which are in a different font and highlighted in yellow. Otherwise, [Appendix 4](#) faithfully reproduces the formatting of Section 300. The County could use this version as a guide for one way to improve Section 300. These changes do not, however, address Section 300's organizational challenges.
 - Title III, Section 100 (Purchasing Regs). The General Services Division publishes Title III, Section 100 as a separate document entitled *Purchasing Policy Manual*. By unhappy coincidence, the Policies & Procedures Manual and the Purchasing Policy Manual share the same initials. To avoid confusion, this report refers to the *Purchasing Policy Manual* as the Purchasing Regs.

The Purchasing Regs describe the aspects of contract generation that Section 300 does not cover. Different procedures apply for generating a contract depending on whether the contract is for goods or services, for professional or other services, or for amounts above a certain threshold. Purchasing Regs Section 4.0 sets forth the County's contract procurement policies, and Section 4.9 deals specifically with professional services.^[45]

- Contract Templates. Most County contracts are based on a template. As an example, the County’s standard form of Independent Contractor Agreement is attached as [Appendix 5](#). The Contract Rules integrate poorly with the templates, despite the templates’ wide adoption. Section 300 refers to an example of a “standardized Agreement Form approved by County Counsel” at the end of “this section,” but no such example exists. ([Section 300 A.7.](#)) Purchasing Reg Section 5.2(i) refers to an “Independent Contractor Agreement (ICA),” but does not otherwise define that term to mean one of the templates.^[46] The templates include more than one version of an Independent Contractor Agreement.

The authority for creating and approving the templates is not widely understood. As noted above, the County Code requires the Purchasing Agent to develop the County’s forms with the approval of County Counsel and the Auditor. In conversation and correspondence, and in the Contract Rules, County employees commonly attribute authority for the templates to County Counsel and sometimes to the Risk Manager or the Board of Supervisors. The Grand Jury did not witness any County employee attribute authority for the templates to the Purchasing Agent or the Auditor.

At least one Department, the Health Services Agency (HSA), uses templates customized for its own needs.^[47] The Encompass mental health services contract the Grand Jury reviewed is such a contract. The Grand Jury did not find any reference to Departmental templates in the Contract Rules. The Grand Jury did not ask who prepared or approved HSA’s templates.

Thumbnail Sketch of the Process

- Initiation. Most professional service contracts originate at the Department level. The Department is responsible for identifying the need for and defining the scope of a desired service. Following the procedures described in the Purchasing Regs, the Department identifies a contractor. The Department prepares an agreement using a template as the preferred starting point. The Department then negotiates specific contract language with the contractor, normally with the advice of County Counsel.
- Contract Management Software. The Department enters the draft agreement into the contract module of the County’s integrated accounting and financial management OneSolution™ software (Contract Module). ([Section 300 A.16.](#)) The references to the Contract Module in Section 300 are casual, as if the reader were expected to already be familiar with its operation. Section 300 includes a link to a user manual for the Contract Module.
- Report SCZCM1000: County Form ADM–29. The Contract Module creates an SCZCM1000 Report that tracks, among other things, the name of the person who initiated the contract, the name of the Department manager who approved the contract, and the name of the CAO analyst who reviewed the contract. Section 300 often refers to the SCZCM1000 Report as an ADM–29. The Grand Jury observed that some contracts have multiple ADM–29s, each pertaining to a

different provision of the contract. The Contract Rules do not explain when a contract needs multiple ADM–29s.

- The Purchasing Agent’s Role. If the Purchasing Agent has the authority to enter into the contract, no other approval is required. ([Section 300 A.9.2.](#))
- County Counsel Review. When the contract is not within the Purchasing Agent’s power, the Department submits the draft contract to County Counsel. County Counsel indicates approval with an authorized signature on the signature page of the contract under the heading “APPROVED AS TO FORM.” ([Section 300 C.2.](#)) Section 300 states that County Counsel’s signature means that the contract “contains all of the necessary elements” of a contract and is binding on the parties. ([Section 300 C.3.](#))
- Risk Management Review. After County Counsel approval, the draft contract is submitted to the Risk Management Division of the Personnel Department (Risk Management). ([Section 300 D.1.1.](#)) Section 300 does not indicate who submits the contract. The Risk Manager will approve the contract when satisfied that the contractor has satisfactory insurance and the County is adequately protected against liability for the potential negligence of the contractor. ([Section 300 D.1.2.](#)) Section 300 does not describe how the Risk Manager indicates approval. The signature pages of recent contracts bear the Risk Manager’s signature under the heading “APPROVED AS TO INSURANCE.”
- Controller Review. After Risk Management approval, the draft contract is submitted to the Controller. ([Section 300 E.1.1.](#)) Section 300 does not indicate who submits the contract. The Controller assigns a number to the contract; encumbers the funds the contract requires so the funds are not available for other uses if appropriations are available; and requires the Department to follow certain procedures if appropriations are not available. ([Sections 300 E.1.3 and E.1.4.](#))
- County Administrative Office Review. After Controller approval, the Department delivers the contract, along with a draft explanatory memo addressed to the Board, to the County Administrative Office. A County Administrative Office Analyst reviews the contract. ([Section 300 F.3.1.](#)) Section 300 does not state the grounds for the Analyst to approve or withhold approval of the contract.

Section 300 states that the signature lines on the “Contract Cover memo and the SCZM1000 [sic] Report (formerly ADM–29)” certify that the agreement “clearly expresses the intent of the parties.” On recent contracts, neither the memo from the CAO to the Board nor the SCZCM1000 Report had signature lines.
- Clerk of the Board Review. At some point the Clerk of the Board confirms that the contract is signed and that the required accompanying documentation is present. ([Section 300 G.1.1.](#)^[48]) Section 300 does not state who delivers the contract to the Clerk of the Board, when the Clerk of the Board performs the review, or the grounds for approving or rejecting the contract. The Clerk of the Board is responsible for placing the contract on the agenda for Board consideration.

The Public Defense Contracts Violate Some Contract Rules

- No Audit Provision. The Contract Rules require a contract to provide for “audit and retention of records for a period of not less than 5 years or until audited whichever occurs first.” ([Section 300 A.12.4.](#)) The public defense service contracts do not have the required provision.
- No Right to Suspend Payments for Nonperformance. The Contract Rules require a contract to allow the County to suspend payments as a remedy for the contractor’s non-compliance. ([Section 300 A.12.5.](#)) The public defense service contracts do not provide such a remedy, even if the contractor’s State Bar membership is suspended or terminated.
- The Fresh Look Requirement. The Contract Rules require a contract to be reviewed for recertification or renegotiation at least every four years. ([Section 300 H.2.4](#) and Purchasing Reg 4.9(c).^[49]) The Contract Rules do not explain what “recertification” means. The context suggests that “recertification” means a department head determines that the contract complies with the Contract Rules and that no renegotiation is necessary.

The Grand Jury’s comparison of each version of Mr. Biggam’s contract found that of 40 amendments (not including changes in annual fees), 23 favored Mr. Biggam, 6 favored the County, and 11 did not favor either party. This result may indicate that the County was either not diligent or not effective in its duty to renegotiate. All the public defense service contracts contain uncorrected typographical errors and unremoved outdated provisions that have persisted from revision to revision. Mr. Biggam’s 2012 contract had a six-year term and no provision for revisiting the contract after four years.

The Application of Some Contract Rules to the Public Defense Contracts is Unclear

- Are Separate Overhead Subsidies “Escalator Clauses”? What If They Are? The Contract Rules “generally discourage” escalator clauses (factors that automatically increase agreement payments annually). ([Section 300 A.12.2.3.](#)) Both insurance subsidies have gone down in some years, so it is not clear if they constitute escalator clauses. The phrase “generally discourage” is unclear. The Contract Rules do not state what consequences follow from including an escalator clause.
- Is Automobile and Worker’s Compensation Insurance Required? The Contract Rules state that automobile and worker’s compensation is “usually required” but do not give any guidance as to when they are not required. ([Section 300 A.12.7](#) and Purchasing Reg 5.1(a)(4).^[50]) Mr. Biggam’s contracts have never required automobile insurance, and a requirement for worker’s compensation insurance in the 1977 and 1978 contracts is not present in any subsequent contract. Both insurances are required in the Conflicts Firms’ contracts.

- Do the Payment Terms Comply? The Contract Rules require a contract to provide “adequate clarity as to payment for services.” The Controller must “specifically” approve payment terms of less than 30 days from receipt of invoice. ([Section 300 A.12.2.1 and A.12.2.2.](#)) Mr. Biggam’s 2012 contract requires the County to pay his malpractice insurance subsidy and his employee health insurance subsidy on July 15 of each year. Unlike contracts based on the County’s standard form ([Appendix 5](#)), none of the public defense contracts require the public defense contractor to submit an invoice with respect to any payment or state when the County is to pay the contractor.

The County Administrative Office Cannot Meaningfully Review Contracts It Initiates

Section 300 requires a CAO Analyst to review any contract a Department generates if the Purchasing Agent does not have the authority to approve the contract. Thus, the County Administrative Office serves as a check on the Department. In the case of the 2018 amendments to the public defense contracts, however, the same Analyst who initiated the contract also reviewed it. There is no second set of eyes on the contract as there is when an Analyst reviews a Department’s work product.

County Executives Mistakenly Expect County Counsel to Ensure the County’s Compliance with the Contract Rules

The Grand Jury did not investigate specific legal advice County Counsel has given to County staff but did explore how County Counsel and County staff interact generally. The Grand Jury was particularly interested in what it means when County Counsel signs a contract under the legend “Approved as to Form.” County Counsel approved all the public defense contracts “as to form,” notwithstanding the issues discussed above.

The Grand Jury had discussions with members of the Office of County Counsel and with County executives about the meaning of “Approved as to Form.” The Grand Jury learned that County executives think “approved as to form” means that a contract conforms to the Contract Rules. County Counsel staff takes the position that the best place to implement County policy is in the contract templates. County Counsel’s interpretation of “Approved as to Form” becomes unclear when the contract in question is not based on a template or deviates from the template.

[The report continues on the next page.]

Part 3: The County's Contract Rules Do Not Effectively Implement County Policies

The PPM is Not a Single Document

The PPM is not a single document. It is only a table of contents with hyperlinks to different titles. The links only work in one direction. When finished with one title, there is no back button. Individual titles are in different fonts, use different numbering systems, and are organized differently. If performing a keyword search, the user must search each title separately. This process was frustrating enough that the Grand Jury was not able to confirm that the Contract Rules include all County policies and procedures that pertain to the contracts.

Only Portions of the PPM are Available to the Public

The current version of the PPM table of contents is only on the County's intranet and is not available to the public. An outdated version of the table of contents is on the County's public website. The version of Section 300 available from the public table of contents appears to be the same document as the one available from the intranet table of contents, but the documents have different internet addresses. The Purchasing Regs are only available on the intranet.

Section 300, the Purchasing Regs, and the Contract Templates are Not Integrated

The Purchasing Regs refer to Section 300 in places, but not to specific provisions. Section 300 has rules about provisions a contract must or must not contain, but no references to the Purchasing Regs. The Purchasing Regs and Section 300 both acknowledge the existence of contract templates but give no guidance on when to use them or where to find them.

There is No Policy or Procedure for Making Exceptions to the Contract Rules

There will be times when the County will want to do business with a contractor even if the contractor will not agree to a provision that the Contract Rules require. In the case of the public defense contracts, the County Administration Office omitted three required provisions year after year. As discussed in [The Public Defense Contracts Violate Some Contract Rules](#), there was no audit provision, no requirement to suspend payment for nonperformance, and in Mr. Biggam's 2012 contract, no requirement to review the contract after four years. The Board was not advised of these omissions in 2018, and the Grand Jury found no evidence that the Board was made aware of these provisions in any previous year.^{[51] [52] [53] [54] [55] [56]} The possibility of ignoring required provisions without approval or consequence renders the Contract Rules ineffective.

There is No Provision for Enforcing the Contract Rules

The Grand Jury heard testimony that Analysts in the County Administrative Office will bring a Contract Rule to the Department's attention when the Analyst notices noncompliance. Nevertheless, Section 300 does not require either the Department

Head or the Analyst to confirm in their reviews that the Contract complies with the Contract Rules.

Contracts with Obvious Errors Get Approved

In the dozens of contracts the Grand Jury reviewed, the Grand Jury found contracts that were not dated, one contract with two different dates, contracts without page numbers, and contracts with blank spaces in them.

Common Obstacles to Understanding Contracts

As this report has demonstrated, people who need to work with a contract have trouble understanding it when it is poorly written. That difficulty results in mistakes, as Part 5 will demonstrate. The following are characteristics that make a contract difficult to understand:

- Paragraphs without unique reference numbers
- Paragraphs without headings
- Related ideas appearing in different places
- Ideas appearing in places one would not expect to find them
- More than one distinct idea in a single paragraph
- Statements that require something to be done without stating who must do it
- Undefined capitalized words and phrases
- Obsolete or outdated language remaining in subsequent versions of contracts
- Stand-alone amendments, requiring the reader to integrate the amendment with the balance of the contract to understand the contract as amended

No Articulation of the Role of County Counsel

As noted in the discussion of what “Approved as to Form” means, County staff and County Counsel do not have the same understanding of the role of County Counsel in contract negotiation. It is generally understood that the Department, and not County Counsel, is responsible for the decisions that go into a contract. Moreover, Section 300 states that it is the responsibility of the CAO, and expressly not the responsibility of County Counsel, to certify that a contract expresses the actual intent of the parties. ([Section 300 C.3](#) and [Section 300 F.1.](#))

Some provisions of a contract, especially a description of services, can be perceived as not involving “legal” issues. As a result, County Counsel might not review, or the Department might feel that it is inappropriate for County Counsel to review, certain language. Nevertheless, attorneys have training in word use and interpretation that non-attorneys do not necessarily have. County Counsel can assist the Departments by recognizing ambiguities or noticing that the language does not address what should happen under certain circumstances. In this way, County Counsel can increase the likelihood that the contract expresses the actual intention of the parties.

Part 4: A Contract with Multiple Unlabeled and Scattered Compensation Provisions is Complex in a Way that Invites Accounting Errors

In calculating “total” compensation for the public defense contractors, the Grand Jury recognized that the complexity of the public defense contracts disguised some of their compensation elements. There are as many as 11 components of compensation in the public defense contracts. None of them is labeled. As this report will demonstrate, this complexity caused or enabled the County to underreport compensation for public defense contractors for longer than the past ten years. The understatement in FY2018 was more than \$600,000.

Eleven Elements of Compensation for Public Defense Contractors

There are 11 categories of compensation for Mr. Biggam and four to seven (depending on how one counts them) categories of compensation for the Conflicts Firms. Table 3 lists each element of compensation for the public defense contractors. Table 3 indicates whether each element is included in the calculation of “total” compensation in Figures 2 and 3 above. Table 3 also indicates where the contractor’s contract provides for that category of compensation. The compensation categories are ranked approximately from largest to smallest by known amounts.

Table 3: Eleven Elements of Compensation for Public Defense Contractors

Element	Included In “Total”?	Contract Section	
		Mr. Biggam	Conflicts Firm
1. Annual fee (Section 1 cases)	Yes	§4, 1st¶	§5, 1st¶
2. Employee health insurance subsidy	Yes	§10(C)	N/A
3. Clean Slate subsidy	Yes	§4, last¶, starting in FY2019	N/A
4. Watsonville office space	Yes	§2	Not in writing
5. Malpractice insurance subsidy	Yes	§10(C)	N/A
6. Additional compensation for Special Circumstances cases	Yes, to the extent known	§8	§7
7. “Adjustments”	Yes, to the extent known	§2	§9
8. Watsonville utilities	No	§2	Not in writing
9. Watsonville janitorial service	No	§2	Not in writing
10. Hourly fees for non-Section 1 cases	No	§4, 2nd¶	Not in writing
11. Hourly fees for SB 90 claims	No	§6	§5, 2nd¶

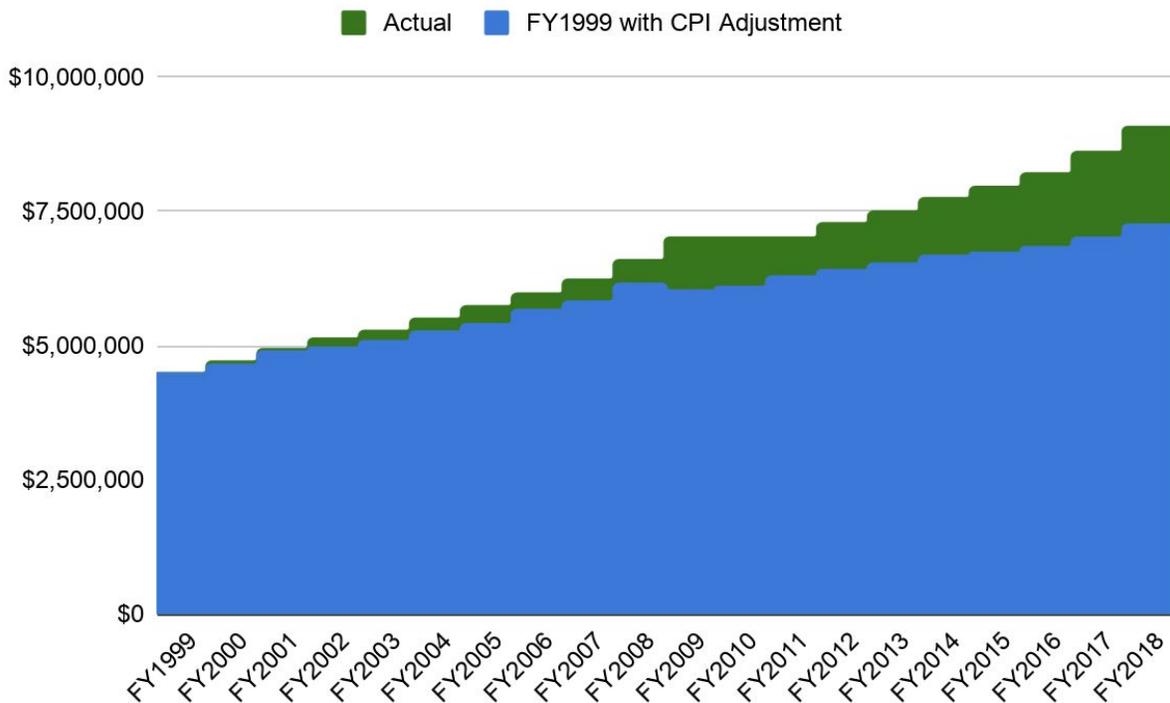
Sources: Public defense contracts.

Compensation Element 1: Annual Fee

An annual fee paid in monthly installments is the largest element of compensation for the public defense contractors. The annual fee is compensation for covering the kinds of cases described in Section 1 of each contract—essentially all criminal matters and civil actions such as involuntary commitment or conservatorship.

Figure 7 shows that for the past 20 years, the amount of the annual fees paid to the three contractors increased at 3.8% per year on average compared to an average annual increase in the CPI of 2.58%. If the annual fees had only increased at the rate of inflation since FY1999, the total annual fees for the period would have been \$13.7 million lower than the actual amount.

Figure 7: 20 Years of the Annual Fees of the Public Defense Contractor



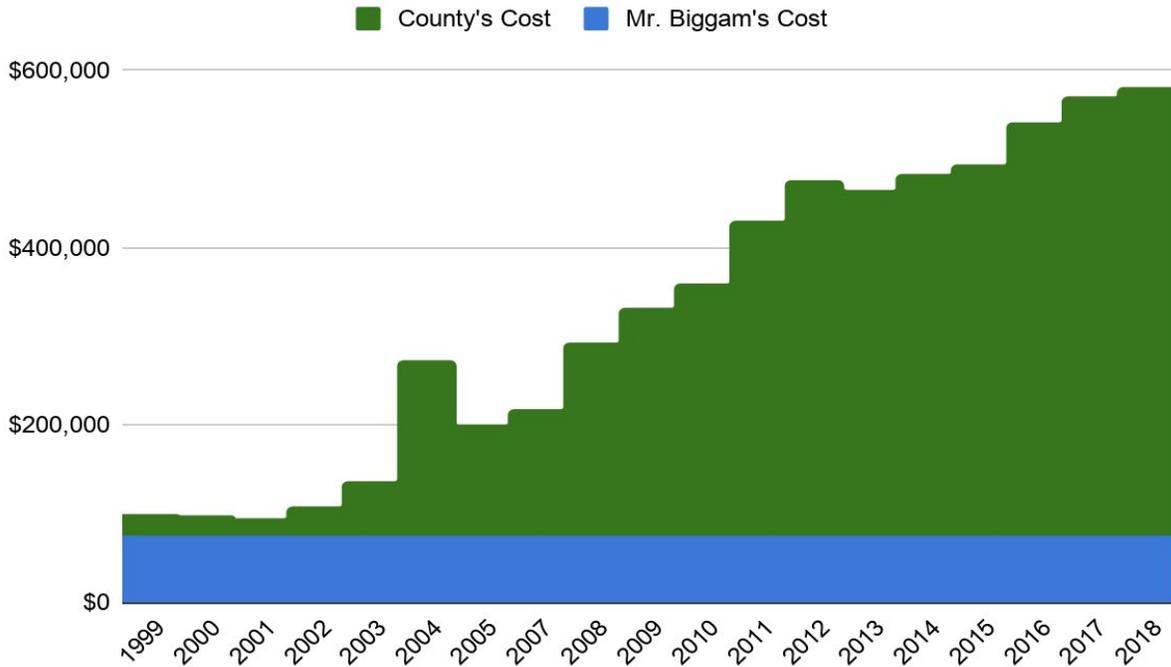
Sources: Public defense contracts; County Controller records; California Division of Industrial Relations website.

[\[Return to Table 3.\]](#)

Compensation Element 2: Mr. Biggam's Employee Health Insurance Subsidy

The County subsidizes Mr. Biggam's employee medical, dental, and vision insurance. The County does not subsidize employee health insurance for either of the Conflict Firms. The County does not have a record of the amount of Mr. Biggam's subsidies for the first eight fiscal years that the subsidy was in effect. Figure 8 shows that in FY1999, the subsidy was less than \$25,000 and amounted to only 25% of Mr. Biggam's employee health insurance cost. In FY2018, the subsidy exceeded \$500,000 and amounted to 87.4% of Mr. Biggam's employee health insurance cost.

Figure 8: 20 Years of Mr. Biggam's Employee Health Insurance Subsidy



Sources: County Controller records

[\[Return to Table 3.\]](#)

Compensation Element 3: Mr. Biggam’s Clean Slate Subsidy

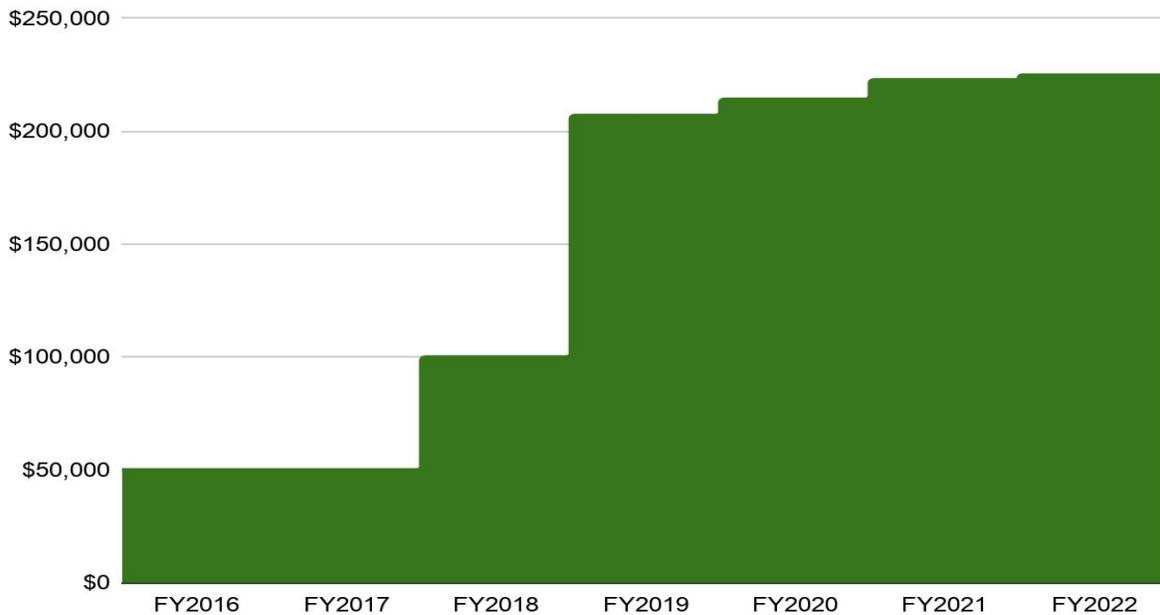
The County and Mr. Biggam use the term “Clean Slate” to refer to a group of services Mr. Biggam provides to persons who have already been convicted of a crime. With the passage of Proposition 47 in 2014 and Proposition 64 in 2016, some persons who have served their prison sentences and probation are eligible to have their criminal records expunged. Some persons convicted of nonviolent felonies or marijuana infractions are eligible to have their sentences reduced or their criminal records changed.

The Clean Slate program evolved out of a County outreach initiative targeted at County residents who could benefit from expungement of their convictions or receive benefits under Prop 47. The County Probation Department, Mr. Biggam, and the Watsonville Law Center participated in these efforts. Eventually the efforts were consolidated under Mr. Biggam’s umbrella.

Mr. Biggam’s annual fee did not cover the Clean Slate services. The County awarded \$50,000 grants to Mr. Biggam in FY2016 and FY2017 to recognize his contributions in these areas. The County increased the grant to \$100,000 in FY2018. In June 2018, the County amended Mr. Biggam’s contract to include compensation “to partially offset the costs of the Clean Slate Program.” The amount of Clean Slate subsidy is \$207,000 for FY2019, increasing to \$224,900 in FY2022. See Figure 9.

Although this compensation is intended to offset the costs of the Clean Slate Program, to date the County has not required Mr. Biggam to document that his costs equal or exceed the amount of his subsidy.

**Figure 9: Main Public Defense Contractor's Clean Slate Subsidy
FY2016 - FY2022**



Sources: Public defense contracts; County Controller records; California Division of Industrial Relations website.

[\[Return to Table 3.\]](#)

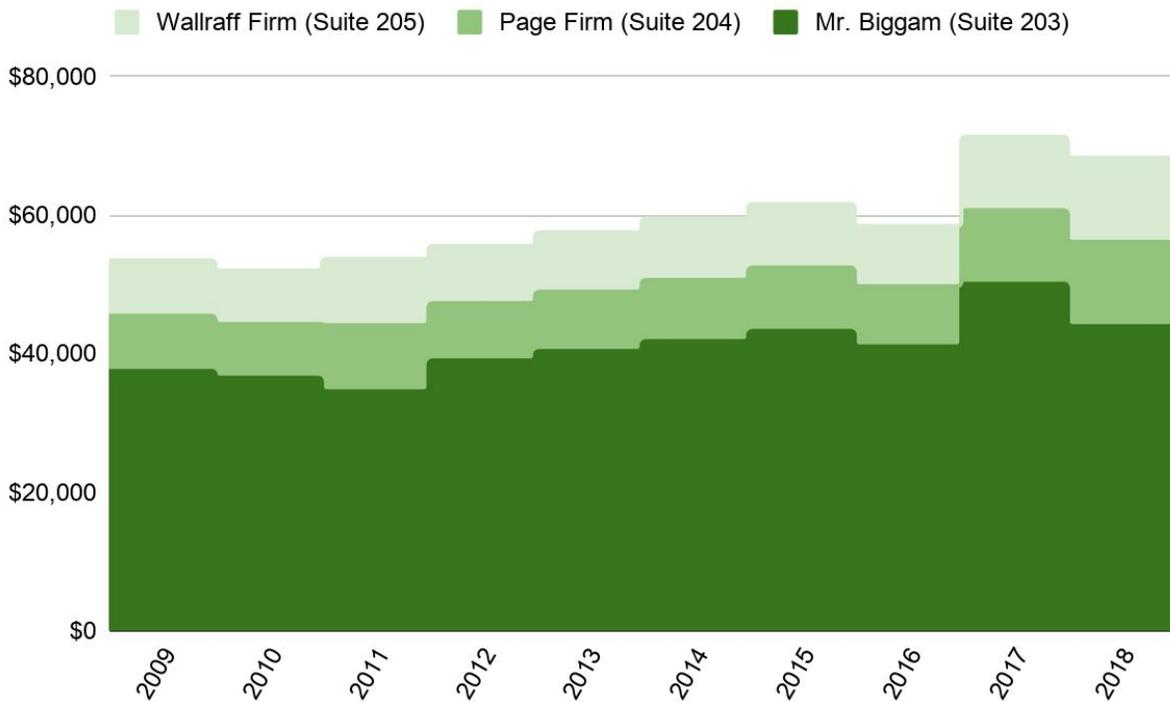
Compensation Element 4: Watsonville Office Space

About 10 years ago the State opened a new Superior Court building in Watsonville. Before that time, the County had to transport defendants incarcerated in Watsonville to Santa Cruz for court hearings. In Mr. Biggam’s 2008 contract, the County agreed to pay for his Watsonville office space.

The Conflict Firms’ contracts are silent with respect to Watsonville. Nevertheless, at the same time the County leased Watsonville office space for Mr. Biggam, it leased adjoining space for the Conflict Firms to use. As the arrangement between the County and the Conflicts Firms is not in writing, there is no requirement that the Conflict Firms use that space exclusively to provide public defense services (as opposed to private services).

Figure 10 illustrates the amounts the County has paid to the Watsonville landlord for public defense contractor office space. Amounts paid for each of the three office suites are displayed on top of one another. The total amount the County pays to the landlord is the sum of the three areas. (For example, in FY2014 the total payments to the landlord were about \$60,000.) Figure 10 does not distinguish between amounts paid as rent and amounts paid as security deposits or for other reasons.

Figure 10: 10 Years of Disbursements to the Watsonville Landlord



Source: County Controller records.

[\[Return to Table 3.\]](#)

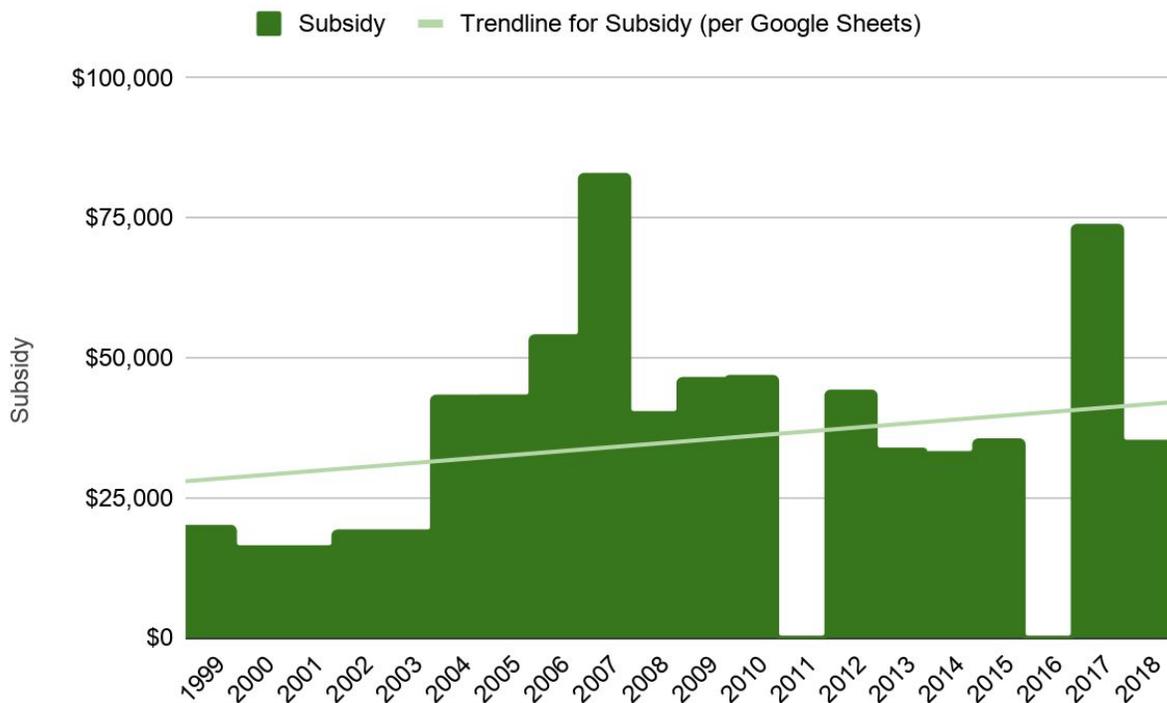
Compensation Element 5: Mr. Biggam’s Malpractice Insurance Subsidy

The County has agreed to pay the cost of Mr. Biggam’s professional liability (malpractice) insurance since at least his 1988 contract. Initially, the County would only reimburse Mr. Biggam for the cost of an insurance policy with a \$50,000 deductible. Mr. Biggam’s 2006 contract amended this provision to allow Mr. Biggam to purchase a more expensive policy with a \$25,000 deductible. No contract has limited the amount of coverage Mr. Biggam may purchase, capped the County’s reimbursement obligation, or required Mr. Biggam to obtain competitive bids.

Figure 11 plots the amount of each malpractice insurance subsidy payment to Mr. Biggam and the year in which the County made the payment. The data the Grand Jury examined did not indicate that the County paid a reimbursement in every year. The County could find no record of a reimbursement to Mr. Biggam in 2011. There was no payment in 2016 but two in 2017.

The County does not reimburse either Conflicts Firm for the cost of its malpractice insurance.

Figure 11: 20 Years of Mr. Biggam's Malpractice Insurance Subsidy



Source: County Controller records.

[\[Return to Table 3.\]](#)

Compensation Element 6: Additional Compensation for Special Circumstances Cases

Their contracts entitle both Mr. Biggam and the Conflicts Firms to request additional compensation in cases that “could require unusual time and expense, including, but not limited to, Special Circumstances cases.” This report refers to such cases as “Special Circumstances” cases.

To qualify as a Special Circumstances case, a court must first agree that the case requires additional time and expense. The Board of Supervisors must then approve the additional compensation. The Grand Jury is aware of three instances when the Board agreed that a case qualified as a Special Circumstances case.^{[57] [58] [59]} In all three, the defendant faced a possible death sentence. The contracts do not require the public defense contractor to claim or prove that the annual fee does not already provide adequate compensation.

County records show a payment of \$50,000 to Mr. Biggam on July 15, 2015, described as “F27144 Tichelmann [sic]”. Figure 12 shows that the data provided to the Grand Jury grouped this payment with Mr. Biggam’s annual fee. The Grand Jury has included this payment in the “total” compensation for public defense contractors.

Figure 12: Excerpt from 2015 Payment Records

512,895.00	Biggam_July_15
50,000.00	F27144_Tichelmann
512,895.00	Biggam_August Contract Payment

Source: County Controller

The Grand Jury also found Board minutes classifying three other cases as Special Circumstances cases. In the payment records, the Grand Jury found several payments with case numbers matching the numbers of these cases but could not determine whether the payments were extra fees or cost reimbursements. Those payments are not included in “total” compensation. See the discussion at [Compensation Element 10](#) below.

The Grand Jury did not recognize any other payments to the public defense contractors as possible additional compensation for Special Circumstances cases.

[\[Return to Table 3.\]](#)

Compensation Element 7: “Adjustments”

The public defense contracts provide for “adjustments” during the term of the contract if caseloads rise or other unspecified circumstances arise. The first three payments of Mr. Biggam’s Clean Slate subsidy and the provision of Watsonville office space to the Conflicts Firms may fall into this category. The only other possible “adjustment” the Grand Jury has identified is a \$10,000 payment to Mr. Biggam in 2009 to underwrite the cost of furnishing and equipping his Watsonville office space. The Grand Jury has included this payment in the calculation of “total” compensation. [\[Return to Table 3.\]](#)

Compensation Element 8: Watsonville Utilities

Mr. Biggam's contract also requires the County to pay the cost of utilities for his Watsonville office. The Grand Jury did not learn whether the County provides utilities for the Conflicts Firms' Watsonville offices. The data provided to the Grand Jury did not include the cost of utilities. The cost of utilities is not included in the calculation of "total" compensation. The FY2019 County Budget shows \$4,140 for FY2019 utilities. [\[Return to Table 3.\]](#)

Compensation Element 9: Watsonville Janitorial Service

Mr. Biggam's contract also requires the County to pay the cost of janitorial service for his Watsonville office. The Grand Jury did not learn whether the County provides janitorial service for the Conflicts Firms' Watsonville offices. The data provided to the Grand Jury did not include the cost of janitorial service for any of the three firms. The Grand Jury has not confirmed that the County provides janitorial service to the Conflicts Firms. The cost of janitorial service is not included in the calculation of "total" compensation. The FY2019 County Budget shows \$2,900 for FY2019 janitorial services. [\[Return to Table 3.\]](#)

A Note on Law Firm Economics.

Overhead (Fixed Costs). Most law firms pay for their own overhead. Overhead is the costs a business must incur just to be in business. Overhead includes rent, salaries, employee benefits, insurance, and equipment. To make money, a law firm must first generate enough income to pay for its overhead.

Variable Costs. Most law firms also pay their own variable costs. Variable costs are costs that increase as the firm's activity increases. Examples of a law firm's variable costs include photocopying and staff overtime.

Case-Specific Costs. An expense a law firm incurs only because it is representing a specific client on a specific case is a "case-specific cost." The County reimburses public defense attorneys for the reasonable case-specific costs they incur.

Compensation Element 10: Hourly Fees for Non-Section 1 Cases

Mr. Biggam is entitled to hourly compensation if the court appoints him as counsel for a case that is not described in Section 1 of his contract (Hourly Fee Case).

The Conflicts Firms' contracts are silent about what happens if the court appoints them as counsel for an Hourly Fee Case. The County might nevertheless compensate a Conflicts Firm that a court appoints as counsel in an Hourly Fee Case.

The County made dozens of payments to Mr. Biggam and the Conflicts Firms in the years reviewed. The Grand Jury is confident that some of the payments were fees for Special Circumstances cases. For example, the Board designated case number F00788 as Special Circumstances. The County's ledger includes 23 payments to Mr. Biggam with that case number. The payments range from \$8.36 to \$50,738.08. The average payment is \$4,332.04. The total payments are \$99,636.97. Some of the other payments could have been for Hourly Fee cases.

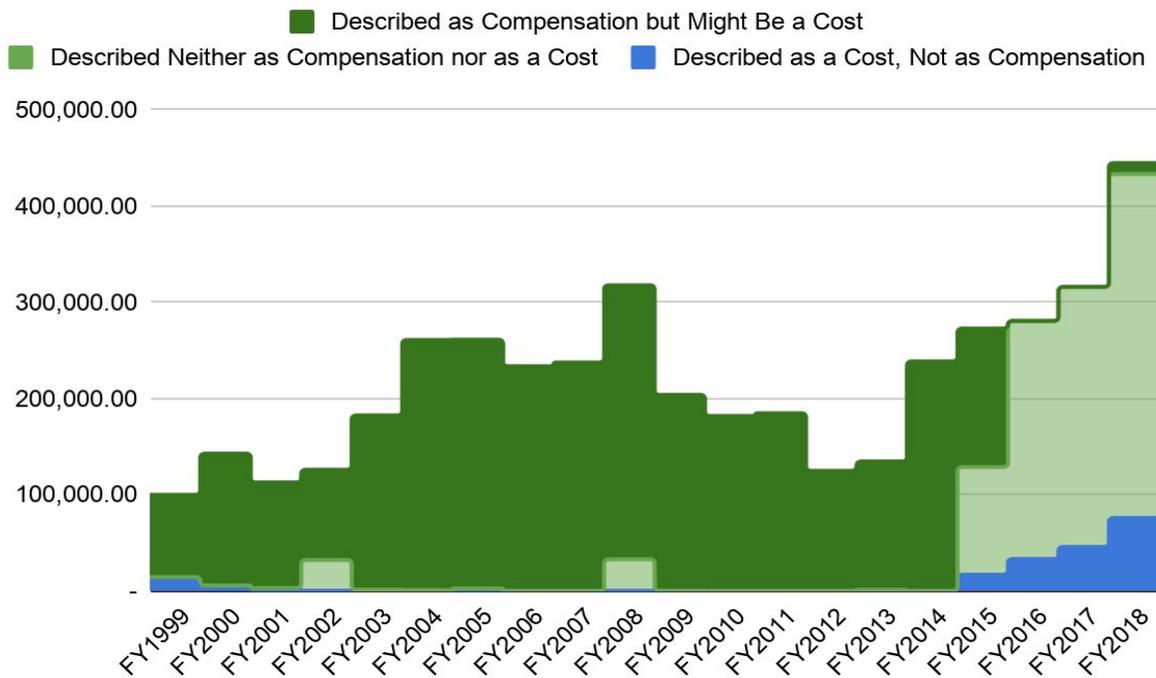
At the Grand Jury’s request, County staff examined some payments described as “PD Fees” or words to that effect. The staff could not determine whether the payments were compensation or cost reimbursements. In some fiscal years, all the payments to Mr. Biggam and the Conflicts Firms are described as “PD Fees” or similar words.

Figure 13 compiles the data the County Controller provided to the Grand Jury. Payments that were not otherwise identifiable were compiled into a separate group and sorted by payment description as shown in Figure 13.

Figure 13: 20 Years of Payments that Might Be Compensation

Color-Key Explanation

Described as a Cost:	The payment description includes a word such as “transcript” or “photos,” even if the description also includes the word “fee.”
Described as Compensation but Might Be a Cost:	The word “fee” appears in the payment description.
Described Neither as Compensation Nor as a Cost:	The payment description includes: <ul style="list-style-type: none"> • “expert fee” (as opposed to “expert witness fee”) • “FFES” [sic] • “CC SECT I 15–16 PD SERVICES” or “CC SEC I 15–16 PD Services (as” [sic] • only a case number



Source: County Controller records.

[\[Return to Table 3.\]](#)

Compensation Element 11: Work on SB 90 Claims

The contracts entitle both Mr. Biggam and the Conflicts Firms to hourly compensation for work on SB 90 claims. There is no requirement that a court has appointed them to provide such services. SB 90 refers to a procedure whereby counties can claim reimbursement from the State for the cost of State-mandated programs. The Grand Jury did not learn why a public defense contractor would be working on an SB 90 claim or whom the public defense counsel would be representing in that case. The Grand Jury did not learn whether the public defense contractors have performed or been compensated for work on SB 90 claims.

[\[Return to Table 3.\]](#)

[The report continues on the next page.]

Part 5: Separate Overhead Subsidies Are Opaque and Have Unintended Consequences

Five of the eleven compensation elements in Mr. Biggam’s contract are overhead subsidies not included in the annual fee. The subsidies make the contract more complicated, which by itself is undesirable for a government that values transparency. A complicated contract invites misunderstanding. There is a lot of misunderstanding about the public defense contracts. Seven specific foreseeable consequences stem directly or indirectly from separate overhead subsidies.

Why Not Subsidize Overhead Separately? The County Has to Pay It Anyway

Some County executives are aware, at some level, that the County separately subsidizes Mr. Biggam’s overhead instead of including it in the computation of his annual fee. They do not see subsidizing overhead separately as inappropriate. They reason that the contractor would have to account for the expense in the contractor’s fee proposal anyway, so what difference does it make whether the County pays the expense directly or as a component of the contractor’s fee?^[60]

This reasoning does not consider that separate overhead subsidies are opaque, not transparent. Separate overhead subsidies disguise the actual cost of a contract, which in turn undermines the County’s understanding of, and accounting for, the contracts.

Unintended Consequence 1: Compensation That Does Not Look Like Compensation

At some point, someone might have wondered how to reflect the County’s obligation to lease Watsonville office space in the CAL as an obligation to Mr. Biggam. Figure 14 shows that the Watsonville office space lease is entered in the CAL as an obligation to a landlord, not as compensation to Mr. Biggam.

Figure14: Excerpt from the FY2019 CAL re Mr. Biggam’s Watsonville Office Space

Department Title	2018-19 Contract #	Contractor	2017-18 Contract Description	2018-19 Amt
PUBLIC DEFENDER	19C36991	ROMO PROPERTIES LLC	17-18 Lease, Suite 203	49,423.52

Source: FY2019 Continuing Agreements List.

The CAL cannot show the rent for the Watsonville office space as both an obligation to the landlord and an obligation to Mr. Biggam; this would double count the rent. When the choice was made to enter the obligation on the CAL as an obligation to the landlord, the obligation to Mr. Biggam never existed for accounting purposes.

This kind of accounting problem will arise whenever the County agrees to provide a good or service to a contractor. The usual result is that one of the obligations gets lost.

Unintended Consequence 2: Additional Compensation That Does Not Look Like Compensation

When the County originally leased Watsonville office space for Mr. Biggam, someone decided also to lease Watsonville office space for the Conflicts Firms. The Conflicts Firms' contracts do not require the County to provide Watsonville office space. Unlike Mr. Biggam's contract, the Conflicts Firms' contracts do not even require them to maintain a Watsonville office. Moreover, the Conflicts Firms may also use the office space to serve their private clients. County executives the Grand Jury interviewed tended to think that providing the Watsonville office space was probably appropriate, even though the County had no obligation to do so.

Unintended Consequence 3: Unrecognized Risk

The County allows the public defense contractors to occupy the Watsonville office space without a use agreement. A use agreement would require the contractor to observe the terms of the County's lease and to indemnify the County if the contractor violates the lease. Without a use agreement, a public defense contractor will have no written obligation to reimburse the County if, for instance, one of the contractor's employees negligently burns down the office. This is a risk the County should be expected to recognize and address.

The Real Property Division of the County's Department of Public Works (RPD) negotiated the Watsonville leases. It is possible that RPD thought the Public Defender was a real Department and already part of the County, rendering a use agreement unnecessary.

Unintended Consequence 4: Omissions to the Board about the Free Watsonville Rent

In a memo to the Board included with a June 23, 2008 agenda item (2008 Memo), the CAO recommended that the Board approve a supplement to the FY2009 Budget.^[64] Excerpts from the 2008 Memo are attached as [Appendix 6](#). The only explanation the 2008 Memo gives for leasing the Watsonville property is that the terms of the leases exceed the terms of the public defense contracts. The 2008 Memo implies that if a public defense contract is not renewed, the County can make the space available to the successor provider of public defense services. The 2008 Memo does not explain whether or why the County is required to provide the office space to the public defense contractors free of charge. Similarly, the 2008 Memo does not advise the Board that the County will not ask the public defense contractors to enter into a written use agreement concerning the property.

In the last paragraph of the excerpt, the 2008 Memo also mentions that the amount budgeted for the lease includes a \$10,000 allowance "to pay for incidental and equipment costs associated with moving the main public defender in to [sic] the new space." Again, the 2008 Memo does not explain whether or why the County is required to pay those costs. It also does not explain that all the \$10,000 will go to Mr. Biggam and that none of it will benefit the Conflicts Firms.

The omissions suggest that the CAO did not understand whether the County had an obligation to pay the expenses. The Board’s acceptance of the recommendations reflects their reliance on the CAO’s understanding of the situation. Confusion about the extent to which Unit 59 is a Department could have contributed to confusion about the normal obligation of an independent contractor to pay its own expenses.

Unintended Consequence 5: Misleading Contract Descriptions in the CAL

As part of the contract approval process, the County assigns a unique number to each contract. The same number is applied to a new contract with the same contractor for the same services. The County has assigned 0147 to all Mr. Biggam’s contracts.

What does the “19C” in front of a contract number mean? When the County enters a contract onto the CAL, it modifies the contract number by adding the last two digits of the fiscal year of the CAL plus a letter in front of the number. The letter indicates a category of contract.

What do the letters after the contract number mean? When a contract requires different kinds of payment, the County adds a letter suffix at the end to differentiate the payments.

The County’s OneSolution system needs to know when a payment is due. For example, Mr. Biggam’s annual fee is payable in 12 monthly installments; his Clean Slate subsidy is payable in 4 quarterly payments; and his insurance subsidies are payable annually.

There is a separate entry in the system for each of these four payments. The description for each insurance subsidy was not “subsidy” or “reimbursement”; it was simply “insurance.”

Figure 15 is an excerpt from the FY2019 CAL showing the contract number suffixes and descriptions for the four payments to Mr. Biggam. The red font color is added.

Figure 15: Excerpt from the FY2019 CAL re Mr. Biggam’s Insurance Subsidies

Department Title	GL Obj	2018-19 Contract #	Contractor	2018-19 Contract Description	2018-19 Amt
PUBLIC DEFENDER	62385	19C0147A	BIGGAM, LAWRENCE P	18-19 Main Public Defender Services	7,042,938.00
PUBLIC DEFENDER	62385	19C0147B	BIGGAM, LAWRENCE P	18-19 Main Public Defender, Clean Slate/Prop 47	207,000.00
PUBLIC DEFENDER	62381	19C0147C	BIGGAM, LAWRENCE P	18-19 Main Public Defender, Liability Insurance	36,416.64
PUBLIC DEFENDER	62381	19C0147D	BIGGAM, LAWRENCE P	18-19 Main Public Defender, Health Insurance	526,209.47

Source: FY2019 Continuing Agreements List.

Unintended Consequence 6: Using a Wrong (or at Least Questionable) GL Obj Code for the Insurance Subsidies

In the meantime, the County had to assign a “GL Obj” code to Contract Nos. 19C0147C and 19C0147D. GL Obj stands for “general ledger object.” It is a 5-digit code the County uses to identify a financial transaction, or, in the case of an expense, the item purchased. In this case, someone selected 62381 (Professional and Special Services - Other) instead of 62385 (Mr. Biggam’s contract). See Figure 16.

Figure 16:

Excerpt from the FY2019 CAL re the GL Obj for Mr. Biggam’s Insurance Subsidies

Department Title	GL Obj	2018-19 Contract #	Contractor	2018-19 Contract Description	2018-19 Amt
PUBLIC DEFENDER	62385	19C0147A	BIGGAM, LAWRENCE P	18-19 Main Public Defender Services	7,042,938.00
PUBLIC DEFENDER	62385	19C0147B	BIGGAM, LAWRENCE P	18-19 Main Public Defender, Clean Slate/Prop 47	207,000.00
PUBLIC DEFENDER	62381	19C0147C	BIGGAM, LAWRENCE P	18-19 Main Public Defender, Liability Insurance	36,416.64
PUBLIC DEFENDER	62381	19C0147D	BIGGAM, LAWRENCE P	18-19 Main Public Defender, Health Insurance	526,209.47

Source: FY2019 Continuing Agreements List.

To assign the GL Obj code for Mr. Biggam’s contract, one would first have to appreciate that reimbursing an expense is not the same as making the purchase. Having a copy of Mr. Biggam’s contract might not help, even if one knows where to look. The obligations to reimburse Mr. Biggam for his insurance are in Section 10 of his contract, which is reproduced in [Appendix 7](#). It takes a careful reading to notice the payment provisions, let alone to understand them.

Unintended Consequence 7: Contributing to a Misleading and Uninformative Presentation of the Expenditure Budget for Unit 59

The FY2019 Budget Introduction states that the document contains schedules “designed to satisfy the needs of knowledgeable budget users.” Schedule 9 is supposed to show how each budget unit intends to spend its money. The Schedule 9 for Unit 59 identifies the main contractor as “Larry Biggam.” The description of Unit 59 states that the “Public Defender” provides services as if Unit 59 were a person, not a budget unit. The Table of Organizational Unit Descriptions states that Unit 59’s budget provides for

- a main contract with BCM;
- two conflicts contracts;
- “fourth party defense counsel” (referring to the CDCP);
- investigation costs, expert witnesses, and related services (referring to case-specific costs); and
- extraordinary defense costs (referring to what this report terms “Special Circumstances” cases).

The above description does not mention that County Counsel administers the CDCP and reviews all claims for case-specific costs. Figure 17 below is an excerpt from the FY2019 Schedule 9 for Unit 59.

Figure 17: Excerpt from Schedule 9, Unit 59, with Highlights

Detail by Expenditure Object	2018-19 Recommended Budget	
SERVICES AND SUPPLIES		
JANITORIAL SERVICES	61412	2,900
MISCELLANEOUS EXPENSE-SERVICES	62111	3,800
DUPLICATING SERVICES	62214	1,100
SUPPLIES	62223	75,000
PROF & SPECIAL SERV-OTHER	62381	1,450,000
PUB DEF CONFLICTS CONTRACT	62384	2,333,080
PUBLIC DEFENDER CONTRACT	62385	7,249,938
PUBLIC DEFENDER/SPECIAL	62386	900,000
RENTS/LEASES-STRUC IMP & GRNDS	62610	70,705
UTILITIES	63070	4,140
TOTAL SERVICES AND SUPPLIES		12,090,663

Source: FY2019 Budget Schedule 9, Unit 59.

Schedule 9 first came to the Grand Jury’s attention when a witness attempted to use it to point out the size of Mr. Biggam’s health insurance subsidy. The Grand Jury recognized that the janitorial services, rents, and utilities were for the Watsonville office space. The Grand Jury wondered if the County Administrative Office and County Counsel were billing duplicating services, supplies, and miscellaneous expenses to Unit 59. They were not. After examining the work papers for Schedule 9, the Grand Jury prepared Figure 18, the Grand Jury’s understanding of the County’s public defense services.

**Figure 18:
The Grand Jury’s Understanding of the County’s Unit 59 Budget**

	2018-19 Recommended Budget
SERVICES	
Lawrence Biggam, main contractor	7,866,933
Page & Dudley, conflicts contractor	1,166,540
Wallraff & Associates, conflicts contractor	1,166,540
Fourth-party Criminal Defense Conflicts Program / Cost approval	587,374
Case-specific costs	829,900
Additional attorney fees and costs for Special Circumstances cases	450,000
Conflicts contractors' Watsonville offices	23,377
TOTAL SERVICES	12,090,663

Source: Schedule 9 work papers; [Appendix 8](#) reconciliation.

There are several ways in which the presentation in Schedule 9 fails to explain the function of Unit 59. Two of these failures are attributable to hidden compensation (Unintended Consequences 1, 2, 4, and 5 above). A third failure is like Unintended Consequence 6, in that it stems from using an incorrect or uninformative GL Obj code. Other failures stem from other sources unrelated to the public defense contracts. Figure 19 lists the presentation failures.

**Figure 19: List of Presentation Failures
of the FY2019 Schedule 9 Unit 59 Expenditure Detail**

1. Arbitrary Order. Using GL Obj codes to determine the order in which Schedule 9 lists the line items is arbitrary and uninformative.
2. Understating Mr. Biggam's Compensation. The presentation understates the total cost of Mr. Biggam's contract by the \$616,994.55 that the presentation includes, with other amounts, in the highlighted line items.
3. Obscuring the Conflicts Firms' Free Watsonville Office Space. The presentation scatters this possible contract "adjustment" across three line items and blends it with Mr. Biggam's compensation.
4. Uninformative Cost Descriptions. The presentation scatters the budget for case-specific costs is across four line items (Miscellaneous Expense-Services, Duplicating Services, Supplies, and Public Defender/Special), only one of which describes a specific kind of expense.
5. Suggestion that Mr. Biggam is the Public Defender. By describing Mr. Biggam's contract as the "Public Defender Contract," the presentation wrongly implies that Mr. Biggam is the Public Defender. In fairness, however, the person who prepared Schedule 9 could not be expected to recognize this error.
6. No Mention of the CDCP. The presentation obscures the important role that the CDCP plays in addressing conflicts and reviewing defense costs.
7. False Impression of a "Real" Department. Unit 59 does not furnish supplies, only services. The County has no control over what an attorney needs to purchase to defend a client, and so a breakdown of those items is unimportant. Attempting to break down the case-specific costs creates the impression that the County, and not the defense attorneys, is purchasing the identified supplies.

[The report continues on the next page.]

Unintended Consequence 8: Misinforming the Board (Again)

The County Administrative Office had access to and should have been familiar with Mr. Biggam's contract. Nevertheless, it may have relied on the CAL or Schedule 9 when it prepared the [2018 Memo](#), which understated the FY2019 cost of Mr. Biggam's contract by \$616,994.55. The 2018 Memo also failed to mention the Conflicts Firms' free use of the Watsonville office space, which is part of the cost of their services, even if not in their written contracts.

In a Disorganized Contract, Even Section Numbers Do Not Always Add Clarity

To answer the Grand Jury's questions about how much the County paid the public defense contractors, the Controller's Office had to sort the payments based on descriptions. Some descriptions are helpful. Others are not. Figure 20 illustrates the range of descriptions.

Figure 20: Selected Payment Descriptions

FY	FM	Posted	Batch ID	Document	GLKey	Fund	GL Obj	Amount	Description
Vendor V101909 -- BIGGAM, LAWRENCE P									
2018	12	6/30/2018	OH306484	F25663_032618	591000	10110	62386	324.73	ancillary fees 031618-032618
2019	01	7/19/2018	OH308011	JULY 2018	591000	10110	62385	586,911.50	Contract Payment July 2018
2018	12	6/21/2018	OH302659	BATCH_092617	591000	10110	62381	87.50	court transcript 091817-092617
2018	12	6/7/2018	OH298413	18CR01981_050918	591000	10110	62381	150.00	expert fees
2019	02	8/13/2018	OH311748	F25036_080218	591000	10110	62386	1,000.00	expert fees
2018	08	2/22/2018	OH280878	JULY16_JULY2017	591000	10110	62381	505,970.64	HealthInsurPrem. July16-July17
2018	12	6/30/2018	OH305101	18CR02509_051018	591000	10110	62381	537.43	interpreter fees 050418-051018
2018	08	2/20/2018	OH280240	SEPT 2016SEP2017	591000	10110	62381	35,016.00	Malprac. Insur. Premium Sept.
2014	07	1/8/2014	FY14PEREXP7	VS5120401	591000	10110	62381	2,900.00	PD FEES F24722 10-12/
2018	10	4/5/2018	OH288399	PROP 47	591000	10110	62385	50,000.00	Prop 47 Clean Slate
2018	08	2/15/2018	OH279591	18CR00184_013118	591000	10110	62381	380.25	Transcription 013118

Source: County Controller

It would have been helpful if every time a request for payment was submitted, the request included a reference to the section number of the contract that entitles the contractor to the payment. As Table 3 shows, however, not all contract paragraphs have a number. The entitlements to the malpractice insurance and employee health insurance subsidies appear in one long run-on sentence, separated only by a semicolon. If a cost is reimbursed in a Special Circumstances case, it is not clear whether payment is made pursuant to Section 7 (reimbursement of costs without exception for Special Circumstances cases) or Section 8 (Special Circumstances cases) of Mr. Biggam's contract.

Part 6: Extending the Duration of Public Defense Contracts Beyond the Budget Cycle Makes It Difficult to See the Cost of the Contracts

Until this year, the County's planning did not extend beyond the next fiscal year, so the County naturally pays less attention to the parts of a contract that extend beyond that fiscal year. Even a two-year budget cycle does not shed much light on the parts of a contract that extend beyond the two years. It does not matter whether a thing is transparent or opaque if no one is looking at it. A County contract becomes less transparent and more opaque as the length of its term extends beyond the County's planning cycle.

The County's public defense contracts became more opaque as their terms increased from one or two years in the 1970s to four or six years in the 2000s. This opacity hid the cumulative effect of minor changes from the cost of the contracts to the County.

Short-Term Reductions and Long-Range Increases

Beginning in July 1992 and continuing through July 2012, the County and Mr. Biggam renegotiated his contract 14 times. Each negotiation reduced Mr. Biggam's annual fee in the upcoming one or two fiscal years but extended Mr. Biggam's engagement for an additional one or two years. Starting with the FY2002 annual fee negotiated in 1999, the initial amount of each annual fee increased noticeably.

Figure 21 shows that although Mr. Biggam reduced his annual fee with all but one renegotiation, the overall trend of the annual fee was upward.

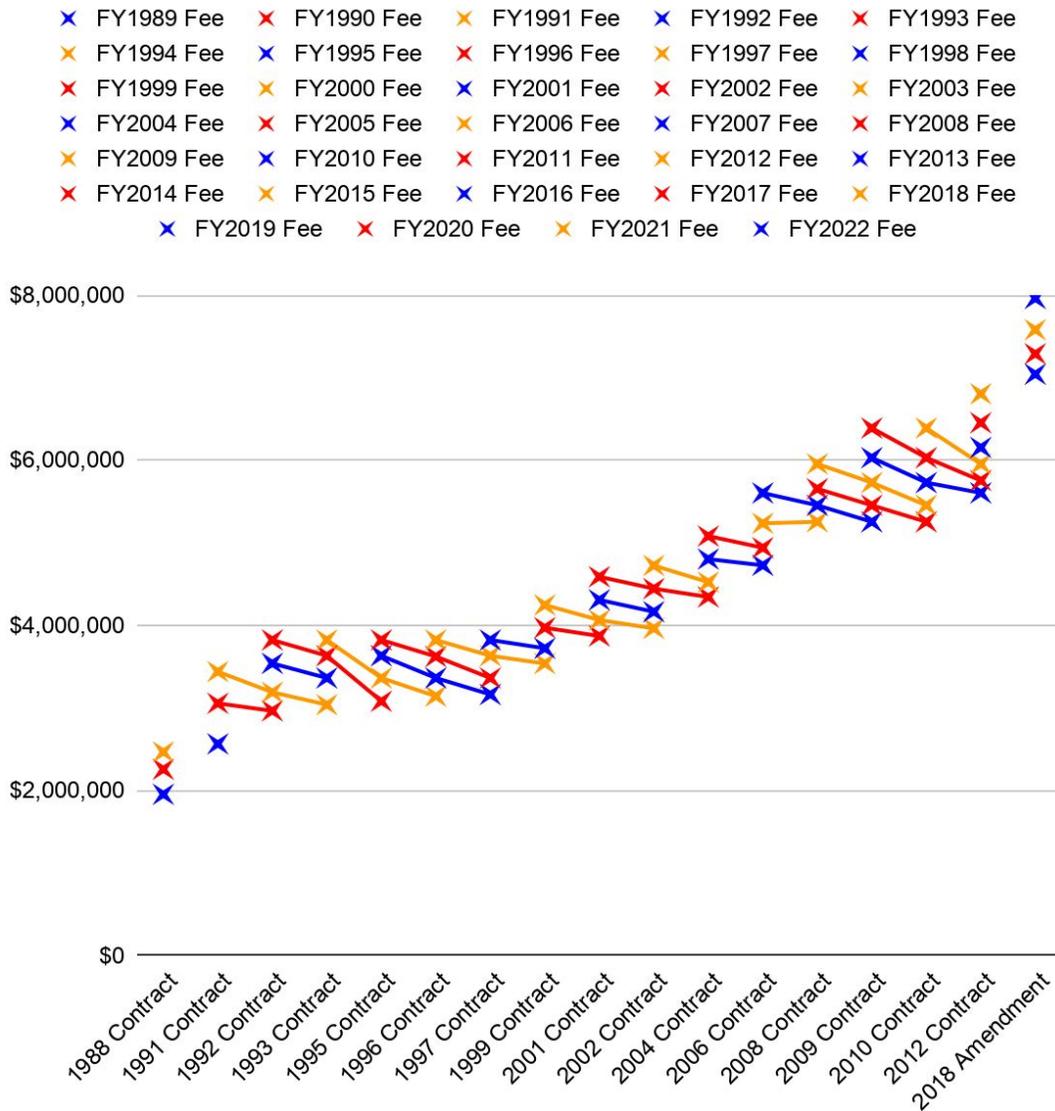
Each column of Xs represents a separate contract. Each X in a column represents a fiscal year that the contract covers. The first X in a diagonal line of Xs represents the originally negotiated annual fee for a fiscal year. Each additional X in the diagonal line shows how the annual fee for the same fiscal year was renegotiated in subsequent contracts.

Figure 21 shows, for example, that the 1999 contract:

- reduced the FY2000 annual fee to \$3,538,288;
- reduced the FY2001 annual fee to \$3,722,788;
- extended the contract to FY2002 for an annual fee of \$3,971,988; and
- extended the contract to FY2003 for an annual fee of \$4,247,113.

Similarly, Figure 21 also shows that the annual fee for FY1992 was negotiated in the 1991 contract and was never renegotiated.

**Figure 21:
The Negotiation and Renegotiation of Mr. Biggam’s Annual Fee—
Contracts dated 1988–2018; Fiscal Years FY1989–FY2022**



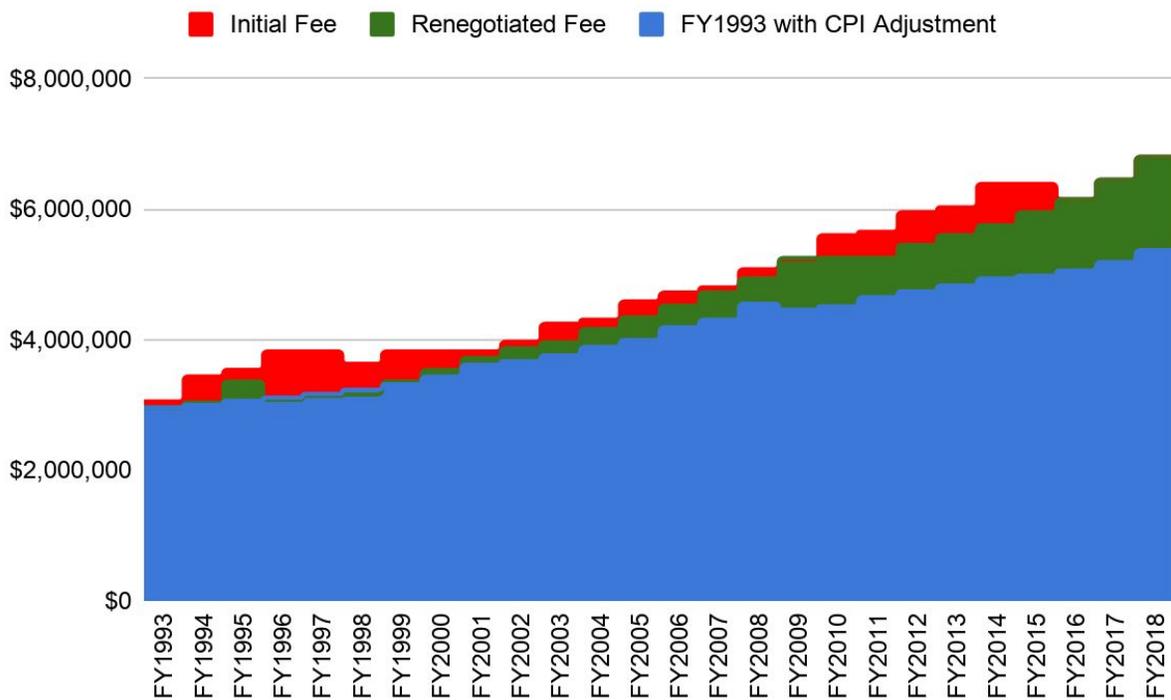
Source: Mr. Biggam’s public defense contracts from 1988 through 2018.

For the first 10 years of this pattern, the renegotiated annual fee increased at a rate that was about the same as the rate of inflation. In June 1999, however, Mr. Biggam negotiated annual fees for FY2002 and FY2003 that increased more rapidly. He would later compromise those rates, but the compromised rate remained higher than the rate of inflation. In June 2012, Mr. Biggam negotiated a three-year extension into FY2016–FY2018. The County never renegotiated the annual fees for those years.

[Appendix 9](#) is a similar chart for the Conflicts Firms and reflects a different pattern of renegotiation. If the pattern of renegotiation originated with the County Administrative Office, one would expect to see the same pattern of renegotiation over the same time in both charts. The differences between Figure 21 and Appendix 9 suggest that the pattern of frequent renegotiation originated with Mr. Biggam.

Figure 22 shows how the increases in the annual fee, both as originally negotiated and as finally renegotiated, compared to the rate of inflation during the same period.

**Figure 22: The Negotiation and Renegotiation of Mr. Biggam’s Annual Fee—
Contracts dated 1988–2012; Fiscal Years FY1989–FY2018**



Sources: Public defense contracts; County Controller records; California Division of Industrial Relations.

[Appendix 10](#) has a similar chart for the Conflicts Firms.

In June 2018, Mr. Biggam repeated this pattern of negotiating higher rates of increase in the more distant years, obtaining a 4% increase for FY2021 and a 5% increase for FY2022. The County gave the same increases to the Conflicts Firms.

Whether There is a Net Increase or Decrease Might Depend on One's Focus

The memo from the CAO to the Board dated June 15, 2006 (2006 Memo), the 2008 Memo, and the memo from the CAO to the Board dated June 26, 2012 (2012 Memo) emphasized the near-term savings that resulted from Mr. Biggam's renegotiated contracts but did not contrast the savings with the cost of the contract extensions.^{[62] [63] [64]} It may be that the CAO assumed that the future increases would be negotiated down in the future and therefore were not important.

In calculating the dollar amount of the savings, the memos did not account for any increase in Mr. Biggam's separate overhead subsidies. In fact, the memos never mentioned that separate overhead subsidies were part of the total cost of Mr. Biggam's contracts.

It seems unlikely that the CAO was unaware of the separate overhead subsidies. Did the CAO consider them to be immaterial? Was the difficulty of calculating and explaining the effect of the separate overhead subsidies not worth the effort? Perhaps, but that proves a point of this report. Separate overhead subsidies make a contract more complex and obscure the total cost of a contract. They make the contract opaque.

- The 2006 Memo. The 2006 Memo to the Board described the terms of Mr. Biggam's new contract as "favorable to the County." The new agreement reduced the annual fees for FY2007 and FY2008 by \$217,236. The memo did not explain that the increases in FY2009 and FY2010 over the FY2008 annual fee totaled \$959,461. The following was the only explanation:

At this time we have reached agreement with the Main Public Defender of a two year extension of the existing agreement and reductions in the contract amounts for 2006–07 and 2007–08. The recommended agreement extends the term of the agreement through 2009–10. The table which follows provides a comparison of the current agreement and the recommended agreement.

<u>Year</u>	<u>Current Contract</u>	<u>Recomm. Contract</u>	<u>Change</u>
2005–06	\$ 4,524,237	NA	
2006–07	4,803,487	\$ 4,727,828	\$ (75,659)
2007–08	5,082,157	4,940,580	(141,577)
2008–09	NA	5,237,015	
2009–10	NA	5,603,606	

- The 2008 Memo. The 2008 Memo recommended increases over the FY2010 annual fee (\$5,454,738) of \$200,000 for FY2011, \$501,368 for FY2012, and \$860,271 for FY2013, or \$1,561,639 in total. The 2008 Memo explained the exchange of a \$131,145 reduction for \$1,561,639 in increases as follows:

*This supplemental provides for restructuring the existing contract for the main public defender to provide for the operation of the Watsonville Office and reduce the cost of living adjustments in the existing agreement for 2008-09 and 2009-10 to an amount consistent with the cost of living adjustments provided the District Attorney's Bargaining Unit. **The resulting savings** is used to fund the budget augmentation required to operate the new Watsonville Office. Below is a summary of the recommended restructuring:*

<u>Year</u>	<u>Current Contract</u>	<u>Recomm. Contract</u>	<u>Change</u>
2008-09	\$ 5,237,015	\$ 5,254,738	\$ 17,723
2009-10	5,603,606	5,454,738	(148,868)
2010-11		5,654,738	
2011-12		5,956,106	
2012-13		6,315,009	

Other changes in the new agreement include:

- *reducing the deductible for the main public defender firm's malpractice insurance from \$50,000 to \$25,000; and*
- *increasing the amount in extraordinary fee cases to the amount now authorized by the Superior Court for 4th party appointments.*

[Emphasis added.]

The memo did not point out that by agreeing to lower the deductible for Mr. Biggam's malpractice insurance, the County would have to increase its malpractice insurance subsidy.

[The report continues on the next page.]

- The 2012 Memo. The 2012 Memo explained the exchange of an \$836,639 reduction for \$1,561,639 in increases over the FY2010 annual fee as follows:

*In summary, the recommended agreement provides for concessions totaling \$836,639 over the existing three year term of the agreement (2012–13 through 2014–15) and extends the term of the contract by three years to 2017–18. This extension will provide for the stability and retention of existing employees and new hires in a competitive marketplace, and will provide for an orderly transition of the Public Defender function to the County at the conclusion of the current agreement. **The recommended agreement not only provides immediate savings, it also provides reductions over the current contract in years two and three, and reductions in planned percentage gains in the final years.** The reduced contract amount represents a significant contribution to the County during these difficult times.*

Year	Current Contract	Recommended Contract	Change
2012–13	\$5,729,738	\$5,604,738	(\$125,000)
2013–14	\$6,031,106	\$5,754,738	(\$276,368)
2014–15	\$6,390,009	\$5,954,738	(\$435,271)
2015–16		\$6,154,738	
2016–17		\$6,454,738	
2017–18		\$6,804,738	

[Emphasis added.]

The memo refers to “reductions in planned percentage gains in the final years.” Presumably the CAO meant that the increases in years 4-6 were smaller than she had originally intended. Whether that reduction reflects a concession by Mr. Biggam is unclear.

[The report continues on the next page.]

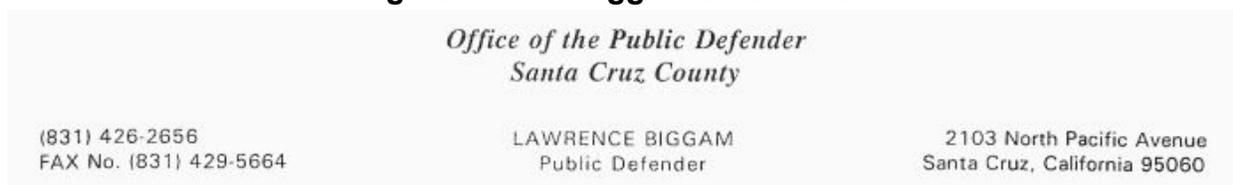
Part 7: Allowing Mr. Biggam to Appear to Be the Public Defender Makes County Government Less Transparent

Mr. Biggam Appears to Be the County's Public Defender

Many County documents, including the Budget, refer to the Public Defender. Sometimes, as in the 2012 Memo quoted in Part 6 above, the words appear to refer directly to Mr. Biggam. In many cases, the words refer to Unit 59 but could easily be understood to refer to Mr. Biggam. When asked to name the Public Defender, County employees who are not themselves attorneys normally identify Mr. Biggam.

Mr. Biggam refers to himself as the Public Defender. His letterhead declares that he holds the Office of Public Defender.

Figure 23: Mr. Biggam's Letterhead



Source: Mr. Biggam's quarterly report

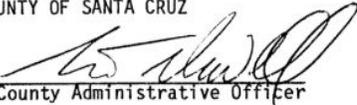
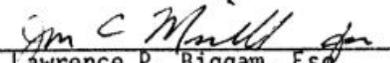
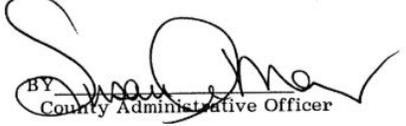
Mr. Biggam's Contracts Make Him Look Like the Public Defender

Mr. Biggam's contracts do not appoint him as Public Defender but suggest that he already holds that office. The contracts require him to "perform the functions and duties of the Public Defender" and refer to his staff attorneys as "deputy public defenders."

[The report continues on the next page.]

Table 4 shows that all but one of Mr. Biggam’s contracts purport to be signed by the Public Defender.

Table 4: Representative Signatures on Each of Mr. Biggam’s Contracts

Contract Date(s)	County’s Signature	Other Signature
1977, 1978	COUNTY OF SANTA CRUZ By  County Administrative Officer	PUBLIC DEFENDER By  LAWRENCE BIGGAM
1988	COUNTY OF SANTA CRUZ BY  County Administrative Officer	PUBLIC DEFENDER SANTA CRUZ COUNTY by  Lawrence P. Biggam, Esq.
1991, 2006, 2008, 2009, 2010,	COUNTY OF SANTA CRUZ BY  County Administrative Officer	PUBLIC DEFENDER SANTA CRUZ COUNTY by Lawrence P. Biggam by Gerald Christensen Lawrence P. Biggam, Esq.
1992, 1993 1995, 1996, 1997, 1999, 2001, 2002, 2004, 2012,	COUNTY OF SANTA CRUZ BY  County Administrative Officer	PUBLIC DEFENDER SANTA CRUZ COUNTY by  Lawrence P. Biggam, Esq.
2018 amendment to the 2012 contract	COUNTY OF SANTA CRUZ By  County Administrative Officer	CONTRACTOR By  Lawrence P. Biggam, Esq.

Source: Mr. Biggam’s contracts

[The report continues on the next page.]

Who Is the Main Public Defense Contractor?

It is unclear whether Mr. Biggam or BCM, the firm in which he is a name partner, is the main public defense contractor. In the Board minutes that the Grand Jury reviewed, almost all the references to the contractor are to BCM, and not to Mr. Biggam personally. The budget and accounting documents that the Grand Jury reviewed, including those attached to Board minutes, identify the contractor as Mr. Biggam or Mr. Biggam “doing business as” BCM.

Mr. Biggam’s contracts confuse the identity of the contractor.

- The First Page of Each Contract. Mr. Biggam’s 1977 and 1978 contracts each state that the agreement is between the County and:

LAWRENCE BIGGAM, hereinafter referred to as “CONTRACTOR,”

Each of Mr. Biggam’s remaining contracts, including the 2012 contract, similarly states that the agreement is between the County and

LAWRENCE P. BIGGAM, attorney, hereinafter referred to as “CONTRACTOR,” [emphasis added]

The 2018 amendment to the 2012 contract, however, opens with the following language:

The parties hereto agree to amend that certain Agreement dated July 2, 2012 ... between the COUNTY ... and the law firm of LAWRENCE P. BIGGAM, attorney, hereinafter referred to as “CONTRACTOR,” [emphasis added]

- The Signature Page of Each Contract. As noted above, **none** of the contracts is signed by Mr. Biggam in his personal capacity, by BCM as a law firm, or by “the law firm of Lawrence P. Biggam.”
- The Current Contract. Section 16 of Mr. Biggam’s 2012 contract, as amended, uses the phrase “the law firm of CONTRACTOR” in two places, the term “CONTRACTOR” in two other places, and the phrase “the Law Offices of Biggam, Christensen and Minsloff” in another place.
- Mr. Biggam’s Characterization. A January 30, 1978 letter to the CAO from Mr. Biggam on BCM letterhead identifies BCM as the contractor:

The “Public Defender’s Office” is a private law firm which independently contracts with Santa Cruz County to provide specific legal services for an established annual fee

Mr. Biggam is Not the Public Defender

Although Mr. Biggam's contract did not appoint him as the public defender, some County executives believe that the Board appointed him as the public defender at some time. The Board's minutes include an opinion of counsel that Mr. Biggam is not the public defender. See [Appendix 11](#).

Allowing Mr. Biggam to Appear to Be the Public Defender Makes His Contract and County Government Less Transparent

Even if Mr. Biggam's ambiguous status leads to no specific harm, it makes an already difficult contract even more confusing. Making government appear to be something that it is not is the opposite of transparency. The County should need no other reason for discontinuing, and asking the County's criminal defense attorneys generally to discontinue, the practice of referring to any public defense attorney as a public defender or deputy public defender.

[The report continues on the next page.]

Part 8: If it had the Resources of a Department, the County Administrative Office Might Have Understood the Real Cost of the Public Defense Contracts

According to the Budget, the duty of the CAO is to oversee the County's departmental functions, not **be** a Department. The duty of the public defender, if the County had one, would be to ensure that the courts do not deprive a person's freedom without due process if the person cannot afford an attorney. The mission of Unit 59, in contrast, is not to **be** the public defender, but to **fund** the services that a public defender would provide.

For years the County has not seen a need to do anything other than fund the public defense contractors because, by all accounts, they are very good at what they do. No concerns about the quality of public defense contractor services have come to this Grand Jury's attention. No concerns about the quality of public defense contractor services are reflected in the reports of five previous Grand Juries.^{[65] [66] [67] [68] [69]} At least in Santa Cruz County, giving public defense counsel total freedom to do their jobs has worked.

The County Administrative Office Stopped Examining Mr. Biggam's Financial Records

There was a time when Mr. Biggam disclosed his finances to the County. In January 1978, Mr. Biggam sent a 13-page letter to the Board describing how his firm worked with the County Administrative Office to arrive at an annual fee. (Mr. Biggam did not have any overhead subsidies at that time.) The letter described how a County Budget Analyst met with BCM's controller and reviewed BCM's financial records. The letter also described arguments over expense assumptions and how they were resolved. When the CAO recommended approval of the FY1979 public defense contracts to the Board in August 1978, he included a 6-page memo justifying the cost. (The 2018 Memo, by contrast, barely discussed cost.)

At some point, the County stopped demanding access to Mr. Biggam's financial information. A 1991 report of the Grand Jury reveals that Mr. Biggam did not honor a Grand Jury subpoena for his financial records.^[70]

Lacking the Resources to Analyze Data, the County Administrative Office Has Overlooked Declining Caseloads

The County Administrative Office does not study or analyze the contractors' quarterly reports. The Grand Jury found no evidence that the County has ever analyzed the quarterly reports, except that some addition errors are noted on some reports. The CAO has compiled total cases and total felonies in memos to the Board concerning the public defense contracts, but normally does not attempt to interpret them. For as far back as the County's records go, each contractor has submitted its quarterly report in its own format. If the County were compiling the data, someone would have asked for the contractors to use the same report form.

If it had the Resources of a Department, the County Administrative Office Might View Claims of Increased Caseloads More Skeptically

When a change in the law has created new categories of tasks for the County's main public defense contractor, the County Administrative Office has cited these new duties as justifying an increase in the main public defense contractor's compensation.

- Prison Realignment. In 2011, AB 109, the Post Release Community Supervision Act of 2011 (Realignment), moved responsibility for supervising some felons after their release from prison from a state agency to the counties.

In 2012, the County and Mr. Biggam agreed to amend Mr. Biggam's contract to add new clauses (j) and (k) to Section 1. Section 1 lists the kinds of cases Mr. Biggam is required to handle, and for which he receives no additional compensation. The new clauses read as follows:

j. Representation at court-ordered sanctions of state inmates of Santa Cruz County origin that are placed on Post Release Community Supervision.

k. Representation at court-ordered parole revocation hearings as of July 1, 2013.

The 2012 Memo then characterized this amendment as increasing Mr. Biggam's workload, as follows:

*The recommended agreement also provides for the Public Defender to **assume new responsibilities** for representation for court-ordered sanctions of state inmates of County origin that are placed on Post Release Community Supervision as of July 1, 2012, and court ordered parole revocation hearings as of July 1, 2013. To facilitate **these additional workload assignments**, ...*

[Emphasis added.]

Unlike every other clause in Section 1, clauses (j) and (k) do not require that a court first appoint Mr. Biggam as counsel. The absence of this requirement, and the fact that Section 1 does not already require Mr. Biggam to act as counsel, suggests that there was no constitutional requirement for the County to provide representation in these matters. The 2012 Memo did not state whether there were other good reasons for the County to pay for the representation.

- Felony Reclassification. In 2014, Proposition 47 reclassified several categories of felonies as misdemeanors, applying this reclassification retroactively. Thus, persons convicted of these felonies could apply to have their criminal record, terms of release, and sentences changed to reflect the change in the law. The Clean Slate program arose out of the County's desire to help eligible people get the benefits of this law. After granting \$50,000 subsidies in each of FY2016 and

FY2017, the CAO wrote to the Board in support of a proposal to increase the subsidy to \$150,000. (The Board increased the subsidy to \$100,000.) The CAO’s June 5, 2017 memo (2017 Memo) read, in part:

The Public Defender reassigned an attorney from the misdemeanor caseload to the program In order to sustain this new assignment, the Public Defender requests an increase of \$150,000 Without this additional funding, the Public Defender will be unable to provide the full scope of services offered by the Clean Slate Program.

The 2017 Memo did not mention that by changing a large class of felonies to misdemeanors, Proposition 47 could reduce Mr. Biggam’s future workload.

- **Marijuana Reform.** The 2017 Memo also alluded to the retroactive provisions of Proposition 64, which decriminalized adult recreational use of marijuana. As with Proposition 47, the CAO emphasized the additional work associated with the retroactive provisions without mentioning that eliminating an entire category could reduce Mr. Biggam’s future workload.

The Absence of Data Allows Increases in Compensation for Public Defense Contractors to Seem Reasonable

With crime in the news every day, it is easy for people to believe that crime is up. As with some prices, especially rising rents, it is easy to believe that everything is getting more expensive. Annual percentage increases of 3.5% in the FY2020 and FY2021 annual fees for the public defense contractors can easily seem reasonable. The 4% and 5% increase in the FY2022 and FY2023 annual fees might appear to be on the high side, but the evidence shows that the public defense contractors are willing to make concessions when money is tight. It is hard for the County Administrative Office to be critical of the public defense contractors when everyone says they are doing a great job.

The Weak Justification for the 2018 Increases

Figure 24 shows that the justification for the 2018 contract increases was just a minor rewording of the justification for the 2012 increase.

Figure 24: Quotes from the Cost Justifications in the 2012 Memo and the 2018 Memo

2012 Memo	2018 Memo
<i>This extension will provide for the stability and retention of existing employees and new hires in a competitive marketplace, and will provide for an orderly transition of the Public Defender function to the County at the conclusion of the current agreement.</i>	<i>These extensions provide for the stability and retention of existing employees and new hires in a competitive hiring environment, as well as provide for an orderly transition of the Public Defender function to a new model at the conclusion of the contract extensions.</i>

Source: 2012 Memo and 2018 Memo

Moreover, a few minutes of internet research would have revealed that even if there was a competitive hiring environment in 2012, the competition in 2018 was among the attorneys seeking employment. Law schools graduate more lawyers than there are jobs available. According to the Bureau of Labor Statistics, many law school graduates and licensed lawyers “end up finding work in other occupations or industries due to the difficulty in finding jobs with traditional legal employers.”^[71]

The County Administrative Office Has Allowed the Courts’ Concern for the Stability of the Public Defense System to Influence the County’s Attitude Toward the Public Defense Contractors

The County relies heavily on judges for their evaluation of the public defense contractors. The judges appreciate how Mr. Biggam does his job, and especially how Mr. Biggam respects, and teaches others to respect, the judges’ desire for an orderly court process.^[72]

The courts have demonstrated their influence on the selection and retention of public defense counsel in other ways. A three-person committee consisting of a judge, the CAO, and the editor of the *Watsonville Register-Pajaronian* evaluated the responses to the 1975 request for proposal (RFP) that resulted in Mr. Biggam’s (or BCM’s) selection.

In 1995 and again in 1999, the County published an RFP to provide alternative public defense services. The 1995 RFP received proposals from the Page and Wallraff firms, a third firm headquartered out of County, and a new firm to be formed by former BCM associate attorneys. The Page and Wallraff firms and the same third firm also submitted proposals in response to the 1999 RFP. In each case, the County consulted with judges of the Superior Court. The CAO’s memos to the Board dated March 7, 1995 and March 11, 1999 reported that the judges opposed working with attorneys with whom they are unfamiliar, and opposed accepting the risk that a new firm might fail to organize a local office in time to provide a smooth transition. The Board accepted the CAO’s recommendation to accept the proposals of the Page and Wallraff firms, even though those proposals were much more expensive than the other firms.

The 2006 Memo again stressed the importance of stability in providing public defense services:

*We are pleased to have reached agreement with the Public Defender which, if approved by the Board, **avoids the need for a costly and difficult transition** from one provider to another during a period of time when the Courts are relocating.*

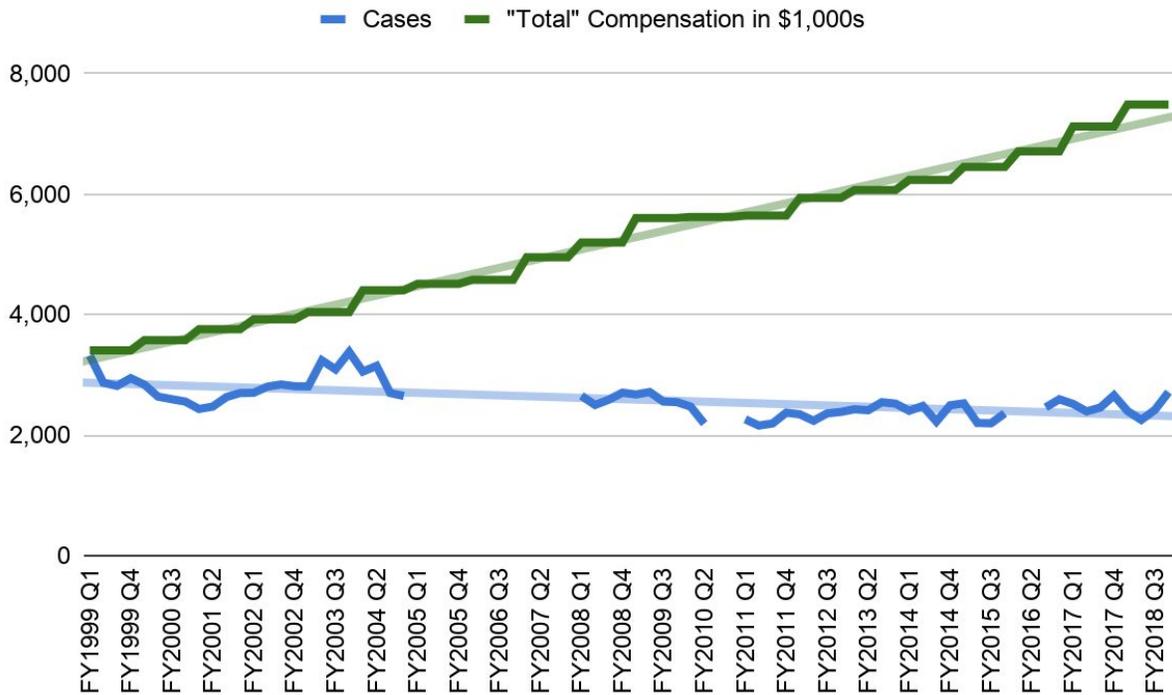
[Emphasis added.]

The judges are an important source of information about the quality of public defense services, but they are a State agency and are not involved in the County’s spending decisions. They have no basis for evaluating the cost efficiency of the public defense services.

The Resources of a Department Would Have Given the County Administrative Office the Tools and Confidence to Negotiate Better Contracts

Figures 2 and 3 have already shown that for the past 20 years, total case assignments and "total" compensation of the public defense contractors have moved in opposite directions. Figure 25 shows that Mr. Biggam's "total" compensation has been increasing at an average rate of 4.12% per year for 20 years while total case assignments for the same period have fallen on average 1.09% per year.

Figure 25: 20 Years of Mr. Biggam's "Total" Compensation in \$1,000s and 20 Years of Mr. Biggam's Reported Case Assignments

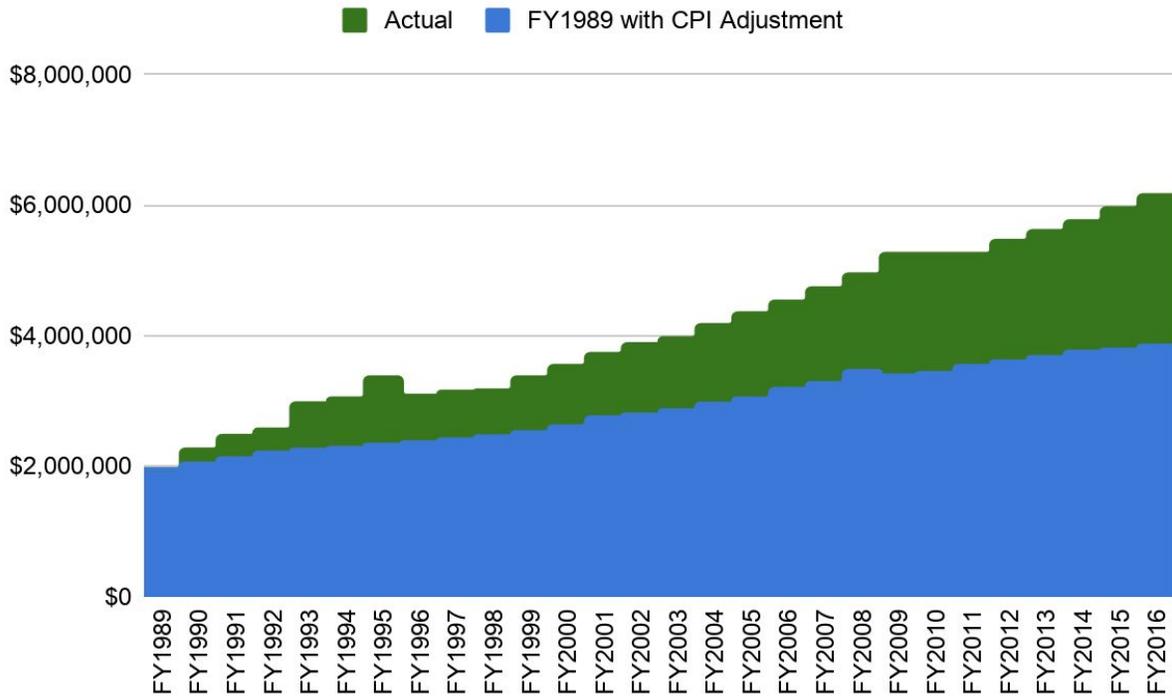


Sources: Public defense contracts; County Controller records; Cal Div of Ind Relations.

Seeing this graph would have given the CAO reason to question the wisdom of assuming that the previous year's compensation was merited and that an additional increase was appropriate. With supporting data, the CAO would be well positioned to fend off pressure from anyone with a less-informed opinion about Mr. Biggam's compensation.

Figure 25 might have inspired the CAO to compare the increases in Mr. Biggam's compensation to the rate of inflation. Figure 26 compares Mr. Biggam's annual fee (and none of his other compensation elements) from FY1989 through FY2016 on the assumption that the chart would have been prepared in FY2017. Figures 25 and 26 suggest that the County could have reduced Mr. Biggam's annual fee by \$2 million and still made the contract worth Mr. Biggam's time.

Figure 26: 28 Years of Mr. Biggam’s Annual Fee Compared to Inflation



Sources: Public defense contracts; County Controller records.

[The report continues on the next page.]

Part 9: If It Had the Resources of a Department, the County Administrative Office Might Have Made Different Choices About Other Provisions in the Public Defense Contracts

Compensation Structure

If it had the resources of a Department, the County Administrative Office might have been aware that the literature on the subject recommends against compensating public defense contractors with a fixed fee.^{[Z3] [Z4] [Z5]}

A fixed fee tempts a contractor to cut costs by overworking and underpaying staff. A fixed fee may also tempt a contractor to skimp on costs, such as consulting with experts. Mr. Biggam's FY1977 and FY1978 contracts created the latter temptation by requiring him to bear these expenses. (In contrast, the Conflicts Firms' contracts in those years covered their costs.) To the extent that temptation exists, the Grand Jury has found no evidence to suggest that the County's public defense contractors have ever given into it.

The literature recommends that public defense contractors be compensated for some matters on a per-case basis and for other matters on a per-hour basis in much the same way that CDCP attorneys are compensated.^[Z6]

The County Administrative Office at one point assembled data showing that CDCP attorneys are paid more per case than the public defense contractors. That analysis, however, did not account for differences in the mix of cases that the CDCP and the public defense contractors handle. Cases do not get to the CDCP unless all three contractors have a conflict, which indicates that CDCP cases are more complicated.

Balanced "Adjustment" Language

If it had the resources of a Department, the County Administrative Office might have recognized the one-sided nature of the "adjustment" language in the public defense contracts. It could have added language to offset the suggestion that adjustments are made only when caseloads increase.

Presently pending legislation would eliminate or reduce one of the services that Mr. Biggam offers in the Clean Slate Program—expungement of criminal convictions. AB-1076, if enacted into law, would expunge the records of eligible persons automatically, eliminating the need for an attorney in many if not most cases.^[Z7] Under the existing language of the contract, Mr. Biggam can argue that nothing in the contract entitles the County to reduce his fee if a change in the law lightens his workload.

Quality Assurance

If it had the resources of a Department, the County Administrative Office might have been familiar with the NLADA Model Contract.^[78] The Model Contract is designed to ensure adequate representation. The following Model Contract provisions are not in the County's public defense service contracts.

- Continuing Education and Training. For each of the contractor's attorneys, seven hours of continuing education in public defense law is required annually.
- Minimum Experience Requirements. Attorneys must have minimum levels of experience to handle specific kinds of cases.
- Continuity of Representation. The contractor must commit to have the same attorney represent the defendant at all stages.
- Prompt Contact. An attorney must contact each defendant within a specified time after appointment.
- Maximum Caseloads per Attorney. The cases assigned to attorneys must not exceed certain maximums.
- Legal Assistant and Investigator Staffing. The Model Contract uses formulas to determine the minimum number of legal assistants and investigators.
- Quarterly Position Salary Profile. The Model Contract requires a quarterly report that includes attorney names and support staff names, distributed by type of case.
- Quarterly Case Completion Report. The Model Contract requires reports of completed cases rather than assigned cases.
- Discipline Reports. The contractor is required to report any complaints filed with the state bar against the contractor's attorneys and any discipline resulting from the complaints.

Realistic Notice of Termination

If it had the resources of a Department, the County Administrative Office might have noticed that the termination provisions in the public defense contracts do not work very well if the contractor or one of the contractor's named partners is suspended or disbarred. Any provision that permits the County to terminate the contract because of suspension or debarment requires, or can be interpreted to require, 90 days advance notice.

Only active members of the State Bar may practice law in California.^[79] A suspended or disbarred lawyer does not have 90 days to transfer a caseload. All representation must stop immediately. Moreover, no active attorney may be a partner of a suspended or disbarred attorney.^[80]

Change in Law Firm Personnel

If it had the resources of a Department, the County Administrative Office might have realized that a contract with a law firm should identify the attorneys whose continued membership in the firm is important. A provision that attempts to do that is in the 2012 Biggam Agreement. No similar provision is in either Conflicts Firm contract.

Findings

- F1.** The County Administrative Office lacks the resources necessary to be the sole administrator of major contracts such as the public defense contracts.
- F2.** Negotiating multi-year, fixed price contracts for public defender services has cost the County several millions of dollars and created a windfall for public defense contractors.
- F3.** No one person or department within County government knows exactly how much total compensation the County pays to the public defense contractors, because payment records commingle some fee payments with cost reimbursements.
- F4.** The County's portrayal of its public defense services is not transparent.
- F5.** The County's accounting for separate overhead subsidies has for years caused the County to understate the compensation of the County's public defense contractors in line-item budgets and in reports to the Board of Supervisors.
- F6.** The County's duty to fund public defense services does not require the County to provide public defense contractors with free office space.
- F7.** When the County provides free office space to a contractor, the Controller's Office does not know to ask whether the cost of the office space should be included in the contractor's compensation for tax purposes.
- F8.** The County's contract policies and standard forms are not integrated with each other, are difficult to use, are not available to the public, are incomplete, and in some cases are poorly written.
- F9.** The County's public defense contracts violated written County policies without consequences.
- F10.** Standard forms are an excellent way to implement some County policies, but they must be used to be effective.
- F11.** County leaders misinterpret the meaning of County Counsel's approval of a contract "as to form."
- F12.** The County lost potentially valuable information when the County destroyed copies of contracts with, and reports submitted by, the public defense contractors.

Recommendations

- R1.** The Board of Supervisors should within the next 60 days instruct the County Administrative Officer to transfer responsibility for initiating and administering any major contract for delivery of services to County residents to a department or comparable organizational unit with the human resources to actively manage the contract. (F1)

- R2.** The Board of Supervisors should condition approval of any future proposal to pay a public defense contractor additional compensation, whether because a case involves special circumstances or otherwise, upon the presentation of evidence demonstrating that in the absence of additional compensation, the total compensation paid to the contractor would be inadequate. (F2)
- R3.** In the interest of transparency, the County Administrative Officer and the Auditor-Controller should work with Lawrence Biggam, the Watsonville landlord, and the Watsonville janitorial and utility providers to implement within the next six months an arrangement by which the County pays Mr. Biggam the amounts due to the Watsonville vendors and Mr. Biggam pays the Watsonville vendors. (F3)
- R4.** In the interest of transparency, the Board of Supervisors should instruct the County Administrative Officer to prepare and present for approval a document directing County staff (a) to use the term “public defense” instead of “public defender” to refer to the services that private defense contractors and Criminal Defense Conflict Program panel attorneys provide, (b) to refrain from referring to a public defense contractor or any member of their staff as a public defender, deputy public defender, or other “defender,” and (c) to refer to Budget Unit 59 using a word that the County Administrative Officer has determined does not suggest that Budget Unit 59 is a department. (F4)
- R5.** The Board of Supervisors should instruct the County Administrative Officer to prepare and present for approval a request to the County’s public defense contractors and the Criminal Defense Conflict Program panel attorneys, with respect and no suggestion of criticism, to refrain from referring to themselves or any peer as a public defender, deputy public defender, or other “defender.” (F4)
- R6.** The Board of Supervisors should instruct the County Administrative Officer to prepare and present for approval a policy that the County will not reimburse contractors for the cost of separate overhead items such as liability insurance, employee health insurance, or office space as one of the County’s obligations to the contractor. (F5, F6)
- R7.** The Board of Supervisors should instruct the County Administrative Officer to prepare and present for approval a policy that the County will not provide goods or services to contractors in lieu of cash. (F5, F6)
- R8.** The County Administrative Office and the Auditor-Controller should find a way to present the actual cost of the compensation paid to each public defense contractor on the County budget, beginning with the 2019–2020 fiscal year. (F5)
- R9.** The Board of Supervisors should instruct the County Administrative Officer to require, within the next 60 days, the public defense contractors to sign a customary use agreement with the County and, in the case of the alternative public defense contractors, pay reasonable compensation to the County for the use of the space. (F6)

- R10.** The Auditor-Controller should within the next 60 days take such steps as are appropriate to ensure that the County is reporting to the Internal Revenue Service the provision of office space, utilities, and janitorial services in Watsonville to the public defense contractors, as the law requires. (F7)
- R11.** The Board of Supervisors should within the next 90 days instruct the County Administrative Officer to work with the Auditor-Controller, the Purchasing Agent, and County Counsel to propose a timeline for revising the County's policies and procedures generally, including the implementation of the recommendations in this report concerning contract rules that Board of Supervisors decides to implement. (F8–F12)
- R12.** The Policies and Procedures Manual should include a statement identifying the policies and procedures that have been promulgated by the authority of the Board of Supervisors, citing the source of the authority for the Board of Supervisors to adopt the policies and procedures, and describing in reasonable detail the procedure for amending or revising the policies and procedures. (F8)
- R13.** The County should present the online version of the Policies and Procedures Manual in a manner comparable to the online version of the County Code. (F8)
- R14.** The Policies and Procedures Manual should include a “readability policy” (i.e., a statement that County policies and contracts should be understandable by the County employees who can reasonably be expected to have to use or understand them) to appear at the beginning of the Policies and Procedures Manual and apply to each Title of the Policies and Procedures Manual. (F8)
- R15.** A County readability policy should include a requirement to the effect that (a) each paragraph of a policy or contract must have a unique reference number, (b) each paragraph of a policy or contract must have a descriptive heading, (c) each paragraph of a policy or contract should address only one idea, (d) any requirement of a policy or contract to do something must identify a party or person as being responsible for doing the thing, and (e) the organization of any policy or contract should be predictable. (F8)
- R16.** The County Administrative Office and the Auditor-Controller should work with the Purchasing Agent and County Counsel to rewrite the provisions of Policies and Procedures Manual Title I Section 300 in accordance with a County readability policy and move the provisions into an appropriate place or places in the Policies and Procedures Manual Title III Section 100. (F8)
- R17.** The County Administrative Office should work with the Purchasing Agent and County Counsel to integrate the Policies and Procedures Manual with the County's contract templates, including department-specific templates. (F8)
- R18.** The County Administrative Office should work with the Purchasing Agent and County Counsel to ensure that the County's contract templates and contract rules are consistent with each other. (F8)

- R19.** The County Administrative Office should work with the Purchasing Agent and County Counsel to include in the Policies and Procedures Manual a section that contains most of the County's rules concerning the form and substance of a contract and that identifies the locations of any additional rules concerning the form and substance of a contract. (F8)
- R20.** The County's contract rules should identify, or have a procedure for identifying, an individual who, with respect to each contract, will be responsible for ensuring that the County's contract rules are followed. (F8)
- R21.** The County's contract rules should (a) provide for a checklist of the County's rules concerning the form and substance of a contract, which should remain in the contract's electronic file, on which the person responsible for the contract, with respect to each such rule, certifies that the contract complies, states that the rule is inapplicable with an explanation why, or explains how the contract does not comply and why and (b) require the CAO Analyst to confirm that the checklist is complete, that any exceptions are appropriate, and that the reasons for any exceptions are sufficiently documented. (F8)
- R22.** The County's contract rules should include a policy (a price justification policy) that (a) applies to appropriations above an amount to be specified in the price justification policy (e.g., more than \$300,000), (b) defines acceptable ways to evaluate cost, (c) requires that, when a contract is forwarded to the CAO Analyst, the department also submit a memo demonstrating that using one of the acceptable ways to evaluate cost establishes that the cost is justified, and (d) if possible, records the CAO Analyst's acceptance of the cost justification memo on the SCZCM1000 Report. (F8)
- R23.** The County's contract rules should require that, for each service contract, the appropriate department has a written plan for measuring the performance of the contract that includes, as appropriate (a) one or more reports that the contractor will submit to the County, (b) other ways that the County will measure performance, (c) a description of how the department will analyze the performance data, and (d) a description of how the department will use the analysis. (F8)
- R24.** The County's contract rules should require that, with respect to any contract that provides for payments for different purposes, the department work with the Controller's Office, at the time of contract initiation and each amendment or renewal, to agree upon a set of code phrases to distinguish one payment from the other, require the contractor to identify the appropriate code phrase on the contractor's invoices, and instruct the Controller's staff to include the appropriate code phrase in the description of the payment. (F8)
- R25.** The duties of the Clerk of the Board with respect to contracts should include, in addition to verifying that all required signatures are present, confirming that the agreement is properly dated, that each page is numbered, and that there are no blank spaces in the document (other than for initials). (F8)

- R26.** The County should change County Counsel’s certification on a contract from “Approved as to Form” to a phrase that is less likely to mislead anyone about the function of County Counsel, such as “County Counsel has advised the initiating department with respect to this Agreement.” (F11)
- R27.** The County’s contract rules should require the County to retain all records pertaining to the services of a contractor until such time as the County’s record retention policies permit the destruction of all the records. (F12)

Required Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Santa Cruz County Board of Supervisors	F1–F12	R1, R2, R4–R7, R9, R11	90 Days September 25,2019
Santa Cruz County Auditor-Controller	F3–F12	R3, R4, R8, R10, R11, R14–R16, R24	90 Days September 25,2019

Requested Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Santa Cruz County Supervisor John Leopold	F1, F2	R1, R2	90 Days September 25,2019
Santa Cruz County Supervisor Zach Friend	F1, F2	R1, R2	90 Days September 25,2019
Santa Cruz County Supervisor Ryan Coonerty	F1, F2	R1, R2	90 Days September 25,2019
Santa Cruz County Supervisor Greg Caput	F1, F2	R1, R2	90 Days September 25,2019
Santa Cruz County Supervisor Bruce McPherson	F1, F2	R1, R2	90 Days September 25,2019
Santa Cruz County Administrative Officer	F1–F6, F8–F12	R1–R9, R11–R27	90 Days September 25,2019
Santa Cruz County Counsel	F8–F12	R11, R12, R14–R19, R26	90 Days September 25,2019
Santa Cruz County Purchasing Agent	F8–F12	R11–R27	90 Days September 25,2019

Defined Terms

- **2006 Memo:** Memorandum of Susan Mauriello to the Board dated June 15, 2006
- **2007 Memo:** Memorandum of Susan Mauriello to the Board dated June 12, 2007
- **2008 Memo:** Memorandum of Susan Mauriello to the Board included with a June 23, 2008 Board agenda item
- **2012 Memo:** Memorandum of Susan Mauriello to the Board dated June 26, 2012
- **2017 Memo:** Memorandum of Susan Mauriello to the Board dated June 5, 2017
- **2018 Memo:** Memorandum of Carlos Palacios to the Board dated June 12, 2018, a reproduction of which is attached as [Appendix 1](#)
- **BCM:** Biggam, Christensen and Minsloff
- **Board:** Santa Cruz County Board of Supervisors
- **Budget:** The County of Santa Cruz Adopted Budget—Fiscal Year 2018–19
- **CAL:** Continuing Agreements List
- **CAO:** County Administrative Officer
- **Caspe:** Caspe & Germain
- **CDCP:** Criminal Defense Conflicts Program
- **Conflicts Firm:** Alternative public defense contractor; since 1989, the Page firm and the Wallraff firm
- **Contract Module:** Contract module of the County’s integrated accounting and financial management OneSolution software
- **Contract Rules:** Section 300 and the Purchasing Regs
- **CPI:** California Consumer Price Index - All Items - Urban Wage Earners and Clerical Workers
- **Department:** County department
- **Encompass:** Encompass Community Services
- **Fox:** Fox & Popin
- **FTE:** Full-time equivalent
- **HSA:** Santa Cruz County Health Services Agency
- **Model Agreement:** NLADA Model Agreement for Public Defense Services
- **NLADA:** National Legal Aid & Defenders Association
- **Ordinance:** Santa Cruz County purchasing ordinance
- **Page:** Page & Dudley
- **PPM:** Policies and Procedures Manual
- **Purchasing Regs:** PPM Title III, Section 100
- **Realignment:** Post Release Community Supervision Act of 2011
- **RFP:** Request for proposal
- **Risk Management:** Risk Management Division of the Santa Cruz County Personnel Department
- **RPD:** Real Property Division of the Santa Cruz County Department of Public Works
- **Section 300:** PPM Title I, Section 300
- **Unit 59:** Budget Unit 59, titled “Public Defender”

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Appendix 1: 2018 Memo

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County of Santa Cruz Board of Supervisors

Agenda Item Submittal

From: County Administrative Office

(831) 454-2100

Meeting Date: June 12, 2018

Recommended Action(s):

1. Approve amendment to agreement with the law firm of Lawrence P. Biggam for public defender services through June 30, 2022, with contract costs of \$7,249,938 in FY 2018-19.
2. Approve amendment to agreements with the law firms of Page, Salisbury & Dudley and Wallraff & Associates for public defender conflict of interest services through June 30, 2022, with contract costs of \$1,166,540 in FY 2018-19.
3. Authorize the County Administrative Officer to sign the amendments.

Executive Summary

Every person appearing before a court has the right to counsel, regardless of their ability to pay. The County of Santa Cruz maintains one main contract for Public Defender services for indigent clients, and two contracts for Public Defender services where there is a potential conflict of interest. Four-year extensions for all three contracts are recommended for approval.

Background

The current contracts for public defender services expire on June 30, 2018. The County currently has three agreements: the main contract with Biggam, Christensen and Minsloff, and two conflicts contracts with Page, Salisbury & Dudley and Wallraff & Associates. These longstanding justice partners have provided superior service to the County, the Courts, and the residents of the County.

As changes to the structure for public defender services would be time consuming and complex, the contract with the main firm provides that "...In August 2016, the parties will begin discussions for the purposes of either extending this agreement beyond June 2018, or planning to transition to the Public Defender function to the County..." In August 2016, the main firm advised the County of their willingness to negotiate a successor agreement. Similarly, the conflicts contracts specify that "...In August 2017, the parties shall begin negotiations for the purpose of determining whether the parties will execute a new contract, and if so, a contract compensation level for 2018-19 and any subsequent years. In the event that an agreement on the renewal is not reached contractor will cooperate in the orderly transition of assigned cases..." In May 2017, we were advised of the willingness of the two firms to continue providing services.

Based upon the willingness of the three firms to continue to provide services to the County, we met with the principals to discuss extending the contracts and continued these discussions over the past year.

Analysis

Staff have concluded discussions with the main and conflict firms. The recommended contract extensions provide for increases over the existing agreements and extend the term of the agreements through June 30, 2022. All three contracts provide four years of funding, with contract increases of 3.5% in year one, 3.5% in year two, 4% in year three, and 5% in year four.

These extensions provide for the stability and retention of existing employees and new hires in a competitive hiring environment, as well as provide for an orderly transition of the Public Defender function to a new model at the conclusion of the contract extensions. The transition planning timeline is as follows:

<u>Fiscal Year</u>	<u>Deliverable</u>
2019–20	Study models and costs
2020–21	Develop transition plan
2021–22	Implement transition plan

Financial Impact

The contract extensions have been included in the FY 2018–19 Proposed Budget for the Public Defender, resulting in no additional Net County Cost.

In FY 2018–19, the law firm of Lawrence P. Biggam will receive a not to exceed amount of \$7,042,938 for public defender services, including the deputy public defenders and investigators, and a not to exceed amount of \$207,000 to partially offset the costs of the Clean Slate Program. These costs are budgeted in GL 591000/62385. Additional costs for health and liability insurance are budgeted in GL 591000/62381.

In FY 2018–19, the law firms of Page, Salisbury & Dudley and Wallraff & Associates will each receive a not to exceed amount of \$1,166,540. These costs are budgeted in GL 591000/62384.

Submitted by:

Carlos J. Palacios, County Administrative Officer

Recommended by:

Carlos J. Palacios, County Administrative Officer

Click [here](#) to return to Background. Click [here](#) to return to Consequence 8.

Appendix 2 Contracts and Quarterly Reports Reviewed FY1975 through FY1998

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Color	Key
	There was not necessarily a contract or report.
	The contract did not require reports.
	The County did not find the document.
	The Grand Jury reviewed the document.
	Report did not contain required felony jury trial data.

	Mr. Biggam				Fox or Page Firm				Caspie or Wallraff Firm						
	Contract	Report				Contract	Report				Contract	Report			
		Q1	Q2	Q3	Q4		Q1	Q2	Q3	Q4		Q1	Q2	Q3	Q4
FY1975															
FY1976															
FY1977															
FY1978															
FY1979															
FY1980															
FY1981															
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FY1993															
FY1994															
FY1995															
FY1996															
FY1997															
FY1998															

Appendix 3

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Contracts and Quarterly Reports Reviewed FY1999 through FY2018

Color	Key
	The County did not find the document.
	The County did not find the document but the CAO reported total case data in the 2007 Memo.
	The Grand Jury reviewed the document.
	Report did not contain required felony jury trial data.

	Mr. Biggam				Page Firm				Wallraff Firm						
	Contract	Report				Contract	Report				Contract	Report			
		Q1	Q2	Q3	Q4		Q1	Q2	Q3	Q4		Q1	Q2	Q3	Q4
FY1999															
FY2000															
FY2001															
FY2002															
FY2003															
FY2004															
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FY2007															
FY2008															
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FY2010															
FY2011															
FY2012															
FY2013															
FY2014															
FY2015															
FY2016															
FY2017															
FY2018															

Appendix 4

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Section 300, Numbered and Annotated

300 - CONTRACTS AND AGREEMENTS

A. CONTRACTS

A.1.1. Board of Supervisors Approval Required. All contracts for goods and services provided to the County of Santa Cruz are entered into under the legislative authority of the Board of Supervisors. Unless authority is delegated to another official (for example, to the Purchasing Agent for certain contracts under the purchasing ordinance, or to another individual as specified in this Section), ALL contracts must be approved by official action of the Board before their terms can be enforced, except for contracts entered into by constitutional office holders pursuant to Government Code Section 25303 and 29601.

A.1.2. Implied Requirement of a Writing; Conditional Exception for Verbal Contracts. Verbal contracts are acceptable only under emergency circumstances when necessary for the detection or prosecution of criminal matters, and the basic provisions of any verbal contracts shall be confirmed in writing within 1–10 working days.

A.2. Content of Agenda Item Seeking Board Approval. For the Board and interested members of the Public to assess the financial impact of an agreement being considered by the Board, the agenda items asking for the agreement to be approved must summarize the fiscal content of the contract. An appropriate consent agenda item might read, for example:

"Approve a contract with the Department of Health Services, in the amount of \$35,680, to provide for increased public outreach activities with respect to Lyme's Disease, as recommended by the Health Services Officer."

A.3. Who Initiates and Administers Contracts. Contracts are initiated by the department that requires a service, and it is the department's responsibility to administer the contract after it is approved by the Board of Supervisors or Purchasing Agent.

A.4. Who Must Approve Amendments to Contracts. The Board or the Purchasing Agent must approve changes to contracts approved by the Board or Purchasing Agent.

A.5.1. Authorization to Negotiate Does Not Confer Authority to Execute. If the Board authorizes a Department Head to negotiate an agreement, it must be returned to the Board for approval. **A.5.2. No Performance Before Approval.** Agreements shall be submitted to the Board prior to the commencement of any work.

A.5.3. Retroactive Provisions. In extraordinary circumstances, if the terms of a contract are to be retroactive, the Board must state their intent in advance. IF THE BOARD DOES NOT CLEARLY STATE ITS INTENT TO MAKE CONTRACT PROVISIONS RETROACTIVE TO A SPECIFIC DATE, NO PAYMENTS WILL BE ALLOWED FOR SERVICES RENDERED PRIOR TO BOARD APPROVAL OF THE AGREEMENT.

A.6. Authority to Execute Does Not Confirm Authority to Modify the Submitted Document. When the Board authorizes a Department Head to execute an agreement, it is authorizing the Department Head to sign the Board approved agreement on behalf of the Board but the terms and conditions must not be altered.

A.7. Standard Template. It is recommended that the standardized Agreement Forms approved by County Counsel be used. See example included at the end of this section.

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A.8. Groups of Contracts. Contracts are generally divided into two groups:

- Services, construction and repair
- Revenue

A.9. Construction and Repair Contracts. A.9.1. Purchasing Department's Authority. The Purchasing Department has the authority to engage independent contractors to perform services for the County and its offices and to employ independent contractors for construction and repairs within limits prescribed by the Government Code. To establish necessary procedures to be followed in these areas, Purchasing should be consulted as particular requirements arise. This authority has been provided in Santa Cruz County Code Chapter 2.37.

A.9.2. Scope of Purchasing Department's Authority. Under this provision the Purchasing Agent has the duty to purchase, rent, lease or lease/purchase for the County, all materials, supplies, furnishings, equipment, facilities (maximum \$35,000 per contracted item), and other personal property of whatever kind and nature for items previously budgeted by the Board. **A.9.3. No Project Splitting.** State law prohibits the splitting of projects into smaller projects to circumvent any or all limitations. **A.9.4. Purchase Orders.** Purchase orders may also be utilized in these transactions. Currently purchase order system requires a separate workflow.

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A.10. Personal Service and Public Project Agreements. A.10.1. When Board of Supervisors Must Approve. All personal service agreements and all public project agreements must be approved by the Board of Supervisors if they are greater than the thresholds indicated in Section 2.1.b and 3.0, respectively, of the Purchasing Policy Manual. **A.10.2. Board Submission to Include Form ADM-29.** Contracts submitted to the Board of Supervisors must be accompanied by an ADM-29. **A.10.3. Authority of Purchasing Agent (and Other Board Authorized Agents?)** The Purchasing Agent may approve agreements below these levels or other Board authorized agents.

A.11. Forms ADM-29 and W-9 Required. Approval of contracts, leases or any other form of agreement for contracted services or supplies, or revenue contracts, requires the use of Forms ADM-29 and W-9. These forms standardize and facilitate processing of such requests and approvals through the Auditor's Department, and gather required information for tax reporting.

A.12.1. Certain Required Provisions. The originating department must provide that each contract contain provisions for:

A.12.1.1. Independent Contractor Status. - Adequate documentation of personal service agreement with individual to determine their status as an independent contractor.

A.12.2.1. Terms of Payment. - Adequate clarity as to payment for services.

A.12.2.2. 30 Day Minimums. Contract provisions should not provide for payment in less than 30 days of receipt by the County of invoice without specific approval by Auditor-Controller-Treasurer-Tax Collector.

A.12.2.3. Escalator Clauses. - Use of escalator clauses, factors that automatically increase agreement payments annually, are generally discouraged except for rental and use type agreements.

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A.12.3. Advance Payments. - Advances are allowed only under the following conditions:

A.12.3.1. 501 Organizations. **A.12.3.1.a. Limited One Time Advance Permitted.** Non-profit, community based organizations granted tax-exempt status under IRC Section 501 may receive a one-time cash advance, not to exceed 1/4th of the total contract amount. Each subsequent payment will be made based on actual services.

A.12.3.1.b. Board of Supervisors Approval Required. If advances are to be allowed, the Board must approve them when the contract is approved.

A.12.3.1.c. Documentation of Justification for Advance. The Department Head or designee shall determine that the program cannot be carried out without the advance prior to submitting it to the Auditor-Controller- Treasurer-Tax Collector. Evidence of such shall be retained in the department files. **A.12.3.1.d.**

Prohibition of Use for Working Capital. The contract shall include a written assurance by the contractor that cash advances will not be used to provide working capital for non-County programs, **A.12.3.1.e.** and when possible such advances shall be deposited in interest bearing accounts, and the interest used to reduce program costs. In most cases a one or two month advance should be adequate.

A.12.3.2. Other Contractors. **A.12.3.2.a. Analyses and Assurances.**

Cash advances for all other organizations shall require the analyses and assurances in (1) above, **A.12.3.2.b. Performance and Fidelity Bonds.** AND may require faithful performance and fidelity bonds naming the County as loss payee depending on the necessity, which will be determined and approved by both the County Administrative Office and Auditor-Controller-Treasurer Tax Collector.

A.12.4. Audit and Record Retention. - Allowance for audit and retention of records for a period of not less than 5 years or until audited whichever occurs first.

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A.12.5. Remedy for Non-Compliance. - Termination and/or suspension of payments for non-compliance.

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A.12.6. Budgetary Control. - Any budgetary control.

A.12.7. Insurance. - Declaration as to required insurances and posting of the necessary certificates of insurance coverage with the originating department. Insurance is usually required for:

- a. General liability
- b. Automobile
- c. Worker's compensation
- d. Fidelity bonds

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A.12.8. Contractor's Nondiscrimination Policy. - The department will require the inclusion of the following equal opportunity clauses as a condition of all contracts in excess of \$10,000:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, disability, medical condition (cancer related and genetic characteristics), gender, pregnancy, marital status, sex, sexual orientation, age (over 18), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

A.12.9. Contractor's Employment Advertisements. - For all contracts in excess of \$50,000 where the Contractor employs at least 15 employees, the department will require the inclusion of the following equal opportunity clauses as a condition of the contract:

The Contractor will state that they are an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor, and ensure that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, disability, medical condition (cancer related and genetic characteristics), gender, pregnancy, marital status, sex, sexual orientation, age (over 18), veteran status or any other non-merit factor unrelated to job duties.

A.13. State and Federal Nondiscrimination Requirements. All County contracts must comply with the non-discrimination requirements of both the State and Federal governments. Certain specific projects conducted under State and/or Federal oversight may have additional definitions and requirements.

A.14. Executive Order 11246. If applicable according to the contract-funding source, the Contractor will comply with all provision of Executive Order 11246, as amended, and of the rules, regulations and orders of the Secretary of Labor, which include furnishing required information and report.

A.15. Remedy for Noncompliance. In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders this contractor may be declared ineligible for further contracts with the County.

A.16. Entering a New Contract into the County's Computer.

A.16.1. Contract Module. Add new contract in the Contract module (mask CMUPCM) to initiate a new contract.

A.16.1.1. Location of Forms ADM-29 and W-9. The County's Form ADM-29 is generated as a CDD report under mask SCZCM1000 and a copy of the Form W-9 is available on the General Services Department website.

A.16.1.2. Additional Instructions. For detailed step by step instructions for use of the OneSolution Contracts Module, accompanied by screenshots, refer to the Contracts End User Guide, available on the Auditor-Controller-Treasurer-Tax Collector's OneSolution Information Page:

<http://countyintranet.co.santa-cruz.ca.us/aud/sungard.html>

A.16.2. Department Approval. The Department approves their contract via OneSolution workflow.

A.16.2.1. Attachments Tab. Attach all copies including the contract or a copy thereof, to the Attachments tab. **A.16.2.2. County Counsel and Risk Review and Signature.** The contract should be delivered to County Counsel (see section B, below) and Risk (see section C, below) for review and signature at least 48 hours prior to the deadline the County Administrative Officer has established as a cutoff for including the item on the Board of Supervisor's [sic] Agenda (See Section 103 of Title V). **A.16.2.3. Clerk of the Board Approval.** Contracts will be forwarded to the Clerk of the Board through the Agenda Management System, who will approve the contract in OneSolution after all approvals and documentation have been received.

A.16.2.4. Wet Ink Signature Requirement. Original contracts with wet ink signatures will also be forwarded to the Clerk of the Board. **A.16.2.5. Notification of Clerk of the Board Approval.** Once the Clerk of the Board approves the contract, the Originator, the Auditor, and Purchasing will be notified with a copy of the final ADM-29 report so the department will know when it can submit claims for payment under the contract.

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B. FORM W-9

B.1.1. Purpose. This form is used to gather required tax information for reporting payments to Federal and State tax agencies. **B.1.2. Signature Required.** All applicable items must be completed, and the form must be signed. **B.1.3. Storage.** The Auditor-Controller-Treasurer-Tax Collector will access the W-9 form in the system contract file. **B.1.1. Exception for Revenue Contracts.** The W-9 is not required for revenue contracts.

B.2.1. Both Personal Name and DBA Required. Caution must be exercised on sole proprietors using fictitious names to ensure both their personal name and business name are reported correctly on the W-9. **B.2.2. Consequence of Failure to Submit.** Failure to submit will result in the automatic backup withholding of income taxes pursuant to IRS regulations.

C. COUNTY COUNSEL

C.1. Responsibility for Routing. Department will route original documents to County Counsel. **C.2. Review and Approval.** The County Counsel will review and

approve other than Standard County contracts by signature for "approval as to form." **C.3. Meaning of Approval.** Such approval indicates that the contract contains all of the necessary elements of a Contract and is binding on the parties. Such approval does not necessarily indicate that the Contract contains all clauses, which may be advisable, or that the language clearly expresses the intent of the parties. **SUCH CONCERNS SHOULD BE RAISED BY SPECIFIC QUESTIONS TO COUNTY COUNSEL.** **C.4. Consequence of Late Submission.** Failure to submit the original contract for review at least 48 hours prior to the deadline for submitting agenda items to the County Administrative Office may result in a deferral of the item to the next agenda.

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D. RISK MANAGER

D.1.1. Timing of Delivery. Following County Counsel review of documents, contracts shall be delivered to Risk Management **D.1.2. Meaning of Approval by Risk Management.** to review and ensure that the County is adequately protected against liability for the potential negligence of the contractor while under contract with the County.

D.2. Departures from Standard Insurance Requirements. In the case of independent contractor agreements, the Risk Manager must approve departures from the standard insurance requirements.

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E. AUDITOR-CONTROLLER-TREASURER-TAX COLLECTOR

E.1.1. Controller Review. Following approval from Risk Management the Auditor-Controller-Treasurer-Tax Collector shall review the documents, **E.1.2. Exceptions to Controller Review.** except for the Human Services Department, Health Services Agency, and Department of Public Works, contracts will be routed in the system to the Auditor-Controller-Treasurer-Tax Collector. **E.1.3. Standard for Approval.** The Auditor-Controller- Treasurer-Tax Collector will review and approve the following:

E.1.3.1. Separate Contract Number. that all contracts have been assigned a separate contract number, including revenue contracts. OneSolution will generate the next available contract number.

E.1.3.2. Sufficient Appropriations. that appropriations are available and have been or will be encumbered for contracts. **E.1.4. Procedure if Appropriations Are Not Sufficient.** If sufficient appropriations are available, funds will be encumbered. If appropriations are NOT sufficient, and an appropriate AUD-74 or AUD-60 is NOT included to correct the insufficiency, THE ADM-29 WILL NOT BE PROCESSED BY THE AUDITOR-CONTROLLER-TREASURER-TAX COLLECTOR, and the entire package will be returned to the originating department for correction. **E.1.5. Mandatory Use of OneSolution.** ALL DEPARTMENTS MUST USE OneSolution TO ASSURE THAT SUFFICIENT FUNDING IS AVAILABLE BEFORE SUBMITTING ADM-29's OR AUD-74's.

E.2. Disclaimer of Controller Responsibility. The originating department is responsible for ensuring that **E.2.1.** all required standard and special provisions are included in the agreement and that **E.2.2.** payment terms and conditions are clearly stated and **E.2.3.** the proper amount and timing of payments under the contract can be computed.

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F. COUNTY ADMINISTRATIVE OFFICE

F.1. Certification of Clear Expression of Intent. The signature lines on the Contract Cover memo and the SCZM1000 Report (formerly ADM–29) that goes to the Board of Supervisors certifies that the subject agreement clearly expresses the intent of the parties.

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F.2. Use of Agenda Management System. All pertinent documents will be forwarded to the Clerk of the Board through the Agenda Management System.

F.3.1. CAO Analyst Review. After department receives documents back from Auditor-Controller-Treasurer-Tax Collector, paper documents with Board memo are delivered to the County Administrative Office for review by CAO Analyst. Once documents are received, the CAO analyst reviews online and approves via workflow. **F.3.2. CAO Approval.** As appropriate, the CAO or CAO's designee reviews and approves through the Agenda Management System workflow. **F.3.2. Routing After CAO Approval.** Documents are then routed to the Clerk of The Board through the Agenda Management System workflow.

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G. CLERK OF THE BOARD

G.1.1. Clerk Agendizes Contract. Clerk of the board reviews documents, and contracts requiring board approval are placed on board agenda through the Agenda Management System. **G.1.2. Clerk Holds Original Signatures.** Paper documents requiring wet ink signature are maintained on file with the Clerk of The Board.

G.2. Department Head Signature and Routing. Once approved, department gets any paper documents from the Clerk of the Board for Department Head signature. Department returns original documents to Clerk [sic] of the Board for Department Head signature.

G.3. Clerk Reviews Official Record. Clerk of the Board reviews contract online, enters BOS approval date and approves via workflow. Clerk of the board then prints Contract Workflow report - SCZM1000 Report (formerly ADM–29) to include as part of the official record.

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H. AFTER BOARD APPROVAL

H.1. Notification of Board Approval. System notifies contract originator, Purchasing and Auditor-Controller-Treasurer-Tax Collector via email that the contract has been approved and is ready to push to PO in the system. Purchasing pushes contract to PO in the system in order to encumber the funds.

H.2. Departmental Responsibilities. Each department is responsible for preparing the agreement and administering it after Board approval, which includes:

H.2.1. Executing the Agreement

H.2.2. Providing Clerk of the Board with original signatures on Agreements for distribution.

H.2.3. Obtain and maintain Certificates of Insurance and oversee compliance of terms of the agreement.

H.2.4. **Recertification or Renegotiation.** All contracts must be reviewed for recertification or renegotiation not less than every four (4) years. Bringing the contract back to the Board with updated provisions would typically do this.

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H.2.5. Copies of deposit permits (AUD-36) must be reconciled to the revenue agreement. Revenue contracts must also use contract workflow report – SCZM1000 (formerly ADM–29).

I. OTHER CONTRACT ISSUES

I.1. **Multi-year Budget Adjustments.** Multi Year Grant Agreements should be prorated and budgeted in the appropriate fiscal year. At fiscal year end, the Board authorizes the Auditor-Controller-Treasurer-Tax Collector and County Administrative Officer to make necessary budget adjustments to account for the multi-year nature of the agreement and provide for year by year budget requirements. Departments must request all re budgets.

I.2.1. **Changes to Encumbrances.** Encumbrance Changes to contracts may be made when approved by the County Administrative Office where the original terms of an agreement are unaffected-

I.2.2. **Categories of Continuing Contracts.** Continuing Contracts comprise two categories of agreements:

I.2.2.1. **Unexpired Contracts.** Agreements which are multi-year or continuous whose ORIGINAL terms extend from the old fiscal year into the new fiscal year; and

I.2.2.2. **Replacement Contracts.** Agreements which terminate on June 30 of the old fiscal year, but which will be re-established by a new agreement in the new fiscal year.

I.3.1. **Continuing Agreements List (CAL).** The procedure for obtaining Board approval for Continuing Contracts is generally the Continuing Contracts List. The Continuing Contracts List is considered and acted on by the Board of Supervisors during final budget hearings each June, and once the Board approves the list, it becomes the legal authority to accept goods and services, and make payments on those agreements, which are included on the list.

I.3.2. **Consequence of Omitting a Contract from the CAL.** Omission of an agreement from the Continuing Contracts List considered during budget hearings will result in delayed or denied contract payments because there is no legal authority to pay on that contract. Agreements which are omitted from the list which were approved by the Board will need to be taken to the Board for approval in the new fiscal year.

I.4. **[Meaning unclear.]** When a contract is extended from one fiscal year to the next and approved on the continuing agreements list, monthly payments on these agreements are limited to two months of payments equal to the lesser of: two-twelfths of the prior year amount, or two-twelfths of the new year amount. Only two payments can be made until necessary approvals are obtained.

I.5. Sections of the CAL. The Continuing Contracts List, which is presented to the Board for consideration during budget hearings, includes four sections. Agreements are grouped into the sections depending on the nature, the dollar amount, and the terms of the agreement. Although ALL continuing agreements must be included on the Continuing Contracts List, different types of agreements will require different actions AFTER the list is approved by the Board, as described below.

I.5.1. Unchanged Agreements. SECTION I: Contracts included in Section I of the Continuing Contracts List are those agreements which, BY THEIR ORIGINAL TERMS are multi-year or continuous, and require no changes from the original terms. These contracts will not return to the Board for any future action, because the original terms and conditions are considered ratified by the Board at this time. WIDGET I are a type of Section I agreement that are based on a rate or unit of service. Any contract whose terms and conditions contain built-in changes such as cost-of-living escalators or periodic rate changes are considered to be No-Change agreements because the Board has already approved these escalators when they considered the original contract terms. Agreements with built-in escalators or modifications DO NOT need to return to the Board to implement the new fiscal year agreement.

I.5.1.1. Unchanged Contracts with Automatic Increases. For Section I contracts including Widget I contracts with escalators or rate changes that require increases in encumbrances above the prior year amount, a Contract Workflow Report SCZM1000 (formerly ADM-29) and brief explanatory memo is required to be submitted to the CAO for approval through OneSolution. The CAO will review and, upon approval, forward documents to the Auditor's Office for processing. **I.5.1.2. [Meaning unclear.]** Contracts approved by the Purchasing Agent under the authority of County Code Section 2.35-2.37, and contracts approved by the Board of Supervisors for specific public works construction improvements by formal bid process are NOT continuing contracts for purposes of this section and DO NOT require Board approval to allow payments into the new fiscal year unless Board approved contingency amounts are exceeded.

I.5.2. Replacement Contracts Increasing Less Than 10%. SECTION II: Agreements in Section II of the List are those, which expire on June 30 of the old fiscal year, but which will be renewed for the new year, include NO program changes and any contract payment increases do not exceed 10% of the expenditures incurred in the old year. Widget II agreements are a type of Section II that are based on a rate or unit of service.

I.5.2.1. [Meaning unclear.] Section II agreements including Widget II agreements are approved by the Board for the new year, pending execution and approval of the new agreement or amendment. Following approval of the Continuing Contracts List during budget hearings, the new agreements or amendments will be presented to the CAO for review and approval.

I.5.3. Other Purchase Contracts. SECTION III: Section III of the Continuing Contracts List will include all contracts, which will incorporate changes in scope or program activities in the new year, and all contracts, which are not eligible to be in the Section I, or II above. Widget III agreements are a type of Section III that are based on a rate or unit of services. All Section III contracts must be submitted as individual items on

the Board's agenda during the new year, as approval of the Continuing Contracts List constitutes only temporary authority to spend until the new contract is executed.

I.5.4. Revenue Agreements. **SECTION IV:** Revenue agreements, such as grant awards and State financing agreements, must be approved by the Board each year, and are identified in this section of the Continuing Contracts List.

J. CONTRACTS OUT OF SPECIAL FUND BY SHERIFF AND DISTRICT ATTORNEY

J.1. District Attorney and Sheriff Special Fund Independent Contractors

J.1.1. Annual List of Payees and Amounts. Whenever these offices hire an independent contractor and pay for those services out- of-the-special fund, they must submit to the Auditor-Controller, at least annually on or before January 5th, a listing of the individual contractor paid and the total paid to each for the calendar year. **J.1.2. W-9s.** In addition, they must secure and submit to the Auditor-Controller a completed W-9 with required tax -payer information.

K. FINAL REPORTS

K-1. Studies and Evaluations. Departments, which contract for a study or evaluation, which results in a final report, shall provide a copy of the final report to the Board of Supervisors.

Appendix 5: Example of a Contract Template

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Contract No. _____

INDEPENDENT CONTRACTOR AGREEMENT (STANDARD)

This Contract, which is effective on the date it is fully executed, is between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and (enter contractor name), hereinafter called CONTRACTOR. The parties agree as follows:

1. **DUTIES.** CONTRACTOR agrees to exercise special skill to accomplish the following results: (enter scope of work) for the County of Santa Cruz (enter department name) Department (hereinafter “the project”).

2. **COMPENSATION.** In consideration for CONTRACTOR accomplishing said result, COUNTY agrees to pay CONTRACTOR as follows: Payment not to exceed \$(enter amount of contract), processed for payment in full after completion of the project, receipt of invoice, and approval of project manager [OR] after receipt and project manager approval of monthly invoices based upon the amount of actual progress achieved during the preceding month.

3. **TERM.** The term of this Contract shall be: (first date of contract) through (last date of contract). If this Contract is placed on the County’s Continuing Agreement List before the Contract term expires, the parties agree to extend the terms and conditions of the Contract as set forth herein, and as reflected in any executed amendment hereto, until the Contract is thereafter terminated.

4. **EARLY TERMINATION.** Either party hereto may terminate this Contract at any time by giving thirty (30) days’ written notice to the other party.

5. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.**
To the fullest extent permitted by applicable law, CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it as a result of, arising out of, or in any manner connected with the CONTRACTOR’S performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons.

B. Any and all Federal, State, and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR’S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding).

6. INSURANCE. CONTRACTOR, at its sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be considered in excess of CONTRACTOR'S insurance coverage and shall not contribute to it. If CONTRACTOR normally carries insurance in an amount greater than the minimum amount required by the COUNTY for this Contract, that greater amount shall become the minimum required amount of insurance for purposes of this Contract. Therefore, CONTRACTOR hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract. Insurance is to be obtained from insurers reasonably acceptable to the COUNTY.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Contract, CONTRACTOR shall obtain and maintain Contractor's Protective Liability insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of CONTRACTOR in this Contract, unless CONTRACTOR and COUNTY both initial here ____ / ____.

A. Types of Insurance and Minimum Limits

(1) Workers' Compensation Insurance in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the CONTRACTOR has no employees and certifies to this fact by initialing here _____.

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the CONTRACTOR does not drive a vehicle in conjunction with any part of the performance of this Contract and CONTRACTOR and COUNTY both certify to this fact by initialing here ____ / ____.

(3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as the most recent ISO Form CG 00 01 with a minimum limit of \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$_____ combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COUNTY ____ / ____.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Contract is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees that the retroactive date thereof shall be no later than the date first written above (in the first paragraph on page 1), and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Contract (hereinafter "post Contract coverage") and any extensions thereof. CONTRACTOR may maintain the required post Contract coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent

upon post Contract coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Contract. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Contract in order to purchase prior acts or tail coverage for post Contract coverage shall be deemed to be reasonable.

(2) All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover the County of Santa Cruz, its officials, employees, agents and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of CONTRACTOR, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, covering both ongoing operations and products and completed operations.

(3) All required policies shall be endorsed to contain the following clause:
“This insurance shall not be canceled until after thirty (30) days’ prior written notice (10 days for nonpayment of premium) has been given to:

Santa Cruz County
[Enter Department Name]
Attn: [Enter Department Contact]
701 Ocean Street, [Enter Room number]
Santa Cruz, CA 95060

Should CONTRACTOR fail to obtain such an endorsement to any policy required hereunder, CONTRACTOR shall be responsible to provide at least thirty (30) days’ notice (10 days for nonpayment of premium) of cancellation of such policy to the COUNTY as a material term of this Contract.

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Contract with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR’s obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

Santa Cruz County
[Enter Department Name]
Attn: [Enter Department Contact]
701 Ocean Street, [Enter Room number]
Santa Cruz, CA 95060

(5) CONTRACTOR hereby grants to COUNTY a waiver of any right of subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

7. **EQUAL EMPLOYMENT OPPORTUNITY.** During and in relation to the performance of this Contract, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, physical or mental disability, medical condition (including cancer-related and genetic characteristics), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Contract provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, ancestry, physical or mental disability, medical condition (including cancer-related and genetic characteristics), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR'S solicitation of goods and services. Definitions for Minority/Women/Disabled Owned Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further contracts with the COUNTY.

(3) The CONTRACTOR shall cause the foregoing provisions of subparagraphs 7B(1) and 7B(2) to be inserted in all subcontracts for any work covered under this Contract by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

8. **INDEPENDENT CONTRACTOR STATUS.** CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers' compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that CONTRACTOR is an independent contractor.

By their signatures on this Contract, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Contract is in fact an independent contractor.

9. NONASSIGNMENT. CONTRACTOR shall not assign the Contract without the prior written consent of the COUNTY.

10. ACKNOWLEDGMENT. CONTRACTOR shall acknowledge in all reports and literature that the Santa Cruz County Board of Supervisors has provided funding to the CONTRACTOR.

11. RETENTION AND AUDIT OF RECORDS. CONTRACTOR shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller-Treasurer-Tax Collector, the State Auditor of the State of California, or the designee of either for a period of five (5) years after final payment under this Contract.

12. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Contract shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

13. ATTACHMENTS. Should a conflict arise between the language in the body of this Contract and any attachment to this Contract, the language in the body of this Contract controls. This Contract includes the following attachments:

(enter attachments here)

14. LIVING WAGE. This Contract is covered under Living Wage provisions if this section is initialed by COUNTY _____.

If Item # 14 above is initialed by COUNTY, then this Contract is subject to the provisions of Santa Cruz County Code Chapter 2.122, which requires payment of a living wage to covered employees.

Non-compliance during the term of the Contract with these Living Wage provisions will be considered a material breach, and may result in termination of the Contract and/or pursuit of other legal or administrative remedies.

CONTRACTOR agrees to comply with Santa Cruz County Code section 2.122.140, if applicable.

15. NON-BINDING UNTIL APPROVED. Regardless of whether this Contract has been signed by all parties, if the total compensation identified in Paragraph 2 of this Contract is greater than \$100,000, this Contract is not binding on any party until the Contract has been approved by the Santa Cruz County Board of Supervisors.

16. MISCELLANEOUS. This written Contract, along with any attachments, is the full and complete integration of the parties' agreement forming the basis for this Contract. The parties agree that this written Contract supersedes any previous written or oral agreements between the parties, and any modifications to this Contract must be made in a written document signed by all parties. The unenforceability, invalidity or illegality of any provision(s) of this Contract shall not render the other provisions unenforceable, invalid or illegal. Waiver by any party of any portion of this Contract shall not constitute a waiver of any other portion thereof. Any arbitration, mediation, or litigation arising out of this Contract shall occur only in the County of Santa Cruz, notwithstanding the fact that one of the contracting parties may reside outside of the County of Santa Cruz. This Contract shall be governed by, and interpreted in accordance with, California law.

///

///

///

SIGNATURE PAGE

Contract No. _____

INDEPENDENT CONTRACTOR AGREEMENT
(STANDARD)

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

2. (ENTER CONTRACTOR NAME)

4. COUNTY OF SANTA CRUZ

By: _____

By: _____

SIGNED

SIGNED

PRINTED

PRINTED

Company Name: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

3. APPROVED AS TO INSURANCE:

1. APPROVED AS TO FORM:

Risk Management

Office of the County Counsel

DISTRIBUTION:

- [Enter Initiating Department Name]
- Auditor-Controller-Treasurer-Tax Collector
- Risk Management
- Contractor

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Appendix 6

Excerpt from June 23, 2008 Board Agenda Item 6, CAO Proposed Budget Recommendations

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At this time the County has completed the new Watsonville Court and provided staffing and long term lease space for the District Attorney's Office including phone and computer services. This supplemental budget recommendation provides for the last piece in extending the full range of services associated with the opening of the new Watsonville Courts - the opening of a branch office of the Public Defenders in Watsonville.

In summary, this supplemental provides funds for:

- (1) a long term lease of office space in a building in close proximity to the Watsonville Court; and
- (2) a restructuring of the existing agreement with the main public defender to provide for the operation of the new Watsonville office by (a) reducing the cost of living adjustment in the existing agreement; and (b) using the resulting savings to convert an existing attorney position to a supervising attorney and providing for reception and clerical support services for the new office as well as phone and computer services.

The supplemental also recommends an extension of the existing contract for the main public defender on terms favorable to the County. This extension avoids the cost of converting the existing contract service to a public office for several years.

Lease

The recommended supplemental provides for a ten year lease of office space at 315 Main Street. The budget amount is based on two leases totaling 3, 320 square feet — 2030 square feet for the main public defender (Suite 203) and 1290 square feet for conflicts public defenders (Suites 204 and 205). The leases are between the County and the lessor (Romo Properties, LLC) and was negotiated by the Real Property Division of the County's Department of Public Works.

The County is the lessee because the ten year term of the lease exceeds the term of the agreements with the law firms that provide public defender services. The proposed space has been inspected and approved by the main public defender firm.

The financial terms of the recommended leases are summarized below. The lease will be presented for [sic] approval on the Board of Supervisors' agenda of June 24, 2008.

- Duration: Ten years
- Cost per square foot: \$1.50 per square foot per month for the first two years for suite 203 and \$1.00 per square foot per month for suites 204 and 205
- Increase 3.5% per year commencing in year three of the lease
- Janitorial/Utilities: estimated at \$.25 per square foot per month

The recommended budget amount of \$80,734 for 2008-09 is based on twelve lease payments plus the last month lease payment amount and twelve monthly payments for janitorial and utility costs and an allowance of \$10,000 to pay for incidental and equipment costs associated with moving the main public defender in to the new space.

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Appendix 7: Section 10 of Mr. Biggam's Contract

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10. INSURANCE

- (A) The CONTRACTOR agrees to take out and maintain professional errors and omissions insurance during the term of this agreement to protect against loss suffered or alleged to be suffered by any person or persons whenever resulting directly or indirectly from any act or activities of the CONTRACTOR or any attorney acting for CONTRACTOR or under CONTRACTOR's control or direction. Such insurance shall be in the amount of not less than \$1,000,000. CONTRACTOR shall submit a certificate of such insurance to the County Auditor-Controller.
- (B) The CONTRACTOR is to take out and maintain a general office liability policy during the term of this agreement to protect against loss. Such insurance shall be in the amount of not less than \$1,000,000.
- (C) Notwithstanding any other provision of this agreement the COUNTY shall be responsible for the actual cost of professional errors and omissions insurance (\$25,000 Deductible) and CONTRACTOR shall be responsible for the deductible; and COUNTY shall be responsible for the actual cost of CONTRACTOR'S Employee Insurance Program above a base amount of \$73,154, provided that the average cost per employee associated with CONTRACTOR'S Insurance program do not exceed the average cost per employee of the program available to District Attorney's Office as measured by budgeted costs and employee count for the Criminal Prosecution Budget Index. The intent of this provision is to minimize the CONTRACTOR'S risk for large cost increases for insurance, provide the contractor with flexibility in their employee insurance program and provide the County with cap on contractor costs. The payment of actual insurance costs shall be in accordance with the Schedule in Exhibit A of this agreement.

Appendix 8: Reconciliation of Figure 18 to Figure 17

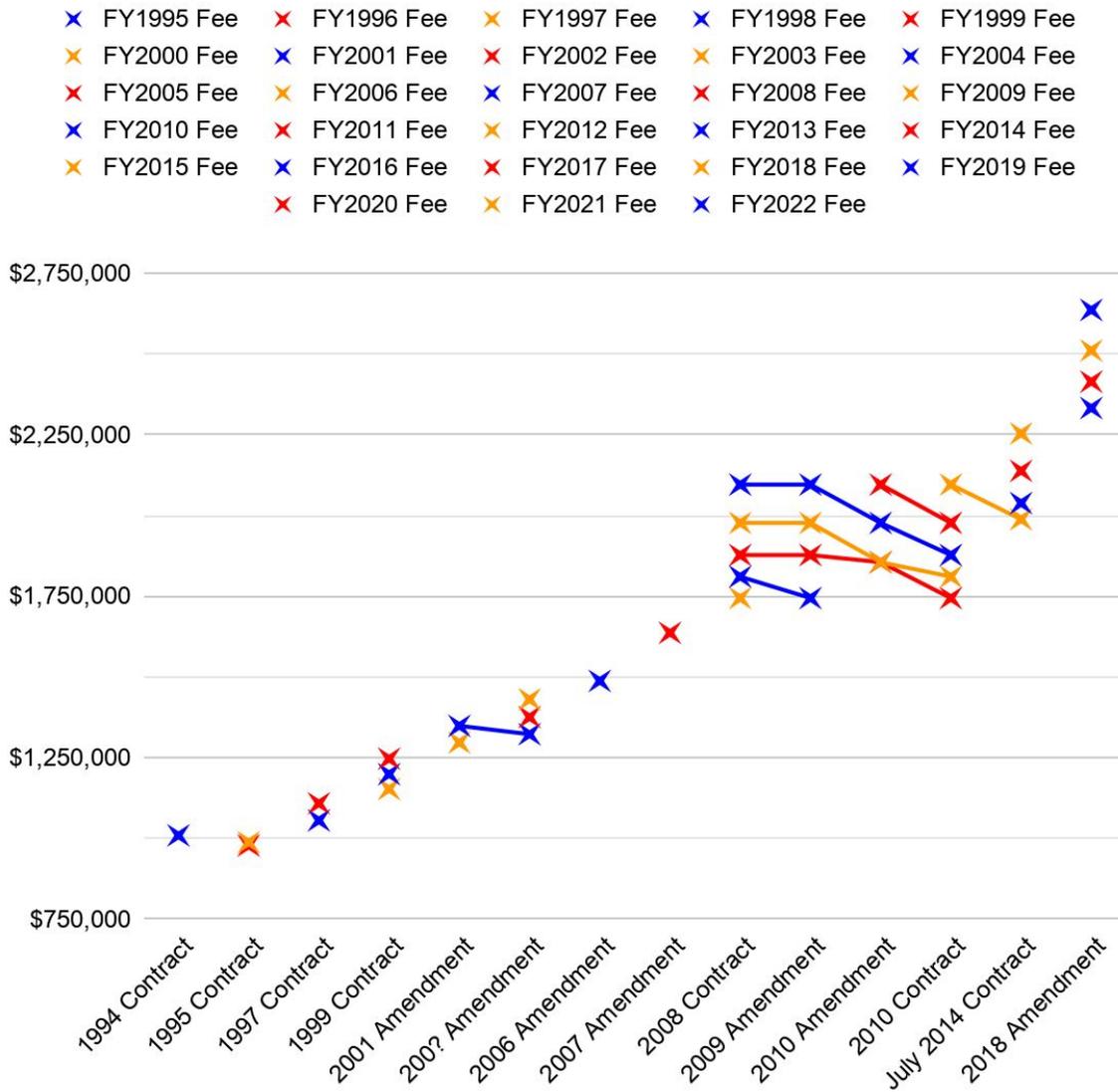
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<u>Lawrence Biggam, main contractor</u>	
19C0147A 18–19 Main Public Defender Services (annual fee)	7,042,938.00
19C0147B 18–19 Main Public Defender, Clean Slate/Prop 47 (subsidy)	207,000.00
19C0147C 18–19 Main Public Defender, Liability Insurance (malpractice subsidy)	36,416.64
19C0147D 18–19 Main Public Defender, Health Insurance (subsidy)	526,209.47
19C36991 18–19 Lease, Suite 203 (Watsonville office space)	49,423.52
5/7 budgeted Watsonville janitorial	2,036.97
5/7 budgeted Watsonville utilities	<u>2,907.95</u>
SUBTOTAL	7,866,932.55
<u>Page & Dudley, conflicts contractor</u>	
19C0616 18–19 Main Conflicts Public Defender Services (annual fee)	1,166,540.22
Rounding	<u>-0.22</u>
SUBTOTAL	1,166,540.00
<u>Wallraff & Associates, conflicts contractor</u>	
19C0023 18–19 Main Conflicts Public Defender Services (annual fee)	1,166,540.22
Rounding	<u>-0.22</u>
SUBTOTAL	1,166,540.00
<u>Fourth-party Criminal Defense Conflicts Program / Costs approval</u>	
19C0097A CDCP Attorneys	240,000.00
County Counsel	206,000.00
Unspecified extra	141,000.00
Rounding	<u>373.89</u>
SUBTOTAL	587,373.59
<u>Case-Specific Costs (all cases)</u>	
Parking fees	3,800
Duplicating services	1,100
Discovery services	75,000
19C0097B CDCP Special	372,445.00
Unspecified extra	377,000.00
Rounding	<u>555.00</u>
SUBTOTAL	829,900.00
<u>Additional attorney fees in special circumstances cases</u>	
19C0360B PD Special Circumstance Expert Services	150,000.00
19C0360A PD Special Expert Services	<u>300,000.00</u>
SUBTOTAL	450,000.00
<u>Conflicts contractors' use of County Watsonville office space</u>	
19C37001 18–19 Lease, Suite 204/205	20,939.90
2/7 budgeted Watsonville janitorial	863.03
2/7 budgeted Watsonville utilities	1,232.05
Rounding	<u>341.58</u>
SUBTOTAL	<u>23,376.56</u>
TOTAL	<u>12,090,663.00</u>
Budgeted Watsonville janitorial	2,900
Budgeted Watsonville utilities	4,140
Ratio of Suite 203 rent to total rent	5/7
Ratio of Suite 204/205 rent to total rent	2/7

Appendix 9

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The Negotiation and Renegotiation of the Conflicts' Firms Combined Annual Fee: Contracts dated 1994–2018; Fiscal Years FY1995–FY2022

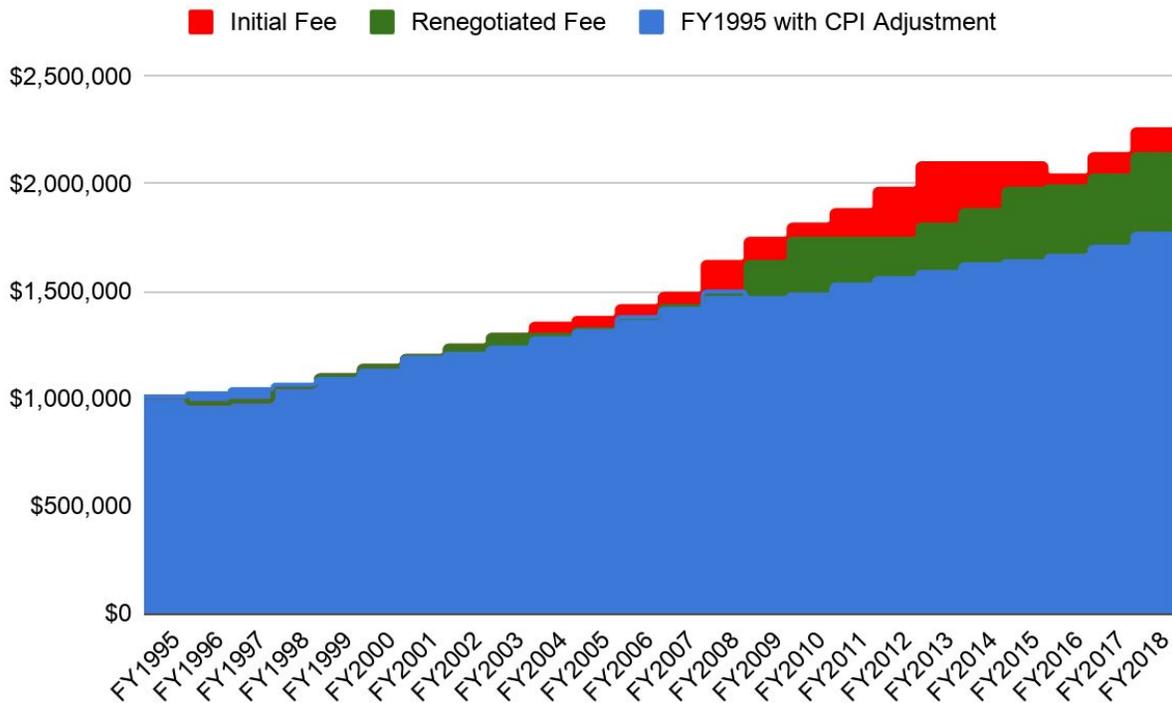


Source: Public defense contracts.

Appendix 10

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The Negotiation and Renegotiation of the Conflicts Firms' Combined Annual Fee: Contracts dated 1988–2012; Fiscal Years FY1989–FY2018



Sources: Public defense contracts; County Controller records; California Division of Industrial Relations.

Appendix 11: Opinion Letter of County Counsel

OFFICE OF THE COUNTY COUNSEL		COUNTY OF SANTA CRUZ
GOVERNMENTAL CENTER		701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95060
(408) 425-2041		
CLAIR A. CARLSON COUNTY COUNSEL		JAMES M. RITCHEY A. TERRY SLOCUM ROBERT L. HULTZEN JONATHAN WITTWER ASSISTANTS
DWIGHT L. HERR CHIEF DEPUTY COUNTY COUNSEL	July 17, 1978	

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, California

Re: Public Defender Contract

Honorable Chairperson and Members of the Board:

This is in response to the Board's referral of a letter from the law firm of Biggam, Christensen & Minsloff requesting approval by the Board of Supervisors for that office to handle out-of-county criminal cases.

An Attorney General's opinion in 58 Ops. Atty. Gen 725 (1975) concludes that when a county contracts with private attorneys to provide public defender services the contract specifies what, if any, restrictions apply to the handling of other cases by such attorneys, and that the general restrictions of the Government Code (such as that contained in Government Code §27707.1 restricting the handling of out-of-county criminal cases) do not apply to such public defender contracts. Accordingly, the contract the county has with the attorneys providing public defender services is the only limitation on such attorneys handling other types of cases. The current contract with Attorney Lawrence Biggam provides that the "contractor shall not handle privately retained criminal defense while this agreement is in effect". Accordingly, if the Board of Supervisors is in agreement with the request of Lawrence Biggam regarding out-of-county criminal practice, this paragraph of the contract should be amended to limit the prohibition to privately retained criminal defense within the County of Santa Cruz.

Very truly yours,

CLAIR A. CARLSON, County Counsel

By Dwight L. Herr
Dwight L. Herr
Chief Deputy County Counsel

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