



2024-2025 Santa Clara County Civil Grand Jury

# **Volunteer Justice: The Power of Pro Bono Partnerships**

**County of Santa Clara Public Defender's Office**

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*June 17, 2025*

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## SUMMARY

Per the Sixth Amendment of the United States Constitution, an individual charged with a criminal offense has the right to representation by an attorney. However, hiring a private attorney may not be an option for some defendants. To meet this need, public defender offices were established to represent those who cannot afford one.

The County of Santa Clara Public Defender's Office (PDO) has served Santa Clara County residents for more than 60 years. The PDO represents individuals who are unable to afford private legal representation in criminal, civil, and juvenile cases.

The range of criminal cases handled by the PDO includes defendants charged with more minor crimes like petty theft or vandalism, up to and including complex multi-party murder cases. The PDO also represents individuals charged with white collar and government integrity crimes. Complex cases may require specialized expertise and/or significantly more hours of preparation due to the number of documents or witnesses involved in the matter.

The 2024-2025 Santa Clara County Civil Grand Jury (Civil Grand Jury) sought to understand the process involved in obtaining representation from a public defender and the circumstances under which the PDO would seek assistance from a private law firm. It found the existence of a pro bono program that supports the PDO's commitment to providing a robust defense to all defendants.

## BACKGROUND

The Sixth Amendment of the United States Constitution defines rights that apply to a criminal defendant, one of which is the right to an attorney. Article 1 of the California Constitution further reinforces this right. The government fulfills this responsibility by establishing public defender's offices. The PDO represents a diverse population and handles cases with varying degrees of severity and complexity.

### History of the Right to an Attorney

The Sixth Amendment to the United States Constitution states:

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.*

In *Hamilton v. Alabama*, 368 U.S. 52 (1961), the U.S. Supreme Court held that the right to counsel applies not just at trial, but at all critical stages of a prosecution, including arraignment.

A landmark Supreme Court case, *Gideon v. Wainwright*, 372 U.S. 335 (1963), established that the Sixth Amendment's right to counsel applies to state criminal courts as well. This means states must provide attorneys to indigent defendants. In those cases, the court must appoint an attorney.

Article 1, Section 15 of the California Constitution guarantees a criminal defendant the right to a speedy public trial, to compel witness attendance, to have counsel, to be personally present with counsel, and to confront witnesses against them.

### History of the Public Defender Office in California

The person credited with the first proposed public defender's office is Clara Shortridge Foltz, who was also the first female attorney on the West Coast. In 1893, she presented model legislation creating a county officer to "defend, without expense to them, all persons who are not financially able to employ counsel and who are charged with the commission of any contempt, misdemeanor, felony or other offense." The California Legislature passed the bill in 1921. It became known as the "Foltz Defender Bill" in at least 32 other states (Justia, 2024).

## **PDO in the County of Santa Clara**

In California, each county's board of supervisors determines whether to establish a county public defender office and whether the public defender will be elected or appointed. In 1964, at the request of the Santa Clara County Bar Association, the County of Santa Clara (County) Board of Supervisors authorized the establishment of a public defender office, with an appointed public defender, to provide legal representation to indigent criminal defendants. The PDO began operations on April 1, 1965 (County of Santa Clara, Alternate Defender Office History, 2025).

The PDO is a public law office that provides legal representation to adults and youth who have been charged with committing a crime and who cannot afford an attorney. Under Government Code section 27706, the Public Defender represents youth in the Superior Court's juvenile division, adults who are charged with a criminal offense, and clients facing civil commitment (including mentally ill persons and developmentally disabled persons).

In 1996, the Board of Supervisors established the Office of the Alternate Defender (ADO) as a separate arm of the PDO. The ADO is distinct and separate from the PDO and performs the duties of the Public Defender when there is a conflict of interest. An "ethical wall" separates the two offices under the mandate of *People v. Christian* (1996) 41 Cal.App.4th 986. The ADO provides the same high-quality, holistic legal representation as the PDO for adult and juvenile clients charged with criminal offenses, post-conviction relief, and mental health cases.

As of the writing of this report, the PDO consists of the Public Defender, one Chief Assistant Public Defender, four Assistant Public Defenders, and 121 Deputy Public Defenders. In addition, the office has 34 paralegals, 27 investigators, five social workers, and seven support staff. The ADO consists of the Alternate Defender and 24 Alternate Deputy Defenders, five paralegals, seven investigators, two social workers, and two support staff. The County Fiscal Year 2025-2026 recommended budget for the PDO is \$90.4M, of which 89% is allocated to salary and benefits (County of Santa Clara, Budget and Finance Division, 2025). The PDO has five offices, including the three locations of the ADO in San José, Morgan Hill, and Palo Alto, and works across nine distinct practice areas. A 2022 management audit indicated that between April 1, 2019, and June 30, 2020, PDO attorneys were assigned to 31,523 cases and ADO attorneys were assigned to 1,313 cases (Board of Supervisors Management Audit Division, 2022). On average, each PDO attorney was assigned 227 cases, and each ADO attorney was assigned 47 cases.

## **METHODOLOGY**

The Civil Grand Jury conducted interviews with individuals in the PDO and received access to confidential information related to qualifications for defendants to be represented by the PDO. The documents will remain protected throughout this report.

## INVESTIGATION

The Civil Grand Jury sought to understand the steps involved in obtaining representation from a public defender in Santa Clara County and the circumstances under which private law firms are brought on as co-counsel with a public defender.

### **Financial Qualifying Process for Public Defender Services**

The PDO becomes the attorney of record on a case once appointed or referred by a judge at a person's first court appearance if a private attorney is not retained. Individuals charged with a misdemeanor, felony, or both may be eligible for representation by the PDO. The County's 2022 management audit noted several findings and recommendations to improve this process, which is beyond the scope of this Civil Grand Jury investigation.

In general, the PDO represents an individual in a specific case. The first step is to verify whether that individual meets the financial criteria to qualify for representation.

The process to determine if an individual meets the financial criteria to qualify for representation is performed by a paralegal from the PDO. The defendant completes and signs the appropriate form requesting representation under penalty of perjury. The form is then discussed and reviewed during an interview between the paralegal and the individual requesting services. At the interview, the paralegal will also complete an intake form on the charge and collect other information that may be relevant to the case. If in-custody, the individual is initially considered eligible for PDO representation, and the interview with the paralegal is conducted at the jail. If an individual is out of custody, the interview is generally conducted at the courthouse. If the financial criteria are met, the PDO takes on the client's representation, and the Superior Court is notified.

The Civil Grand Jury examined the financial forms and the paralegal training materials. Paralegal training covers how to evaluate income, property/assets, and debts/expenses as they apply to qualifying criteria and the decision-making process.

In the event a client retains private counsel after the PDO has taken on the case, the PDO discontinues its representation, all documents and discovery are turned over to private counsel, and the Superior Court is notified of the change.

The final step before an individual is confirmed for PDO representation is to identify if a conflict of interest exists.

## **Conflict of Interest Determination**

An attorney has a duty of loyalty to the client they represent. The duty in defending is exclusive to the client; the attorney cannot have competing interests. A conflict of interest for an attorney in California arises when an attorney's ability to represent a client is materially limited by the attorney's own interests or their duties or relationships with other clients or a third person. For example, if the PDO represents a defendant in one case, it cannot represent a co-defendant in the same case. The California Rules of Professional Conduct, Rule 1.7, address current client conflicts and states that a lawyer shall not represent a client if the representation involves a conflict of interest. The PDO maintains a case management system that stores information to aid in identifying conflicts.

If a conflict is identified, the client is referred to the ADO. This office was established in December of 1996 by the County Board of Supervisors. The County website describes the office as “a separate segmented ethically walled Office under the umbrella of the Office of the Public Defender” (County of Santa Clara, Alternate Defender Office History, 2025). This office also performs its own conflict of interest verifications. If there are no conflicts, the ADO takes on representation.

If the ADO determines it has a conflict, the case is referred to the Independent Defense Counsel Office (IDO), a division of the Office of the County Counsel. The IDO administers and oversees a panel of private criminal defense attorneys to provide court-mandated criminal defense services to indigent defendants when there is a legally disabling conflict of interest with both the PDO and ADO. The IDO also provides legal representation to indigent defendants in criminal contempt proceedings for failure to pay child support. Private attorneys are screened by IDO employees, and once selected, are retained under contract to the Office of County Counsel.

## **Importance of Competent Counsel**

Essential to ensuring a fair and just legal defense is a competent attorney. Competency ensures:

- the right to counsel under the Sixth Amendment of the U.S. Constitution is upheld,
- the charge(s) against a client are investigated,
- the prosecution's case is challenged,
- relevant evidence is presented and witnesses are cross-examined,
- the client's rights are advocated for,
- consideration of reduced charges is negotiated and presented to the client, and
- the evidence is thoroughly examined to help prevent an unjust conviction.

# VOLUNTEER JUSTICE

The American Bar Association Standard 4-1.2 includes the following in the Functions and Duties of Defense Counsel:

(b) Defense counsel have the difficult task of serving both as officers of the court and as loyal and zealous advocates for their clients. The primary duties that defense counsel owe to their clients, to the administration of justice, and as officers of the court, are to serve as their clients' counselor and advocate with courage and devotion; to ensure that constitutional and other legal rights of their clients are protected; and to render effective, high-quality legal representation with integrity.

(c) Defense counsel should know and abide by the standards of professional conduct as expressed in applicable law and ethical codes and opinions in the applicable jurisdiction. Defense counsel should seek out supervisory advice when available, and defense counsel organizations as well as others should provide ethical guidance when the proper course of conduct seems unclear. Defense counsel who disagrees with a governing ethical rule should seek its change if appropriate, and directly challenge it if necessary, but should comply with it unless relieved by court order.

(d) Defense counsel is the client's professional representative, not the client's alter-ego. Defense counsel should act zealously within the bounds of the law and standards on behalf of their clients, but have no duty to, and may not, execute any directive of the client which violates the law or such standards. In representing a client, defense counsel may engage in a good faith challenge to the validity of such laws or standards if done openly (American Bar Association, 2017).

The PDO's Mission and Values statement, per their website, supports these responsibilities:

We are the Public Defender's Office, and we fight for people who can't afford a lawyer. No matter what crime you are accused of, we're here to protect your rights and ensure fairness at every point in your case. We are a public law firm of expert criminal lawyers who serve clients in a holistic and client-centered fashion.

We listen. We respect. We fight. We are loyal. We explain the legal system, investigate facts, give advice, and argue for the best possible outcome. We are honest, direct, and compassionate. We treat every client with dignity and focus on your goals and needs. We will do everything we can to get you home.

We believe everyone deserves a voice in court. We protect diverse clients, including the poor, children, mentally ill, immigrants, and people from communities of color. We believe in social justice, racial equity, diversity, and attacking the mass incarceration system. We

are the voice of the community. It is our honor to help and defend you. (County of Santa Clara, Mission and Values, 2025)

The PDO's private law firm pro bono program is a tool that helps ensure a competent defense when specialized expertise is needed.

## **Pro Bono Partnerships**

In California, attorneys are expected to make a contribution to the public by providing pro bono services. While not mandated, the State Bar of California encourages attorneys to participate in pro bono activities, and starting in 2026, attorneys will be required to report their pro bono hours. Pro bono services are defined as providing or enabling the direct delivery of legal services without expectation of compensation to indigent individuals or organizations serving those with limited means (State Bar of California, 2025).

Occasionally, there are cases where the PDO would benefit from the assistance of a private law firm in its representation of its client. The PDO established a program more than 15 years ago that uses the pro bono help of private law firms on complex cases.

The Civil Grand Jury learned that the PDO typically engages private firms on cases involving white collar crime or government integrity allegations, including things like securities fraud, money laundering, or tax evasion. These types of cases involve a large volume of discovery and/or documents, are complex, typically require specialized analysis or expertise, and often involve extra hours of work to prepare a defense. Private firms can help provide additional resources to the PDO, who may not have the necessary expertise in-house.

Since its inception, the private defender pro bono program has been managed by an Assistant Public Defender (APD). Firms interested in working with the PDO are recruited and undergo a vetting process. The PDO develops a trusted relationship with these firms.

If the PDO determines that a client's defense would benefit from a private attorney co-counsel, the request is reviewed by a member of the PDO executive team. If approved, the APD determines the private firm that best fits the needs of the case. A meeting is held with the firm and members of the PDO to decide the best way to partner given the firm's available resources and the needs of the PDO. Once an agreement is reached, a Memorandum of Understanding confirms the arrangement between the PDO and the private firm. The private firm takes direction from the assigned public defender, who acts as a litigation manager, assigning all tasks, reviewing all work, and controlling all decisions. At the conclusion of a case, depending on the level of involvement of the legal firm, they may meet to debrief the case events.

During this investigation, the Civil Grand Jury learned that the private attorney pro bono co-counsel program benefits the PDO by providing:

- a method to ensure the PDO has performed its due diligence to provide a robust defense for their client, generally those charged with a white collar or government integrity offense,
- assistance with managing the workload and tackling challenges on complex cases with a high volume of discovery and documents,
- additional assistance with cases that require specific expertise, and
- the ability to adapt and adjust the private firm's resources to the needs of the PDO.

## CONCLUSION

The PDO has a method to qualify those who cannot afford representation by a private attorney for services from its office. It ensures that representation meets the “duty of loyalty” to a client by verifying that no conflicts of interest exist. The PDO’s pro bono co-counsel program with private law firms enables the PDO to leverage expertise and resources in its defense of a client, benefiting both the PDO and the client.

## FINDINGS AND RECOMMENDATIONS

### **Finding 1**

The Civil Grand Jury commends the Public Defender Office for its private attorney co-counsel pro bono program, which assists its attorneys in their representation of clients.

### **Recommendation**

No recommendation.

## **REQUIRED RESPONSES**

None required.

## GLOSSARY AND ABBREVIATIONS

<b>Discovery</b>	The formal process of exchanging information between the parties in a case about the witnesses and evidence they will present at trial. It enables the parties to know before the trial begins what evidence may be presented.
<b>Felony</b>	Under California Penal Code section 17, serious criminal offenses punishable by death, imprisonment in state prison, or in a county jail with a sentence of more than one year.
<b>Indigent</b>	1. A person so poor and needy that he/she cannot provide the necessities of life (food, clothing, decent shelter) for himself/herself, or 2. One without sufficient income to afford a lawyer for defense in a criminal case.
<b>Memorandum of Understanding</b>	An agreement that outlines the general terms and intentions of a collaboration between two or more parties. It serves as a formal acknowledgment of shared goals and expectations.
<b>Misdemeanor</b>	Under California Penal Code section 17, a criminal offense for which the maximum penalty is up to one year in county jail and a fine of not more than \$1,000.

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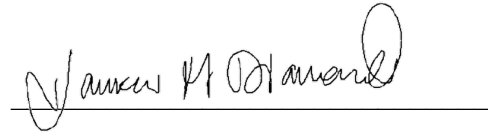
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# VOLUNTEER JUSTICE

This report was **ADOPTED** by the County of Santa Clara 2024-2025 Civil Grand Jury on this 17th day of June, 2025.

A handwritten signature in black ink, reading "Lauren M. Diamond", is written above a solid horizontal line.

Lauren Diamond  
Foreperson