

OFFICE OF THE
COUNTY ADMINISTRATOR

August 15, 2023

Matthew H. Hymel
COUNTY ADMINISTRATOR

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

Daniel Eilerman
ASSISTANT COUNTY
ADMINISTRATOR

Ariel Espiritu Santo
ASSISTANT COUNTY
ADMINISTRATOR



SUBJECT: Response to 2022-23 Grand Jury Report "*Justice Delayed is Justice Denied – Marin District Attorney's Office in Crisis*" (May 15, 2023)

Dear Supervisors,

RECOMMENDATION: Concur in and adopt the attached proposed response to the FY 2022-23 Marin County Civil Grand Jury Report regarding the Marin County District Attorney's Office and authorize the Board President to forward the response to the Presiding Judge of the Marin County Superior Court.

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SUMMARY: The 2022-23 Civil Grand Jury Report published a report entitled "*Justice Delayed is Justice Denied – Marin District Attorney's Office in Crisis*." (May 15, 2023) The report included a request for response from your Board, the District Attorney, and the Sheriff.

Attached for your consideration, in accordance with §933 of the California Penal Code, is a proposed response for your Board's consideration. A copy of the Grand Jury report is also attached for your information, as well as the responses from the District Attorney and the Sheriff's Office to the Grand Jury.

FISCAL/STAFFING IMPACT: None.

ALTERNATIVE TO RECOMMENDED ACTION(S): The Board may amend any suggested response.

SUBMITTED BY:

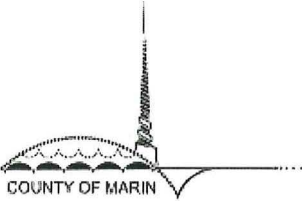
REVIEWED BY:

Dan Eilerman
Assistant County Administrator

Matthew H. Hymel
County Administrator

Attachments: Proposed BOS response; Responses from District Attorney Frugoli and Sheriff Scardina; and the May 15, 2023 Grand Jury Report

Cc: Lori Frugoli, Marin County District Attorney
Jamie Scardina, Marin County Sheriff



RESPONSE TO GRAND JURY REPORT FINDINGS AND RECOMMENDATIONS

REPORT TITLE: *“Justice Delayed is Justice Denied – Marin District Attorney’s Office in Crisis”*
REPORT DATE: May 15, 2023
RESPONSE BY: County of Marin Board of Supervisors

GRAND JURY FINDINGS

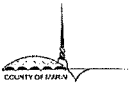
- We agree with the findings numbered: **F1**.
- We disagree wholly or partially with the findings numbered: **F2-F9**.

GRAND JURY RECOMMENDATIONS

- Recommendation numbered **R4** and **R5** have been implemented.
- Recommendations numbered **R1**, and **R7** have not yet been implemented, and will be implemented in the future.
- Recommendations numbered **R2**, **R3**, **R6** and **R8** require further analysis.

Date: 8/15/23

Signed: *Stephanie Monltm - Peters*
President, Board of Supervisors



County of Marin Response to Grand Jury Report Findings and Recommendations
"Justice Delayed Is Justice Denied — Marin District Attorney's Office in Crisis"
(May 15, 2023)

RESPONSE TO GRAND JURY FINDINGS

F1. There is a substantial backlog of criminal cases pending in Marin County.

Response: Agree. We agree, however, as District Attorney Frugoli noted in her July 14, 2023, response to the Grand Jury, the backlog has recently trended downward after the period evaluated by the Grand Jury.

F2. Victims of crimes and people charged with crimes in Marin are waiting an unreasonable length of time for cases to be resolved – in many cases more than a year.

Response: Partially Disagree. Cases should be resolved as quickly as possible; however, it is difficult to say what is unreasonable given the extraordinary conditions of the COVID-19 pandemic court closures. Many California counties, including several in the Bay Area, are experiencing extremely long delays.

F3. The District Attorney's Office is primarily responsible for the delays in resolving criminal cases in Marin.

Response: Partially Disagree.

We do not have adequate data to agree that the District Attorney's Office is primarily responsible for delays in resolving criminal cases in Marin relative to other factors. Criminal cases involve multiple agencies including the Courts, Public Defender, and the Probation department.

F4. The District Attorney's Office lacks the internal organizational structure and operations to facilitate the efficient processing and resolution of criminal cases.

Response: Partially Disagree.

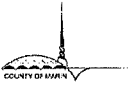
While we cannot agree that issues of organizational structure and/or operations are the leading factor in unresolved cases, we anticipate that a review of staffing, operations, and structure in relation to other comparable District Attorney Offices will inform such an assessment.

F5. Deputy district attorneys are unable to consistently carry out their legal duties due to overwhelming caseloads.

Response: Partially Disagree.

While we do not have sufficient comparable data to conclude that Deputy District Attorneys in Marin are unable to consistently carry out their legal duties due to large caseloads, we agree that caseloads and vacancy rates for attorney and non-attorney classifications are priorities that need to be addressed.

F6. The caseloads must be reduced to manageable levels to stem the departures of attorneys from the office and to facilitate recruiting efforts.



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Response: Partially Disagree.

While there is clearly a backlog, and high turnover has been a problem faced by the District Attorney and other departments in the wake of the "Great Resignation" following the COVID-19 pandemic emergency, we are not able to conclusively agree that attorney caseloads are the sole or leading factor.

An independent review by a management or organizational expert will help to reach an informed assessment of this finding.

F7. The District Attorney's Office needs additional experienced deputy district attorneys to facilitate the processing and resolution of criminal cases.

Response: Partially Disagree.

While we agree that any District Attorney's Office needs experienced deputy district attorneys to facilitate the processing and resolution of criminal cases, our position has been that the first priority should be on filling the department's existing vacancies before consideration of new budgeted positions.

F8. The District Attorney's Office does not consistently provide discovery materials (e.g., police report, defendant's criminal history, camera footage) to defense counsel in a timely manner, thereby significantly delaying the resolution of cases.

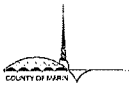
Response: Partially Disagree.

We are not able to agree or disagree with this finding because we do not have information to indicate whether this is true or not.

F9. People in custody awaiting trial are treated the same as convicted inmates and are subjected to unduly restrictive conditions in the county jail.

Response: Partially Disagree.

We are not able to agree or disagree with this finding. The Marin County Sheriff noted in his response that "Guilt or innocence of an incarcerated person is determined by the Court. The Sheriff's Department does not impose restrictions or deny or grant privileges based on conviction status. Title 15 of California Code of Regulations does not require this distinction."



County of Marin Response to Grand Jury Report Findings and Recommendations
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RESPONSE TO GRAND JURY RECOMMENDATIONS

The Marin County Civil Grand Jury recommends the following:

R1. By November 1, 2023, the Marin County Board of Supervisors should request the Marin County Administrator to hire an independent consultant who reports to the County Administrator's Office to analyze operations of the District Attorney's Office with the following objectives: reducing the overwhelming caseloads of deputy district attorneys, facilitating timely production of discovery materials, implementing early evaluation of cases to promote plea negotiations, improving office morale, and updating the case management system.

This recommendation has not been implemented and will be in the future.

The County has budgeted an additional \$500,000 in Fiscal Year 2023-24 to address caseload backlog issues, including an independent organizational analysis of the District Attorney's Office and funds for short-term staffing. We expect this study, performed by an outside expert, will focus on areas including business process improvement, staffing, workflow, and other areas that may affect items listed in this recommendation. The County Administrator will work with the District Attorney's Office to review the study's recommendations and recommend future strategies.

R2. By December 1, 2023, the District Attorney's Office should hire two or more highly experienced former deputy district attorneys on short term (6 - 12 mos.) contracts whose sole responsibility would be to reduce the backlog of cases through plea negotiations, starting with the longest pending cases.

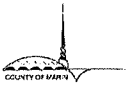
This recommendation requires further analysis.

There are approximately \$750,000 available for short-term staffing in this year's budget. From February to June 2023, the District Attorney has reduced five vacant attorney positions to two. The newly filled positions included two Deputy District Attorney III positions and one Deputy District Attorney II position. In addition, the District Attorney recently hired a part-time retired District Attorney IV position. The County Administrator's Office will continue to work with the District Attorney to fund short-term staffing options to reduce the backlog of cases.

R3. Once the caseload has been significantly reduced, the District Attorney's Office should hire experienced deputy district attorneys to maintain caseloads at a manageable level.

This recommendation requires further analysis.

As discussed in the response to R2, the District Attorney's Office recently added three new attorneys to fill vacancies and is operating consistent with the recommendation. We anticipate that the remaining two open positions will be filled by experienced attorneys. The County Administrator's Office will continue to work with the District Attorney to review and budget for appropriate staffing levels with the goal of maintaining caseloads at a manageable level.



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R4. By December 1, 2023, the District Attorney's Office should implement a new process to provide discovery materials (e.g., police report, defendant's criminal history, and camera footage) to defense counsel within a reasonable time of arraignment.

This recommendation has been implemented according to the District Attorney's Office.

The District Attorney noted in her response that "many of our processes were improved months prior to issuance of the Grand Jury report. We continue to review and identify improvements to our discovery process, including the possibility of new software. Resources for these expenditures have been identified and set aside by the CAO's office." The County Information Service and Technology department is investing approximately \$200,000 to implement new digital evidence and subpoena management software.

R5. By December 1, 2023, the District Attorney's Office should institute a position, such as an expeditor, that is primarily responsible for facilitating plea negotiations in misdemeanor cases.

This recommendation has been implemented according to the District Attorney's Office.

The District Attorney noted in her response that "Last summer, a prosecutor was assigned to the misdemeanor team whose primary focus was expediting SVU (Special Victims Unit) cases.

In April of 2023, we assigned a prosecutor to the Expediter position part-time, and they transitioned to the position full time in June of 2023.

In June of 2023, we hired an experienced, temporary attorney who is also serving as a misdemeanor expeditor."

R6. By October 1, 2023, the District Attorney's Office should hire paralegals to assist attorneys with discovery, witness coordination, and trial preparation.

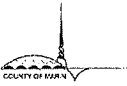
This recommendation requires further analysis.

We look forward to the results of an independent review by an outside expert to examine this issue and provide recommendations concerning the potential roles and responsibilities of paralegals in relation to existing department positions.

R7. By November 1, 2023, the District Attorney's Office should commence providing a quarterly update and statistical report to the Board of Supervisors and the County Administrator's Office on its progress to reduce the backlog of criminal cases.

This recommendation has not been implemented and will be in the future according to the District Attorney's Office.

The District Attorney has agreed to develop quarterly update reports to the Board and County Administrator. The County Administrator will with the District Attorney to develop the scope of the reporting to ensure that the backlog is being effectively addressed by all justice partners.



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R8. By October 1, 2023, people in custody who are awaiting trial should be granted more accommodations than inmates who have been convicted. Possible accommodations include, where appropriate, contact visits with family, utilization of technology (e.g., tablets) within their cells, and contact visits with defense counsel.

This recommendation requires further analysis.

As noted in the response to F9, we are not able to agree or disagree with the assertion that "People in custody awaiting trial are treated the same as convicted inmates and are subjected to unduly restrictive conditions in the county jail."

While this is the purview of the Marin County Sheriff, we understand the Sheriff's Office is in contract negotiations with a technology vendor to provide additional access to personal and legal visits through teleconference, as well as additional educational and vocational applications. This technology will be accessible through tablets administered to incarcerated individuals by jail staff.