

County of Santa Clara

Office of the Clerk of the Board of Supervisors
County Government Center, East Wing
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Megan Doyle
Clerk of the Board

(ENDORSED)
FILED
SEP 11 2018

September 4, 2018

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

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

RE: Grand Jury Report: 2016-17 Civil Grand Jury Report Follow-Ups: Justice Still Delayed.

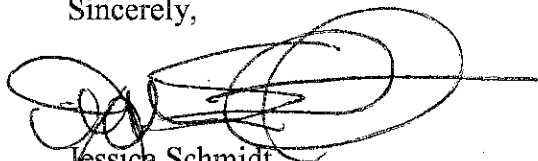
Dear Judge Lucas:

At the August 28, 2018 meeting of the County of Santa Clara Board of Supervisors (Item No. 61), the Board adopted the responses from The Office of the Public Defender and County Administration to the Final Grand Jury Report entitled 2016-17 Civil Grand Jury Report Follow-Ups: Justice Still Delayed.

As directed by the Board of Supervisors and on behalf of the Board President, our office is forwarding to you the enclosed copies of the responses to the Final Grand Jury Report. These responses constitute the responses 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.

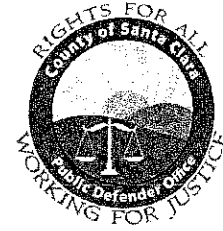
Sincerely,



Jessica Schmidt
Deputy Clerk, Board of Supervisors
County of Santa Clara

Enclosures

County of Santa Clara
Law Offices of the Public Defender
120 West Mission Street
San Jose, California 95110
(408) 299-7700 FAX (408) 998-8265



Molly O'Neal
Public Defender

MEMORANDUM

TO: Miguel Márquez
FROM: Molly O'Neal
SUBJECT: 2018 Grand Jury Report "Justice Still Delayed"
DATE: August 5, 2018

In June 2017, the Civil Grand Jury (CGJ) of Santa Clara County released a report on trial delays in the County's criminal justice system. The report was entitled "Justice Delayed." In June 2018, a newly convened Civil Grand Jury released a "continuity" report entitled "Justice Still Delayed." In between the two reports, the Santa Clara County Superior Court released a correction to the initial report showing that the data relied upon by the 2017 CGJ was incomplete and inaccurate. The 2018 CGJ was made aware of the inaccurate data. The 2018 report, however, continues to rely on the same inaccurate data relied upon by the 2017 CGJ, and it does so notwithstanding that the Court, the District Attorney (DA), and the Public Defender all pointed out that the actual percentage of felony cases resolving within one year is about average for the state.

Internal statistics from the Public Defender's Office (PDO) reflect an 85% disposition rate for felonies within one year, as did the Court's internal data inquiry. The DA's data showed a 75% disposition rate. This is consistent with other counties across the state. The DA and PDO data would not be expected to align exactly because while the DA prosecutes 99% of the cases in the county, the PDO has conflicts in some cases that are referred to the Alternate Defender's Office (ADO) or Independent Defense Counsel Office (IDO); thus, the PDO's internal statistics do not represent all the cases defended in the county. The 2017 and 2018 CGJ reports rely on insufficient and incomplete data, making it difficult to address the Findings and Recommendations contained therein. PDO refers the Grand Jury to the Superior Court's press release dated June 25, 2018, entitled "Clarifications Necessary for 'Justice Still Delayed,'" Grand Jury Continuity Report. This press release, among other things, addresses the inaccuracies of the data used in the Grand Juries' reports.

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

Adopted: 08/28/2018

Preliminarily, as noted in the response to the 2017 CGJ report, it should be recognized that defense counsel has an ethical obligation to provide effective assistance of counsel pursuant to the U.S. Constitution, case law, and 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, 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 over in an efficient and effective manner. We also recognize the value of reducing delay to our clients, victims, witnesses and to the County.

We were asked to agree or disagree with the Findings in the 2018 CGJ report, and to respond to the Recommendations set forth therein. As noted, the PDO generally disagrees with the Findings due to the inaccuracy of the data relied upon by both the 2017 and 2018 Civil Grand Juries.

Finding 2

It is difficult for the public to judge the performance of the DA and the Santa Clara County Public Defender Office (PDO) in improving the speed of felony-case resolutions because they:

- Have not publicly provided details about how their respective offices are educating and training their staffs (sic) about the ramifications of slow felony-case dispositions
- Do not detail how they are holding their staffs (sic) accountable.

Response to Finding 2:

PDO *disagrees* with the Finding 2.

The 2017 and 2018 Civil Grand Jury reports have relied upon incomplete and inaccurate data. However, before it became known that the 2017 Civil Grand Jury had been given inaccurate data, the PDO discussed with staff the need for expedient and efficient but constitutionally sound representation, something that is still a factor in the PDO's representation strategy. The impact of any unnecessary delay on clients, families, victims and witnesses continues to be a consideration in representation and case processing at PDO and has also been discussed with staff on an ongoing basis. Further, our felony trial team caseload sheets are updated weekly, and supervisor/attorney meetings happen regularly to discuss the status of each trial case to actively manage case progress and identify and resolve any issues contributing to delay.

Finding 3**Finding 3a**

It is difficult for the public to judge the performance of the DA and the PDO in improving the speed of felony-case resolutions because neither office makes public its felony-case tracking data.

Finding 3b

It is difficult to improve 12-month felony-case resolutions when the DA is tracking cases for special attention only at the 12-month mark and the Public Defender at nine months.

Finding 3c

There is potential for more disparity in case-resolution statistics, since the County, the Public Defender and DA are implementing a data management system that differs from the new system being implemented by the Court.

Response to Findings 3a, 3b, and 3c:

PDO *agrees* in part and *disagrees* in part with Findings 3a, 3b, and 3c. See above response to Finding 2. With respect to Finding 3a, the implementation of a new case management system will help produce real time data which can be made publicly available on the PDO website. With respect to Finding 3b, the PDO uses a 9-month mark as a “tickler” for supervisors to inquire about the status of the case to ensure timely resolution. It is not accurate to say that cases are only tracked at the 9-month mark. Cases on the felony trial team are tracked from assignment, but inquiry is made at the 9-month mark if no progress toward resolution has been made. With respect to Finding 3c, disparate data management systems do not mean that there will be disparity in case resolution statistics. The reason for the disparity was not disparate case management systems; it was that when the Court provided data to the 2017 CGJ, it omitted an entire class of cases that had resolved within one year (those that resolved *after* preliminary hearing). When those cases are added back, the resolution rate is 85%.

Recommendation 3a

The DA and PDO should use identical benchmarks when publishing felony-case statistics.

Response to Recommendation 3a:

The PDO will work with the DA with the goal of using the same benchmarks when publishing felony-case statistics.

Recommendation 3b

The DA and PDO should start tracking cases for special attention when they have been in the process for six months, starting by Dec. 31, 2018.

Response to Recommendation 3b:

The PDO's 9-month tickler system works well for the PDO. It is worth noting, however, that the PDO tracks cases on the felony trial team from inception, not just at the 9-month mark.

Recommendation 3c

The DA should publish an annual report on the number of felony cases that remain unresolved after six months and include estimates on how many of those cases could be resolved within 12 months, starting Dec. 31, 2018.

Recommendation 3d

The PDO should publish an annual report on the number of felony cases that remain unresolved after six months and include estimates on how many of those cases could be resolved within 12 months, starting Dec. 31, 2018.

Recommendation 3e

The Santa Clara County Board of Supervisors should require the PDO to publish an annual report on the number of felony cases that remain outstanding after six months, and include estimates on how many of those cases could be resolved within 12 months, starting Dec. 31, 2018.

Response to Recommendations 3c, 3d, and 3e:

The PDO will publish its annual settlement rates, but it will be very difficult to estimate the 12-month settlement rate given the number of factors that impact resolution. Taking previous year averages, the estimate would be close to 85%.

Finding 4

The offices of the Public Defender, Alternate Defender and Independent Defense Counsel often do not enter a plea in felony cases at the first arraignment hearing, which slows felony case dispositions.

Recommendation 4

Santa Clara County should direct the offices of the Public Defender, the Alternate Defender and the Independent Defense Counsel to report annually on the average time from the filing of charges to the entry of a plea in its felony cases, and provide comparison figures for the counties in Table 3, starting with the 2019 fiscal year.

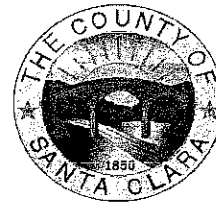
Response to Finding and Recommendation 4:

The PDO *disagrees* with Finding 4. While it is true that the PDO and ADO in general do not enter pleas at the first arraignment date, there are many very good reasons why this is the practice, and it does not contribute to delay. Entering a plea triggers statutory timelines for preliminary examination. Many cases settle prior to a preliminary examination. This is possible

because not entering a plea at the first court date allows time for discovery, investigation, ordering of records, and discussion with clients, which frequently result in an early plea without victims, witnesses, or police officers having to come to Court to testify unnecessarily. That work must be done to ensure constitutionally sound representation, and it is preferable to do it early on in the case so that counsel can advise clients whether to negotiate a disposition or proceed to trial. A plea at arraignment would preclude that work being completed prior to the preliminary hearing, potentially having the unintended consequence of increasing inefficiency and expense. For example, additional court appearances, including time-consuming formal preliminary hearings, would likely increase cost and waste time that could be focused on preparing and resolving cases.

County of Santa Clara
Office of the County Executive

County Government Center, East Wing
70 West Hedding Street, 11th Floor
San Jose, California 95110
(408) 299-5105



Date: August 10, 2018
To: Miguel Marquez, Chief Operating Officer
From: Garry Herceg, Deputy County Executive
Subject: Response to Civil Grand Jury Follow Up Report Justice Still Delayed

Please accept this response to the to the Santa Clara County Civil Grand Jury Report dated June 21, 2018.

Finding 2 It is difficult for the public to judge the performance of the DA and the Santa Clara County Public Defender Office (PDO) in improving the speed of felony-case resolutions because they:

- Have not publicly provided details about how their respective offices are educating and training their staffs about the ramifications of slow felony-case dispositions.
- Do not detail how they are holding their staffs accountable.

Recommendation 2b: Santa Clara County Board of Supervisors should require the PDO to issue report explaining how it educates its staff as to the ramifications of slow felony-case dispositions and how it holds staff accountable, by December 31, 2018.

Response: The respondent agrees with the finding and recommendation. It is further recommended that the report be forwarded to the Public Safety and Justice Committee for discussion.

Finding 3a It is difficult for the public to judge the performance of the DA and the PDO in improving the speed of felony-case resolutions because neither office makes public its felony-case tracking data.

Recommendation 3a: The DA and PDO should use identical benchmarks when publishing felony case statistics.

Response: The respondent agrees with the finding and recommendation.

Adopted: 08/28/2018

Finding 3b It is difficult to improve 12-month felony case resolutions when the DA is tracking cases for special attention only at the 12-month mark and the PDO at nine months.

Recommendation 3b: **The DA and PDO should start tracking cases for special attention when they have been in the process for six months, starting by December 31, 2018.**

Response: The respondent agrees with the finding and recommendation.

Recommendation 3d: **The PDO should publish an annual report on the number of felony cases that remain unresolved after six months and include estimates on how many of those cases could be resolved within 12 months, starting December 31, 2018.**

Response: The respondent agrees with the recommendation. In addition, it is recommended the report be forwarded to the Public Safety and Justice Committee for discussion.

Recommendation 3e: **The Santa Clara County Board of Supervisors should require the PDO to publish an annual report on the number of felony cases that remain outstanding after six months and include estimates on how many of those cases could be resolved within 12 months, starting December 31, 2018.**

Response: The respondent agrees with the recommendation. In addition, it is recommended the report be forwarded to the Public Safety and Justice Committee for discussion.

Finding 4 The offices of the Public Defender, Alternate Defender and the Independent Defense Counsel often do not enter a plea in felony cases at the first arraignment hearing, which slows felony-case dispositions.

Recommendation 4: **Santa Clara County should direct the offices of the Public Defender, Alternate Defender and the Independent Defense Counsel to report annually on the average time from the filing of charges to the entry of a plea in its felony cases and provide comparison figures for the counties in Table 3, starting with the 2019 fiscal year.**

Response: The respondent partially agrees with the finding and recommendation. Deferring of an entry of a plea at first arraignment has minimal impact in the overall delay of the disposition of a case. Waiving of judicial time frames (time waived cases) by the defense has a much greater impact in the delay of dispositions. Despite this, when collecting this data, special consideration must be given to the seriousness of the criminal charge and ensuring defendants receive a robust and vigorous defense. Therefore, it is recommended that the Offices of the Public Defender, Alternate Defender, and Independent Defense Counsel form a working group to develop analytics that also consider seriousness of charge and robust/vigorous defense

Memo to Miguel Marquez
Re: Response to Civil Grand Jury Follow Up
August 21, 2018
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strategies. It is further recommended that this working group use the National Legal Aid and Defender Association recommendations as to data collection as a guideline.