

# County of Santa Clara

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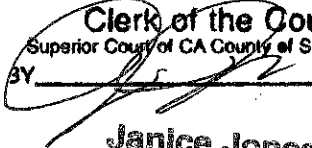


Megan Doyle  
Clerk of the Board

September 12, 2017

**FILED**  
SEP 13 2017

The Honorable Patricia M. Lucas  
Presiding Judge  
Santa Clara County Superior Court  
191 North First Street  
San Jose, CA 95113

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY  DEPUTY  
Janice Jones

RE: Grand Jury Report: Justice Delayed: Why Does It Take So Long To Resolve Felonies in Santa Clara County

Dear Judge Lucas:

At the August 29, 2017 meeting of the County of Santa Clara Board of Supervisors (Item No. 51), the Board adopted the response from County Administration to the Final Grand Jury Report entitled Justice Delayed: Why Does It Take So Long To Resolve Felonies In Santa Clara County.

As directed by the Board of Supervisors and on behalf of the Board President, our office is forwarding to you the enclosed copy of the response to the Final Grand Jury Report. This response constitutes the response of the Board of Supervisors, consistent with provisions of California Penal Section 933(c).

If there are any questions concerning this issue, please contact our office at (408) 299-5001 or by email at [boardoperations@cob.sccgov.org](mailto:boardoperations@cob.sccgov.org).

Sincerely,

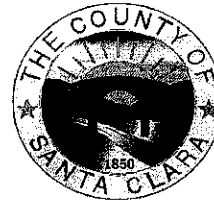


Tina Purpura  
Deputy Clerk, Board of Supervisors  
County of Santa Clara

Enclosures

**County of Santa Clara**  
Office of the County Executive

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San Jose, California 95110  
(408) 299-5105



Date: August 14, 2017  
To: Miguel Márquez, Chief Operating Officer  
From: Garry Herceg, Deputy County Executive  
Subject: Response to Civil Grand Jury Final Report “Justice Delayed: Why Does It Take So Long to Resolve Felonies in Santa Clara County?”

Please accept this response to the Santa Clara County Civil Grand Jury Report dated June 12, 2017.

**Finding 1** There is a culture in the criminal justice administration system that tolerates delays in disposition of felony cases. This is costly to Santa Clara County in both financial and human terms.

**Recommendation 1b:** Santa Clara County should direct the Public Defender, the Alternate Defender, and the Independent Defense Counsel Offices to:

- Identify practices in their offices that contribute to delays in disposition of criminal cases.
- Educate staff about the about the financial and human impacts of delays on Santa Clara County.
- Develop more efficient practices without sacrificing their duty to their clients.
- Hold staff accountable for adopting those practices.

**Response 1b:** Santa Clara County agrees with the finding. Implementation efforts of this recommendation are underway.

The Public Defender, the Alternate Public Defender and the Independent Defense Counsel have been directed to:

- Review current practices as related to unreasonable delays in case processing.
- Develop and incorporate educational sessions related to the impact of delayed court case processing into attorney trainings.
- Review efficient case processing practices in other jurisdictions for possible implementation in Santa Clara County while ensuring these practices do not impede with a robust and vigorous defense.
- Develop internal measures as recommended by National Legal Aid and Defense Association (NLADA) as related to case processing.

Adopted: 08/29/2017

**Recommendation 1c:** **Santa Clara County Board of Supervisors should require the District Attorney, the Public Defender, the Alternate Defender, and the Independent Defense Counsel Offices to provide evidence of changes in practices that will lead to shorter disposition times for felony cases as a prerequisite to authorizing additional resources for these offices.**

**Response 1c:** The respondent partially agrees with this finding. A review process for resource requests is already in place.

As Santa Clara County continues to work on reducing court case processing times and researching root causes along with possible solutions, it could be discovered that additional resources will be needed to address the problem. In addition, some of these agencies perform functions unrelated to court case processing. For instance, the Public Defender's Office provides assistance to the community regarding criminal record expungement. The District Attorney's Office provides forensic lab testing in a variety of areas. These are valuable functions within Santa Clara County and denying all resource requests for such functions based on delays in criminal case processing could greatly impact service delivery.

Progress reports on changes in practices regarding court case processing will be required for all additional resource requests from the District Attorney's Office, the Public Defender's Office, the Alternate Defender Office and the Independent Defense Counsel. Each resource requests will be reviewed and decided on a case-by-case basis.

**Finding 2** Santa Clara County's criminal justice agencies use outdated, legacy computer systems, making it difficult to exchange information and expedite disposition of criminal cases. A plan for integrating computer systems and databases is expected to take at least three to five years to implement.

**Recommendation 2:** **Santa Clara County should expedite the updating and integration of criminal justice agencies' computer systems and databases.**

**Response:** The respondent agrees with this finding and partially agrees with this recommendation.

Due to some of the current computer systems and databases being in use over the last 40 years, huge amounts of historical data need to be transferred to new more modern solutions. To accomplish this, the County's Information Services Department (ISD) is currently working on designing a data exchange system. Where possible, the Information Services Department will continue to expedite the updating and integration of computer systems and databases. Additionally, Santa Clara County is currently exploring ways to expedite the procurement process which should further assist in the acquisition of new computer systems and databases.

**Finding 3** Santa Clara County's criminal justice agencies do not have the data management resources needed to deal with a huge increase in the volume of discovery, such as audio and video recordings and social media postings.

**Recommendation 3:** **Santa Clara County should work with the District Attorney, Public Defender, Alternate Public Defender, and Independent Defense Counsel to evaluate the data-**

**management needs of criminal-justice agencies in order to determine and prioritize training, hiring and technology resources.**

**Response:**

The respondent agrees with this finding and efforts are already underway within the Information Services Department to implement this recommendation.

In 2016 the Information Services Department formed a working group of criminal justice stakeholders which included the District Attorney's Office, the Public Defender's Office and the Alternate Defender's Office to look at possible solutions regarding the receiving, sharing and storage of digital evidence. This working group has reviewed several existing technological solutions related to content management and digital evidence storage. The group is currently reviewing which existing technology may best meet the needs of criminal justice stakeholders in Santa Clara County.

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Molly O'Neal  
Public Defender

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**MEMORANDUM**

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TO: Miguel Marquez  
FROM: Molly O'Neal  
SUBJECT: Grand Jury Report  
DATE: July 24, 2017

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In June, 2017, the Civil Grand Jury (CGJ) of Santa Clara County released a report on trial delay in the County's criminal justice system. The Office of the Public/Alternate Defender (PDO) has responded to the report in several ways, as will be outlined in this memo to the County Executive. Primarily, we have established a framework for examination of trial delay that will inform our own internal data collection and examination of policies and practices that can change going forward. This memo will discuss 1) the Public Defender/Alternate Defender response to the Grand Jury Report; 2) the long-term collaborative efforts that can improve disposition time; and 3) additional thoughts on the report.

Preliminarily, it should be noted that defense counsel have an ethical obligation to provide effective assistance of counsel pursuant to the U.S. Constitution as well as the A.B.A. guidelines, and that adherence to those ethical obligations is paramount. That means that all defenses must be explored, any necessary records ordered, any mental health defenses fleshed out, all alibi or other witnesses interviewed, and the client informed about the nature and strength of the Prosecution's case and the possible direct and collateral consequences that may result from the charges. Defense Counsel also have the duty to zealously represent each client, which means that the best negotiated disposition that can be attained must be sought after, and/or a jury trial prepared and presented. Because a person's liberty is at stake, it is not until all of those things are done that a case can be adjudicated.

Mindful of the fundamental premise that defense counsel must leave no stone unturned in vigorously representing a criminal defendant, we recognize our obligation to turn those stones

Assistant Public Defenders: Jose G. Guzman, Damon Silver, Michele Diederichs

Adopted: 08/29/2017

over in an effective and efficient manner. We also recognize the value of reducing delay in the outcome of cases to our clients and to the County and look forward to working with justice partners in addressing the issues presented by the Grand Jury. In response to the findings of the Grand Jury that there are significant delays in our County in the disposition of felony cases as compared to other counties, the following internal practices are being examined to address the overall theme that there is a culture of complacency. External practices are also addressed.

### **Finding 1**

There is a culture that tolerates delays in disposition of felony cases

We are in agreement that there is a certain culture in our county that tolerates delay more than appears to be the practice in other counties. We address each recommendation separately.

### **Recommendation 1b**

- Identify practices that contribute to delay:

### **Response**

1. As a starting point, we contacted other Public Defender offices in the State soliciting information about their systems and practices and we are currently assessing where we could implement modifications or change practices to reduce delay in our county based on their feedback. We provided them a copy of the GJ report for reference.
2. In view of practices in other counties, an immediate practice change would be that PDO/ADO will increase the number of cases that proceed to disposition "time not waived" where discovery exchange and investigation are complete. We have already increased the number of Preliminary Hearings set on a "time not waived" basis as an interim step. Cases set on the calendar in a speedy manner were vetted by a felony Supervisor with discussions and oversight of the Preliminary Hearing deputy in charge of the case. We have identified and directly flagged for the DAO supervision cases that resolved immediately in the PX department. We believe this practice can help identify similarly situated cases in hopes of flagging them for earlier disposition, and ultimately reducing delay. We will be looking to duplicate this direct vetting by management on more cases. We will request a meeting with the Court and the DA's office to discuss expansion of this practice since it will have impact on both partners. This discussion should be mindful of the lack of departments and court staff (court reporters) to support hearings moving faster. There has been a notable delay in the rescheduling of preliminary hearings where the DA's officer was not available on the date set.
3. We have requested a meeting along with the DA's office to further assess the case management design. The system is designed to have in each of the four departments, one week of arraignment matters, two weeks of pleas/sentencings (every other week) and one week of preliminary hearings during the month. There can be a fairly significant log jam

if the department experiences a heavy week of arraignment matters. In order to start working on the case, procure discovery and conduct investigation, defense counsel either needs to request a continuance for one week, three weeks, five weeks, etc. A one week continuance is too soon to have meaningful negotiations that include defense input via investigation, but best practice is to avoid making the client wait three weeks to meet regarding the status of their case. The unfortunate Hobson's choice is to either load up that first plea week to show the client we are beginning to work on their defense or wait three to five weeks and try to show them some tangible progress. In the abstract this does not appear to be a significant factor in delays, but, the cumulative impact to the calendar when cases roll over to only one of the two plea weeks can result in a high volume during plea weeks. In turn this slows the plea negotiation process. Exploring with the court increasing the number of plea sessions per month, which might include sending preliminary hearings to trial departments, could ease the load on the initial processing of cases. Notable is that several cases now are being sent to trial departments (out of the case management departments) for the preliminary hearing due to the volume. Therefore, this would not be a unique systemic change yet could reduce delay by increasing the opportunity for pleas.

In the alternative, a total reorganization of the case management departments could be considered. Previously, there was a single "hub" for felony arraignments, where all felony cases remained until they were sent to an early disposition calendar or were set for preliminary hearing. This system was expanded into four distinct departments (see above for calendar issues related to case management). A reorganization of this system may reduce delay by returning to daily plea calendars, with more serious matters requiring a lengthier discussion sent to a dedicated discussion department in a more manageable atmosphere.

4. The PDO leadership has routinely met over the last year to focus on staffing the felony team. The goal has been to redistribute the heavy load of cases with lifetime prison exposure and to reduce the delay of cases moving through the system. As a result, we have now added three lawyers to the felony team while reducing staff on other assignments to help meet the need. At some point, this reduction on other teams could have delay impacts elsewhere but demonstrates PDO's commitment to address delay concerns related to felony cases. Having more felony trial lawyers available will reduce the time it takes to get to disposition.
5. Attorneys currently devote significant time to working up mitigation to help our clients achieve the best result. Social Workers are better equipped to complete much of this mitigation workup, such as completing needs assessments, exploring treatment and sentencing options and presenting mitigation to the prosecution and the court. With the addition of two social workers at the PDO and one at the ADO a substantial portion of this work will be transferred from the attorneys to these social workers. Ideally, this will reduce continuance requests related to preparing this information. Historically attorneys have been functioning as de-facto social workers without the training and experience to do so efficiently.

6. PDO/ADO hopes to work with the court and the prosecution on a speedier disposition of de minimis Three Strikes cases that appear to be good candidates for ultimate reduction. This includes requesting the court to consider defense presentation of oral "Romero" motions (a request that the court strike prior strike charges for sentencing purposes). Oral Romero motions on obvious cases would greatly reduce time to disposition.
7. PDO specially assigned a felony attorney to handle cases involving client with moderate or serious mental illness. These cases can take an inordinate amount of time to move to disposition due to necessity of gathering medical and psychological records, obtaining psychiatric evaluations, working on a treatment plan and then preparing a mitigation packet. Ultimately this information is presented to the DA and Judge to request a fair disposition in view of a person's mental illness. These cases begin in a case management department but due to the high case volume it is impossible for the regularly assigned public defender to communicate with these special needs clients. This specialized mental health attorney routinely meets with the client at the jail, works with justice partners and providers, and presents mitigation. This should reduce the delay that was otherwise occurring by keeping these cases with the case manager attorneys. PDO has also been actively working collaboratively with County efforts to examine the charging, jailing, treatment and disposition of cases for the serious mentally ill in our county.
8. PDO has increased our attention to and advocacy for our Incompetent to Stand Trial (IST) clients. These clients have been found incompetent to stand trial pursuant to Penal Code Section 1368. These clients have strained every level of the system resulting in long delays in the processing of their cases in court, as well as long stays in the jail waiting for bed space at the state hospital. This not only denies our clients' due process right to receive timely treatment necessary to understand their cases and make rational decisions, but is also inhumane. PDO has met with the County Executive's office, and has gathered information from other counties and from the Department of State Hospitals, to determine how to address this important problem. Fixing this problem would greatly reduce time to disposition for hundreds of felony clients.
9. The Santa Clara County charging practices have historically been out of line with other counties. Several examples illustrate this point. First, Santa Clara County had the highest number of Proposition 36 eligible clients of any contiguous county, and higher than most in the state. That is, individuals whose third felony was neither serious nor violent were sentenced to 25-life. In the wake of the passage of Proposition 36 it was determined that Santa Clara County had roughly 150 such individuals, while San Francisco had 3, Contra Costa 7 and San Mateo 20. A vast amount of resources were expended on both the front and back end of this overcharging practice – initially to defend against 25 to life exposure, and after the passage of Proposition 36, to litigate release from prison under the new statutory guidelines. Another example illustrating this point is the practice of direct filing on juveniles (putting them in adult court without a determination by the Juvenile Justice Court that they were not amenable to rehabilitation). This practice was overused in comparison to other Counties across California. For example, Santa Clara County direct-filed on 57 youth in 2013, whereas Alameda County direct-filed on 22, Contra Costa direct- filed on 15, and San Francisco



direct filed on 1 youth. Currently, offers on cases in drug court are not in line with legislative changes which have reduced felonies to misdemeanors, legalized marijuana and pointed the justice system toward rehabilitation and away from mass incarceration. These historical practices are institutionalized and have resulted in the delay of disposition of cases as defense counsel have had to push and prod to get to a fair offer, get strikes stricken, get charges dismissed and get non-strike offers. This pushing and prodding causes delay. The idea that an offer at the inception of the case that is made without in-depth knowledge of the facts and circumstances of the case, without BWC footage and without investigation is the one offer that should never be undercut belies credulity.

- Educate staff about the financial/human impacts of delay:
  1. The CGJ report was distributed to all attorney staff as well as supervisors and managers in other divisions of the office. A preliminary appraisal among managers has been requested. Leadership will endorse with supervisors, attorneys, investigators and staff a change in practices that both recognize our obligation to provide quality defense to clients but also emphasizes reducing delay.
  2. Follow up with meetings and trainings to improve the communication flow both ways in order for staff to understand the office's responsibility to the county and for leadership to keep current on impediments to moving forward on particular cases. We will identify those practices that should be modified or changed immediately and propose timelines to court partners for long term results (digital discovery, gang discovery, earlier discovery).
- Develop more efficient practices without sacrificing the duty to the client

See above.
- Hold staff accountable for adopting those practices
  1. PDO will build in as part of Felony Team Supervision bi-monthly individual case management meetings.
  2. PDO will track cases on the After Arraignment calendar, Readiness meeting, and Master Trial Calendar with the new case management system by building in "ticklers" to notify a supervisor when a case is over an identified age, likely 270 days.
  3. Incorporate metrics in attorney performance evaluations that reflect recognition of the goals set in responding to this report by encouraging dialogue and accountability.
  4. Require as part of rotation onto the felony trial team discussion of the expectations regarding progress of cases in a way that benefits the client and that reflect the goals set in responding to this report.

**Finding 2**

**Santa Clara County's criminal justice agencies use outdated, legacy computer systems, making it difficult to exchange information and expedite disposition of criminal cases. A plan for integrating computer systems and databases is expected to take at least three to five years to implement.**

**Recommendation 2**

**Santa Clara County should expedite the updating and integration of criminal justice agencies' computer systems and databases.**

**Response:**

PDO agrees with the finding.

Updated computer and database systems should help the court run more efficiently. Ideally updated systems will provide more timely and accurate information to all the criminal justice partners, who are dependent on the county to "push" court activity information to their respective database/case management systems. There will be fewer errors causing continuances as a result of delayed or inaccurate notice regarding upcoming court dates. For example, ideally court calendars will be more accurate and will be provided sooner, reducing the need for continuances by any criminal justice partner as a result of missing files. PDO's project manager is also assisting with the implementation of Tyler's Odyssey system for the court, thus integration should be facilitated because of this relationship. Further, PDO staff attend all county inter-agency meetings and work groups designed to ensure a smooth and collaborative process related to electronic communication going forward.

**Finding 3**

**Santa Clara County's criminal justice agencies do not have the data management resources needed to deal with a huge increase in the volume of discovery, such as audio and video recordings and social media postings.**

**Recommendation 3**

**Santa Clara County should work with the District Attorney, Public Defender, Alternate Public Defender, and Independent Defense Counsel to evaluate the data management needs of criminal-justice agencies in order to determine and prioritize training, hiring, and technology resources.**

**Response:**

Agreed. The increased volume of discovery in the form of digital evidence, electronic exchange of discovery ("e-discovery"), and social media evidence presents new challenges for the PDO.

PDO's new case management system will help the office more efficiently store digital evidence (scanned documents, digital photographs, and digital audio and video recordings). PDO is currently coordinating with the District Attorney's Office to develop protocols that maximize the automated ingestion of e-discovery into PDO's case management system, thereby avoiding manual processes which consume human resources and time. Additionally, PDO is currently exploring more efficient and alternate methods to manage police body worn camera (BWC) recordings. A simple misdemeanor case may include one to three hours of BWC evidence. A complex case may have hundreds of hours. In an effort to maintain confidential work product and meet ethical obligations regarding file retention PDO currently downloads every BWC recording from the DAO's cloud-based platform. For larger files this can take hours and has consumed substantial IS human resources. This also contributes to delay as attorneys wait for access to this material. The Board of Supervisors recently budgeted the PDO and ADO for a dedicated employee to manage e-discovery, including managing BWC evidence. PDO recently requested County IS expand the office's bandwidth in hopes of increasing downloading speeds. Additionally, PDO has begun discussions with the DAO and the private vendor who manages their BWC platform. This cloud-based platform allows law enforcement to directly upload their recordings. PDO is investigating whether we can meet our ethical obligations, while increasing our efficiency, by expanding our relationship with the private vendor. PDO hopes to directly access and view recording on the cloud-based platform, in turn saving human resource time and removing any delay related to downloading.

Beyond streamlining the ingestion process, PDO must also focus on efficient review of the voluminous material. PDO is currently researching available software solutions to help manage and review this material, including BWC evidence, cellular telephone records, and social media postings. Some useful software may be available through the BWC private vendor. This is an additional reason PDO is exploring a new relationship with the vendor. PDO is considering volunteering for a pilot project to become the first public defender agency to work directly with the vendor. Also, PDO is investigating software to better manage and analyze cellular telephone records. Finally, PDO will need to continue to identify and update software necessary for capturing and preserving social media evidence. Ideally this evidence can be captured in real time, rather than relying on subsequent and time consuming subpoenas. Capturing this evidence early will decrease related delays.

#### **CONCLUSION:**

The Offices of the Public Defender and Alternate Defender look forward to working with the Court, District Attorney and other system partners to reduce felony trial delay while continuing to provide zealous legal representation for its thousands of clients.