

THE RIGHT TO COUNSEL IN LAKE COUNTY, CALIFORNIA

EVALUATION OF TRIAL-LEVEL INDIGENT
REPRESENTATION SERVICES

FEBRUARY 2023



SIXTH
AMENDMENT
CENTER

The Right to Counsel in Lake County, California: Evaluation of Trial-Level Indigent Representation Services
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Prepared by

The Sixth Amendment Center (6AC) is a non-partisan, non-profit organization providing technical assistance and evaluation services to policymakers and criminal justice stakeholders. Its services focus on the constitutional requirement to provide effective assistance of counsel at all critical stages of a case to the indigent accused facing a potential loss of liberty in a criminal or delinquency proceeding. See SIXTH AMENDMENT CENTER, <https://sixthamendment.org/>.

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This report solely reflects the opinions of the authors and does not necessarily reflect the views of Lake County.

Prepared for

The County of Lake, California commissioned this evaluation and report.

PREFACE

This report was requested and commissioned by Lake County, California and authored by the Sixth Amendment Center (6AC).

The 6AC is a national nonpartisan nonprofit organization that seeks to ensure that no person faces potential time in jail or prison without first having the aid of a lawyer with the time, ability, and resources to present an effective defense, as required under the United States Constitution. The 6AC conducts independent and objective evaluations of state and local indigent defense systems and offers technical assistance to state and local policymakers, using Sixth Amendment case law and national standards for right to counsel services, along with the requirements of local and federal laws. Our methodology includes four basic components: (1) legal research and analysis, (2) data collection and analysis, (3) court observations, and (4) interviews.

For this evaluation, all interviews and court observations were conducted virtually and in person from September 2021 through January 2022. To control for any potential impact that the COVID-19 pandemic might have had on the county's indigent defense system, the 6AC conducted additional court observations in November 2022. In total, the 6AC observed approximately 170 court proceedings involving indigent representation attorneys in the Lake County Superior Court in all critical stages of an adult trial-level criminal case. We also interviewed stakeholders in the judiciary, indigent defense, prosecution, and law enforcement.

Throughout this evaluation, Lake County administrators and criminal justice stakeholders were cooperative and forthcoming with the 6AC. Although written for Lake County, this report exposes the role of the State of California in Lake County's administration of an indigent defense system that is perilously in need of reform. As this report explains, the state shares responsibility for these local challenges, and strengthening Lake County's indigent defense system requires a coordinated effort by both the county and the state.

We believe this context is important to hold while reading about the right to counsel deficiencies in Lake County that are detailed in this report. We applaud Lake County's commitment to make significant changes in the delivery of right to counsel services, and we hope this report encourages the State of California to provide Lake County with the support necessary to structure a constitutionally effective indigent defense system.

EXECUTIVE SUMMARY

In 1963, the U.S. Supreme Court held in *Gideon v. Wainwright* that providing and protecting the Sixth Amendment right to effective assistance of counsel is a constitutional obligation of the states under the due process clause of the Fourteenth Amendment. California has delegated this responsibility to county boards of supervisors and/or the superior court judges in each county in all trial-level cases.

On its own initiative, Lake County sought this evaluation of its indigent representation services, in order to better understand how the county can effectively and efficiently fulfill the obligation of providing indigent representation services that has been delegated to it by the state. It is difficult for Lake County officials to improve indigent representation services in the trial court, because so many of the problems described throughout this report are inherently tied to decisions made by the state and over which the county has little control. For so long though, as the State of California makes county officials and trial court judges responsible for ensuring the effective right to counsel for indigent defendants, the trial court judges and county officials in Lake County *are* responsible. This report addresses what Lake County policymakers must do to provide effective representation until such time as California meets its Fourteenth Amendment obligations.

When a state chooses to delegate its constitutional responsibilities to local governments, the state must guarantee not only that those local governments are capable of fulfilling those responsibilities but also that they are in fact doing so. This evaluation shows, as reflected in Finding 1, that the State of California has not established any means to ensure that Lake County provides to every indigent defendant an attorney who has the time, training, and resources to provide effective representation at every critical stage of a criminal or juvenile delinquency case.

As explained in chapter I, the Sixth Amendment Center independently and objectively evaluates indigent defense services through legal research and analysis, data collection and analysis, interviews with criminal justice system stakeholders, and courtroom observations. Indigent defense services are assessed against Sixth Amendment case law that establishes the hallmarks of a structurally sound indigent representation system, which include the early appointment of qualified and trained attorneys, who have sufficient time and resources to provide effective representation under independent supervision. The absence of any of these factors can show that a system is presumptively providing ineffective assistance of counsel.

Chapter II describes the indigent representation system that Lake County has established, placing it in context with the trial court and the prosecution. Today in Lake County, all court-appointed representation of indigent people at the trial court level is provided by private attorneys who are not government employees. This is a two-part system.

- (1) Lake County contracts with an informal partnership of private attorneys, collectively known as Lake Indigent Defense LLP (LID). At the time of this evaluation there are three LID partner attorneys. The LID partner attorneys subcontract with a number of individual private attorneys, including themselves, to represent indigent people in all the types of cases that receive appointed counsel (other than juvenile dependency and family law proceedings), whenever they are appointed by the superior court to do so.

- (2) The Lake County Superior Court appoints on a case-by-case basis private attorneys to represent indigent people in juvenile dependency and family law proceedings, and the court also appoints private attorneys on a case-by-case basis in all other types of trial-level cases where none of the LID subcontractor attorneys are available. Except for juvenile dependency and family court proceedings, no private attorney outside of LID's subcontractor attorneys has been appointed to represent an indigent person in any case since LID was awarded the county contract for indigent representation services on May 7, 2017.

This evaluation is limited in scope to the indigent representation services that Lake County contracts to provide through the private attorneys collectively known as LID. Finding 2 explains that, even though Lake County's contract with LID provides means by which the county can oversee the LID partner attorneys' administration and provision of the right to counsel, the county does not do so. The county does not know, on an on-going basis, whether the right to counsel is being provided effectively, to how many people and in how many cases of what types, by whom, and how much the provision of the effective right to counsel should cost.

Instead, Lake County's contract with the LID partner attorneys devolves onto the LID partner attorneys nearly all of the county's responsibility for providing effective assistance of counsel to indigent people in the trial court. Lake County's contract with the LID partner attorneys requires them to ensure representation is provided to indigent defendants, whenever appointed by the Lake County Superior Court, in an unlimited number of cases of specified types. In exchange for these services, Lake County pays a flat annual fee to the LID partnership (composed of its three attorney contractors), paid in monthly installments, and allows for the possibility of additional compensation for "complex cases requiring extraordinary attorney time" and hourly rate compensation if appointed to a death penalty case.

As a practical matter, there are two different aspects of the contract:

- the administration of the contract, which is performed by the LID partner attorneys who are named as the "contractor," and for which they pay themselves a flat annual fee; and
- the direct representation of indigent people, which is provided pursuant to a series of subcontracts that the LID partner attorneys enter into with themselves and other private attorneys.

As reflected in Finding 3, even though the subcontracts provide means by which the LID partner attorneys can oversee the provision of the right to counsel by all of the subcontractor attorneys, the LID partner attorneys purposefully do not do so. The LID partner attorneys do not know, on an on-going basis, whether the right to counsel is being provided effectively, to how many people and in how many cases of what types, by whom, and how much the provision of the effective right to counsel should cost.

Chapters III through VI explain the details of the indigent representation system that Lake County operates through its contract with the LID partner attorneys, and through which indigent people in the Lake County Superior Court are represented by the subcontractor attorneys in all of the types of cases for which California provides the right to counsel (other than in juvenile dependency and family court proceedings).

Before the Lake County Superior Court can appoint any individual attorney to represent any indigent defendant, the indigent defense representation system established by Lake County through its contract with the LID partner attorneys must first select the attorneys whom it makes available to be appointed. As of October 2021, there are 15 subcontractor attorneys (including the three LID partner attorneys) who are eligible to be appointed pursuant to the LID contract to represent indigent people in Lake County. As shown in Chapter III, the LID partner attorneys have not established any required qualifications that an attorney must meet to receive a subcontract to represent indigent people, nor is there any formal process for selecting the subcontractor attorneys. Once selected, there is no requirement from the state, county, or LID partner attorneys for the subcontractor attorneys to receive on-going training in the non-death penalty adult criminal cases to which they are appointed. As one stakeholder explains, “no one teaches anyone what to do” – there is no “professional development, nobody getting taught how to be a public defender.”

Further, there is almost no oversight of either the LID partner attorneys’ performance of their contractual obligations to administer and provide direct representation of indigent people or of the subcontractor attorneys’ actual representation of indigent people. The county’s contract with the LID partner attorneys contains numerous mechanisms by which the county can, if it chooses to do so, provide oversight. Yet the LID partner attorneys state that, from the outset of the contract and continuing through at least January 2022, the county has not made any requests of the LID partner attorneys to fulfill their contractual reporting obligations and the LID partner attorneys have not submitted any reports to the county.

Lake County delegates to the LID partner attorneys almost all responsibility for supervising the LID subcontractor attorneys (which includes the LID partner attorneys themselves, leaving them responsible for their own supervision), holding them “legally responsible” for all work performed pursuant to the contract by the subcontractor attorneys. Nonetheless, the LID partner attorneys avoid supervising the LID subcontractor attorneys, because they do not believe they “can simultaneously have truly conflict free counsel and also engage in any significant effort to compel any performance which requires or hints at supervision.” The LID partner attorneys say they do not conduct any type of performance evaluation of the LID subcontractor attorneys because “there is no way to do a performance evaluation without supervising the attorneys, which we are not allowed to do.”

The U.S. Constitution holds the State of California responsible for ensuring adequate funding for the right to counsel under the Sixth and Fourteenth Amendments. California has delegated to its counties all responsibility at the outset for funding trial-level indigent representation services, and up through March 2022, Lake County has never received funding from the state government for trial-level right to counsel indigent representation services. Chapter IV provides a detailed discussion of the funding that Lake County allocates to providing the right to counsel, and how that money is spent for necessary case-related expenses, overhead, and compensation of appointed attorneys.

As this report concludes in Finding 4, Lake County’s contract with the LID partner attorneys pays them a flat annual fee to administer the trial-level indigent defense system and to provide all right to counsel services for which the State of California is responsible under the U.S.

Constitution, without regard to how much or how little time is necessary to provide effective assistance of counsel in all appointed cases. The LID partner attorneys' subcontracts with individual private attorneys (including themselves) pay each of the subcontractor attorneys a flat monthly fee to represent all people to whom they are appointed by the superior court, without regard to how much or how little time is necessary to provide effective assistance of counsel in all appointed cases. These flat-fee compensation methods result in a system-wide conflict of interest between each and every indigent person's interest in their constitutionally guaranteed right to effective representation and the personal financial interest of the attorney appointed to represent them, leading to the constructive denial of the right to counsel to some indigent people in Lake County.

Chapter V focuses on when and how an attorney is appointed to represent an individual defendant in an adult criminal case in the Lake County Superior Court. All misdemeanors and felonies in California carry the possibility of incarceration as a punishment, so every person charged with any of these crimes who cannot afford to hire their own attorney is entitled under the Sixth and Fourteenth Amendments to have an attorney provided at public expense to represent them. Once the right to counsel has attached, any indigent defendant facing possible loss of liberty in a criminal case and who does not waive their right to counsel must be represented by counsel at every critical stage of the proceedings. In Lake County, the judges presume that defendants who appear without counsel are indigent. If the defendant says they would like to have a lawyer but cannot afford to hire one, the judge finds that the defendant qualifies for court-appointed counsel. It is estimated that approximately 90-95% of defendants charged with a criminal offense in Lake County receive appointed counsel.

Despite counsel being appointed, the greatest difficulty experienced by indigent defendants is in communicating with their appointed attorneys, as expressed by criminal justice system stakeholders throughout the evaluation. It is most often the situation that appointed subcontractor attorneys meet with their clients only on the dates of scheduled court proceedings, and often the only attorney-client conversations occur during the court proceedings. This causes confusion and frustration for indigent defendants, impeding their ability to make informed decisions about the exercise of their legal rights, and it creates a backlog of cases for the courts, the prosecution, and the subcontractor attorneys.

It is reportedly common in Lake County for indigent defendants to ask the court to remove the subcontractor attorney who is representing them and appoint a different attorney on their case. This situation is referred to as a "*Marsden* motion," arising most often because the defendant says their appointed subcontractor attorney "never talk[s] to them at the jail, never visit[s], or never talk[s] to witnesses." Stakeholders explain that "*Marsden* motions happen all the time" and "almost everyone gets a *Marsden* filed against them once every several months." One LID subcontractor attorney reports that in Lake County they "have been *Marsden*-ed more times than [they] can count" and more than in any other California county during their years of criminal defense practice.

As Chapter VI explains, there are certain fundamental tasks each attorney must do on behalf of every client in every criminal case. The time an appointed attorney can devote to accomplishing each of these tasks in each defendant's case depends on the total amount of time the attorney

has available for all professional endeavors and the total amount of work the attorney must accomplish in that available time. For this reason, the U.S. Department of Justice has advised, and national standards agree, that a careful analysis of each appointed attorney's workload is necessary. Workload includes caseload – the raw number of cases of each type that an attorney is responsible for within the indigent defense system in a given time period – *plus* any cases an attorney takes on privately, appointed cases for which the attorney is responsible in other jurisdictions, and the attorney's other professional obligations such as obtaining and providing training and supervision. Workload additionally considers "all of the factors affecting a public defender's ability to adequately represent clients, such as the complexity of cases on a defender's docket, the defender's skill and experience, the support services available to the defender, and the defender's other duties."

California does not charge any state agency to collect caseload or workload information nor even to ensure that cases are counted uniformly throughout the state. Lake County's contract with the LID partner attorneys requires that the subcontractor attorneys should not carry excessive caseloads that interfere with their lawyer's obligation to provide effective assistance to each client in each case. Despite this, the county and the LID partner attorneys have not implemented effective tools for monitoring or reporting subcontractor attorney caseloads.

The LID partner attorneys have not established any caseload limits for the subcontractor attorneys. Instead, the LID partner attorneys pass their contractual duty to maintain reasonable caseloads onto the individual subcontractor attorneys. The onus is on each subcontractor attorney to understand, evaluate, and raise the issue of an excessive caseload to the LID partner attorneys. During this evaluation however, none of the subcontractor attorneys were able to provide their actual caseload numbers and few could accurately give a ballpark estimate of their number of open cases. In sum, no one at the state, county, or local levels tracks accurate data on the number of cases appointed to the subcontractor attorneys who provide indigent representation services.

The case management technology developed by the LID partner attorneys cannot be relied on to accurately show the actual caseloads of the subcontractor attorneys, and the subcontractor attorneys do not report the information necessary to know their caseloads or workloads. LID subcontractor attorneys are allowed to take private cases and appointed cases in other jurisdictions, and some do, but there is no mechanism for either the county or the LID partners to monitor this. Most LID subcontractor attorneys work without any secretary or social worker, and there are only two part-time investigators available for investigation in all of the cases appointed to all of the LID subcontractor attorneys. When indigent representation system attorneys must perform tasks that do not require legal credentials or experience (such as tasks that can be performed by a paralegal or legal secretary), this reduces the amount of the attorney's time that is available for representing clients. And when indigent representation system attorneys must fulfill responsibilities in their appointed cases that require specialized skills that the attorneys lack (such as the skills of a trained investigator or social worker), this *increases* the amount of time the attorney must devote to each appointed case.

The anecdotal evidence, on top of the limited available caseload data, suggests that LID subcontractor attorneys have excessive workloads that affect their ability to provide effective assistance of counsel to each individual defendant. Throughout this evaluation, various

stakeholders expressed frustration about ways in which the representation provided by the subcontractor attorneys is often impeded by the subcontractor attorneys' attempts to represent too many people at the same time.

Prosecutors and judges commented at length that the subcontractor attorneys often seem unprepared for their court appearances and have not communicated with their clients in advance of scheduled court proceedings. The subcontractor attorneys frequently confer with their clients for the first time *during* court proceedings, causing confusion and frustration for indigent defendants that impedes their ability to make informed decisions about the exercise of their legal rights.

Because the subcontractor attorneys are paid a flat monthly fee for their LID-appointed work but are not required to devote all of their working hours to their LID-appointed work, they often take on other paying work to increase their income. This leaves fewer working hours for the subcontractor attorneys to devote to their appointed Lake County clients, as discussed by subcontractor attorneys, prosecutors, and judges alike. Frequently, subcontractor attorneys are in a different county representing other clients when they are scheduled to be in court for their LID-appointed clients. This results in many continuances of Lake County cases, creating a backlog of cases for the courts, the prosecution, and the subcontractor attorneys, and forcing indigent defendants to return again and again to court before their cases can be resolved.

With 52 weeks in a year, and if there were no holidays and subcontractor attorneys were never absent for illness or vacation, there would be 260 business days in the year, and at eight hours per day that provides 2,080 working hours in a year. Under the NAC misdemeanor caseload standard of no more than 400 cases spread throughout a year, an attorney should have at least 5.2 hours to devote to each misdemeanor defendant's case. But the LID-appointed caseloads of misdemeanor subcontractor attorneys are sometimes at least as high as 450 misdemeanor cases all open at the same time, allowing only 4.6 hours per case, and leaving no time at all for that subcontractor attorney to be appointed to any additional cases during the year (not to mention for any non-LID work). The subcontractor attorneys must do all of the necessary preparation in every case, consulting with and advising each client so that the client can make informed decisions about exercising their legal rights, but the subcontractor attorneys cannot control when and how many of their cases are set for trial. For example, at the time of this evaluation, one subcontractor attorney had six misdemeanor cases set for trial during every week for the next ten weeks – 60 cases all needing trial preparation at the same time – without accounting for any time to devote to the subcontractor attorney's other 300 open case (not to mention for any non-LID work).

As summed up by a Lake County stakeholder: the subcontractor attorneys “have too many cases, and they're too busy, and should not be appointed new cases,” wishing that “the attorneys would decline to take cases” because of their excessive caseloads – “clients do not have their day in court.”

All of this leads to the conclusion that Lake County has established an indigent representation system that is devoid of basic oversight. Neither the State of California, Lake County, nor the LID partner attorneys know whether each indigent defendant in the Lake County Superior Court who is entitled to public counsel is in fact represented by a qualified and trained attorney,

who has sufficient time and resources to provide effective representation under independent supervision. The absence of systemic accountability has allowed deficiencies in the provision of direct services to indigent clients to become institutionalized, which the U.S. Supreme Court describes as the constructive denial of the right to counsel. And without oversight, Lake County lacks any mechanism to identify and rectify these systemic deficiencies.

Lake County should not be responsible for solving these problems alone. The State of California's dereliction of its constitutional obligations to provide effective representation to indigent people was recently the subject of a class action lawsuit that culminated by settlement in 2020. In an April 2016 ruling in that case, the trial court found that the state "cannot disclaim its constitutional responsibilities merely because it has delegated such responsibilities to its [counties]. . . . If the State created an indigent defense system that is systematically flawed and underfunded, . . . the State remains responsible, even if it delegated this responsibility to political subdivisions."

The Sixth Amendment Center makes three recommendations, one calling on the State of California to uphold its constitutional responsibilities, and the other two as stopgap measures until such time as the state does so:

Recommendation 1. Lake County policymakers should advocate for the State of California to form a legislative and/or gubernatorial committee to study and make recommendations about how best to fulfill the state's Sixth and Fourteenth Amendment responsibilities to ensure that each indigent defendant who faces the possible loss of liberty in a criminal or juvenile delinquency case receives effective assistance of counsel.

Recommendation 2. The Lake County Board of Supervisors should establish a non-partisan independent commission to oversee all aspects of indigent representation services and should fund the operations of the commission and the implementation of the methods and standards it adopts.

Recommendation 3. The Lake County Board of Supervisors should immediately establish an office of indigent representation services to carry out the day-to-day duties of the commission, headed by an executive director attorney selected by the commission. As quickly as possible, Lake County should provide adequate permanent staff to fulfill the commission's duties to ensure effective assistance of counsel to each indigent defendant.

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CHAPTER I. THE RIGHT TO COUNSEL AND THIS EVALUATION

A. The right to counsel in California

The Sixth Amendment to the United States Constitution states that in “all criminal prosecutions” the accused shall enjoy the right, among others, to “have the Assistance of Counsel for his defence.”¹ In 1963 in *Gideon v. Wainwright*, the U.S. Supreme Court declared it an “obvious truth” that anyone accused of a crime who cannot afford the cost of a lawyer “cannot be assured a fair trial unless counsel is provided for him.”² As the U.S. Supreme Court has noted, “[o]f all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.”³

Since *Gideon v. Wainwright*, the Sixth Amendment right to counsel means every person who is accused of a crime is entitled to have an attorney provided at government expense to defend them in all federal and state courts whenever that person is facing the potential loss of their liberty and is unable to afford their own attorney.⁴ In subsequent cases, the U.S. Supreme Court found that the Sixth Amendment requires the appointment of counsel for the poor threatened with jail time not only in felonies but also in misdemeanors,⁵ misdemeanors with suspended sentences,⁶ direct appeals,⁷ and appeals challenging a sentence imposed following a guilty plea where the sentence was not agreed to in advance.⁸ Children in delinquency proceedings, no less than adults in criminal courts, are entitled to appointed counsel when facing the loss of liberty.⁹ Moreover, the appointed lawyer needs to be more than merely a warm body with a bar card.¹⁰

¹ U.S. CONST. amend. VI.

² *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

³ *United States v. Cronin*, 466 U.S. 648, 654 (1984). *See also* *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932) (“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.”).

⁴ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁵ *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

⁶ *Alabama v. Shelton*, 505 U.S. 654 (2002).

⁷ *Douglas v. California*, 372 U.S. 353 (1963).

⁸ *Halbert v. Michigan*, 545 U.S. 605 (2005).

⁹ *In re Gault*, 387 U.S. 1 (1967). “[I]t would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase ‘due process.’ Under our Constitution, the condition of being a boy does not justify a kangaroo court.” *Id.* at 27-28. “A proceeding where the issue is whether the child will be found to be ‘delinquent’ and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child ‘requires the guiding hand of counsel at every step in the proceedings against him.’ . . . [T]he assistance of counsel is essential for purposes of waiver proceedings, [and] we hold now that it is equally essential for the determination of delinquency, carrying with it the awesome prospect of incarceration in a state institution until the juveniles reaches the age of 21.” *Id.* at 36.

¹⁰ As the Court noted in *Strickland v. Washington*, 466 U.S. 668, 685 (1984), “[t]hat a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command.”

The attorney must also be effective,¹¹ subjecting the prosecution’s case to “the crucible of meaningful adversarial testing.”¹²

The California constitution guarantees that “[t]he defendant in a criminal cause has the right... to have the assistance of counsel for the defendant’s defense”¹³ Although states are free to construe their own laws more broadly than the federal constitution has been construed, California provides that:

In criminal cases the rights of a defendant . . . to the assistance of counsel . . . shall be construed by the courts of this State in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States.¹⁴

California statutes guarantee that every indigent person, adult and juvenile, “who is charged with the commission of any contempt or offense triable in the superior courts” is entitled to public counsel “at all stages of the proceedings, including the preliminary examination,” and continuing on direct appeal.¹⁵ Crimes in California are either felonies, misdemeanors, or infractions.¹⁶ All misdemeanors and felonies in California carry the possibility of incarceration as a punishment,¹⁷ so a person charged with any of these crimes who cannot afford to hire their own attorney is entitled to have an attorney provided to represent them at public expense. Although a person charged with an infraction cannot be sentenced to jail,¹⁸ and so is not entitled to appointed counsel, the failure to appear in court on an infraction constitutes a misdemeanor.¹⁹

“States are free to provide greater protections in their criminal justice system than the Federal Constitution requires,”²⁰ but they cannot provide less. Though the federal Constitution does not

¹¹ *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (“It has long been recognized that the right to counsel is the right to the effective assistance of counsel.”). To be effective, an attorney must be reasonably competent, providing to the particular defendant in the particular case the assistance demanded of attorneys in criminal cases under prevailing professional norms, such as those “reflected in American Bar Association standards and the like.” *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984).

¹² *United States v. Cronin*, 466 U.S. 648, 656 (1984).

¹³ CAL. CONST. art. I, § 15.

¹⁴ CAL. CONST. art. I, § 24.

¹⁵ CAL. GOV. CODE § 27706(a) (West 2021); CAL. WELF. & INST. CODE §§ 633, 634, 634.6, 679 (West 2021); CAL. RULES OF CT. r. 5.663(c).

¹⁶ CAL. PENAL CODE § 16 (West 2021). California counties and cities are authorized to adopt ordinances, and a violation of an ordinance is by default a misdemeanor (and therefore aailable offense) unless the ordinance expressly makes it an infraction. CAL. CONST. art. XI, § 7; CAL. GOV. CODE §§ 25132, 36900 (West 2021).

¹⁷ CAL. PENAL CODE § 17 (West 2021).

California maintains the death penalty as an available punishment, and special statutes and rules govern the provision of counsel in capital cases. *See, e.g.*, CAL. CONST. art. I, § 27; CAL. PENAL CODE § 15 (West 2021). Executions are not currently being carried out due to a moratorium imposed by the Governor on March 13, 2019 and extending throughout his term in office. Cal. Governor’s Exec. Order No. N-09-19 (Mar. 13, 2019), <https://www.gov.ca.gov/wp-content/uploads/2019/03/3.13.19-EO-N-09-19.pdf>.

¹⁸ CAL. PENAL CODE § 19.6 (West 2021).

¹⁹ CAL. PENAL CODE § 853.7 (West 2021).

²⁰ *California v. Ramos*, 463 U.S. 992, 1014 (1983). *See, e.g.*, *Oregon v. Hass*, 420 U.S. 714, 719 (1975); *Cooper v.*

require it,²¹ California statutorily guarantees appointed counsel to indigent defendants in some later stages of a criminal case for defendants.²² California also statutorily provides appointed counsel to indigent parties in a significant number of civil proceedings.²³

California, 386 U.S. 58, 62 (1967); *O'Connor v. Johnson*, 287 N.W.2d 400, 405 (Minn. 1979) (“The states may, as the United States Supreme Court has often recognized, afford their citizens greater protection than the safeguards guaranteed in the Federal Constitution. Indeed, the states are ‘independently responsible for safeguarding the rights of their citizens.’”); *South Dakota v. Opperman*, 247 N.W.2d 673, 674 (S.D. 1976) (“There can be no doubt that this court has the power to provide an individual with greater protection under the state constitution than does the United States Supreme Court under the federal constitution.”).

²¹ *Murray v. Giarratano*, 492 U.S. 1, 10 (1989); *Pennsylvania v. Finley*, 481 U.S. 551, 555-57 (1987); *Ross v. Moffitt*, 417 U.S. 600, 610-12, 617-18 (1974).

²² These are:

- writ of certiorari to the United States Supreme Court from judgment of the California Supreme Court on direct appeal. CAL. GOV. CODE § 15421 (West 2021); CAL. PENAL CODE § 1240 (West 2021).
- in state postconviction proceedings, with the same attorney handling a federal habeas corpus petition where appointed and paid by the federal court. CAL. GOV. CODE §§ 68661.1, 68662 (West 2021); CAL. PENAL CODE § 1509 (West 2021).
- in state postconviction proceedings, a petition to vacate a conviction and be resentenced where a person was convicted of felony murder (or murder under the natural and probable consequences doctrine or other theory where malice is imputed to a person based solely on that person’s participation in a crime), attempted murder under the natural and probable consequences doctrine, or manslaughter. CAL. PENAL CODE § 1170.95 (eff. Jan. 1, 2022) (West 2022).

²³ These include:

- for the parents/guardian or adult relative of a child who is the subject of a juvenile court hearing in which the child may be adjudged a ward of the court. CAL. WELF. & INST. CODE §§ 658, 679 (West 2021).
- regarding the nature and conditions of pretrial detention, of preadjudication restrictions, of treatment, or of punishment, for both adults and juveniles. CAL. GOV. CODE § 27706(g) (West 2021).
- involuntary extended commitment proceedings of persons determined to be “insane” at the time of the offense. CAL. PENAL CODE § 1026.5 (West 2021).
- involuntary commitment proceedings of “mentally disordered” offenders. CAL. PENAL CODE § 2972 (West 2021).
- indeterminate commitment proceedings of “sexually violent predators.” CAL. WELF. & INST. CODE § 6603(a) (West 2021).
- for “collection of wages and other demands” for \$100 or less if the attorney believes “the claim urged is valid and enforceable.” CAL. GOV. CODE § 27706(b) (West 2021).
- defense of civil litigation if the attorney believes “the person is being persecuted or unjustly harassed.” CAL. GOV. CODE § 27706(c) (West 2021).
- involuntary mental health proceedings. CAL. GOV. CODE § 27706(d) (West 2021); CAL. WELF. & INST. CODE §§ 5150, 5226, 5256.4, 5276, 5302, 5326.7(e), 5346 (West 2021).
- involuntary conservatorship proceedings. CAL. GOV. CODE § 27706(d) (West 2021); CAL. PROB. CODE §§ 1471, 1826, 1828 (West 2021); CAL. WELF. & INST. CODE § 5365 (West 2021).
- for a child, without regard to indigency, who is the subject of a juvenile court dependency proceeding “unless the court finds that the child . . . would not benefit from the appointment of counsel” (and the attorney appointed to represent the child may be a district attorney, public defender, or other member of the bar). CAL. WELF. & INST. CODE §§ 317(c), 681, 681.5 (West 2021).
- for the parents/guardian of child who is the subject of a juvenile court dependency proceeding involving out-of-home care for the child. CAL. WELF. & INST. CODE § 317(b) (West 2021).
- for putative fathers in proceedings to determine paternity in which the state appears as a party or appears on behalf of a mother or child. *Salas v. Cortez*, 593 P.2d 226 (Cal. 1979) (due process requires appointment of counsel to represent indigent defendants in proceedings to determine paternity in which the state appears as a party or appears on behalf of a mother or child).

B. The provision of the right to counsel in Lake County

In 1963, the U.S. Supreme Court held in *Gideon v. Wainwright* that providing and protecting the Sixth Amendment right to effective assistance of counsel for the indigent accused in state courts is a constitutional obligation of the states under the due process clause of the Fourteenth Amendment.²⁴ California has delegated to its counties the responsibility for providing effective assistance of counsel to indigent people at the trial court level in all of the types of cases for which California guarantees a right to counsel.²⁵ The U.S. Supreme Court has never directly announced whether it is unconstitutional for a state to delegate its right to counsel responsibilities to its counties. However, when a state chooses to place this responsibility on local governments, the state must guarantee not only that those local governments are capable of providing adequate representation but also that they are in fact doing so.²⁶

Today in Lake County, all court-appointed representation of indigent people at the trial court level is provided by private attorneys who are not government employees. This is a two-part system.

- (1) Lake County contracts with an informal partnership of private attorneys, collectively known as Lake Indigent Defense LLP (LID). At the time of this evaluation there are three LID partner attorneys. The LID partner attorneys subcontract with individual private attorneys including themselves, to represent indigent people in all the types of cases that receive appointed counsel (other than juvenile dependency and family law proceedings), whenever they are appointed by the superior court to do so.²⁷
- (2) The Lake County Superior Court appoints on a case-by-case basis private attorneys to

²⁴ *Gideon v. Wainwright*, 372 U.S. 335, 341-45 (1963) (“[T]hose guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. . . . [A] provision of the Bill of Rights which is ‘fundamental and essential to a fair trial’ is made obligatory upon the States by the Fourteenth Amendment. . . . [I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”).

²⁵ Representation of indigent people on direct appeal and in later stages of cases is not the responsibility of the counties.

²⁶ *Cf. Robertson v. Jackson*, 972 F.2d 529, 533 (4th Cir. 1992) (although administration of a food stamp program was turned over to local authorities, “‘ultimate responsibility’ . . . remains at the state level.”); *Osmunson v. State*, 17 P.3d 236, 241 (Idaho 2000) (where a duty has been delegated to a local agency, the state maintains “ultimate responsibility” and must step in if the local agency cannot provide the necessary services); *Claremont School Dist. v. Governor*, 794 A.2d 744 (N.H. 2002) (“While the State may delegate [to local school districts] its duty to provide a constitutionally adequate education, the State may not abdicate its duty in the process.”); Letter and white paper from American Civil Liberties Union Foundation *et al* to the Nevada Supreme Court, regarding Obligation of States in Providing Constitutionally-Mandated Right to Counsel Services (Sept. 2, 2008) (“While a state may delegate obligations imposed by the constitution, ‘it must do so in a manner that does not abdicate the constitutional duty it owes to the people.’”).

²⁷ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer). See Lake County Administrative Office, Request for Proposal Number: 1012-0217 For Contract Indigent Defense Services ¶ 1.1 (Feb. 21, 2017) (stating that “All services related to juvenile dependency and family law proceedings are procured and contracted directly by the Courts . . .”).

represent indigent people in juvenile dependency and family law proceedings,²⁸ and the court also appoints private attorneys on a case-by-case basis in all other types of trial-level cases where none of the LID subcontractor attorneys are available. Except for juvenile dependency and family court proceedings, no private attorney outside of LID's subcontractor attorneys has been appointed to represent an indigent person in any case since LID was awarded the county contract for indigent representation services on May 7, 2017.

C. This evaluation

Lake County's existing contract with three private attorneys collectively known as LID concludes on December 31, 2022,²⁹ and the county desires to determine how it can most effectively and efficiently fulfill the obligation of providing indigent representation services that has been delegated to it by the state. It is toward that end that Lake County commissioned the Sixth Amendment Center to conduct this evaluation. This evaluation is limited in scope to the indigent representation services that Lake County contracts to provide through LID – it does not include appointed representation in juvenile dependency cases or family law proceedings, nor does it include appointed representation provided in any type of case other than through the LID contract.

Methodology. The Sixth Amendment Center independently and objectively evaluates indigent representation systems using Sixth Amendment case law and national standards for right to counsel services as the uniform baseline measure for providing attorneys to indigent people, along with the requirements of local and federal laws. The Sixth Amendment Center's evaluation in Lake County has been carried out through four basic components.

Legal research and analysis. Every state in the country has its own substantive and procedural law – through its constitution, statutes, rules, regulations, and case law – that operates differently than that of every other state. In addition, counties and cities, as well as the courts located within them, often have their own governing laws, rules, and policies. The Sixth Amendment Center independently researched the relevant law of California, Lake County, and the Lake County Superior Court and analyzed its internal interactions and its interactions with federal law and national standards, in order to understand and explain the workings of the indigent representation system within Lake County.

Data collection and analysis. Information about how a jurisdiction provides right to counsel services exists in a variety of forms, from statistical information to policies and procedures. The Sixth Amendment Center obtained and analyzed extensive amounts of hard copy and electronic information.

Court observations. Right to counsel services in any jurisdiction involve interactions among at least three critical processes: (1) the process individual people experience as their cases

²⁸ See Lake County Administrative Office, Request for Proposal Number: 1012-0217 For Contract Indigent Defense Services ¶ 1.1 (Feb. 21, 2017) (stating that “All services related to juvenile dependency and family law proceedings are procured and contracted directly by the Courts . . .”).

²⁹ “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

advance from arrest, summons, or petition through disposition; (2) the process the appointed attorney experiences while representing each person at the various stages of a case; and (3) the substantive laws and procedural rules that govern the justice system in which indigent representation is provided. To understand these processes, the Sixth Amendment Center conducted both remote and in-person courtroom observations in the Lake County Superior Court during October and November 2021.

Interviews. No individual component of the justice system operates in a vacuum. Rather, the decisions of one component necessarily affect another. Because of this, the Sixth Amendment Center conducted interviews orally and in writing with a broad cross-section of justice system stakeholders in Lake County, including judges, court administrators, prosecutors, defense attorneys, court personnel, law enforcement, and county officials and their staff.

Assessment criteria. The criteria used to assess the effectiveness of indigent representation systems and the attorneys who work within them come primarily from two U.S. Supreme Court cases that were decided on the same day: *United States v. Cronic*³⁰ and *Strickland v. Washington*.³¹ *Strickland* is used after a case is final to determine retrospectively whether the lawyer provided ineffective assistance of counsel, applying the two-pronged test of whether the appointed lawyer's actions were unreasonable and prejudiced the outcome of the case. *Cronic* explains that, if certain systemic factors are present (or necessary factors are absent) at the outset of a case, then a court should presume that ineffective assistance of counsel will occur.

Hallmarks of a structurally sound indigent representation system under *Cronic* include the early appointment of qualified and trained attorneys, who have sufficient time and resources to provide effective representation under independent supervision. The absence of any of these factors can show that a system is presumptively providing ineffective assistance of counsel.

UNDERSTANDING *CRONIC* THROUGH THE AMERICAN BAR ASSOCIATION'S ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Adopted by the American Bar Association House of Delegates in 2002, the *ABA Ten Principles* are self-described as constituting “the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.” The *Ten Principles* include the markers of a *Cronic* analysis: independence of the defense function (principle 1); effective representation by

counsel at all critical stages (principles 3 and 7); sufficiency of time and resources (principles 4, 5, and 8); and qualifications, supervision, and training of attorneys (principles 6, 9, and 10).

AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2002), available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf.

³⁰ 466 U.S. 648 (1984).

³¹ 466 U.S. 668 (1984).

THE CORONAVIRUS PANDEMIC & LAKE COUNTY'S JUSTICE SYSTEM

This evaluation was conducted during the time that the United States, along with the rest of the world, was struggling through the coronavirus pandemic. As has been widely reported, the novel coronavirus that causes the covid-19 disease was first detected in late-December 2019 in Wuhan, Hubei Province in China.¹ The first U.S. case was confirmed on January 21, 2020 in Washington state.² On March 11, 2020, the World Health Organization officially declared the coronavirus outbreak a pandemic.³

With 53 confirmed cases of the coronavirus in California, Governor Gavin Newsom formally declared a state of emergency on March 4, 2020.⁴ Within two weeks, California was placed under a statewide “shelter in place” order.⁵

Lake County declared a local health emergency on March 9, 2020.⁶ The county issued its first “shelter in place” order to go into effect on March 19, 2020, which was extended and remained in effect until May 21, 2020 when certain activities were permitted to resume.⁷

On March 23, 2020, the Chief Justice of California authorized superior courts throughout the state to adopt or amend rules to address the pandemic, allowing rule changes to take effect immediately without advance circulation for public

¹ *WHO Statement regarding cluster of pneumonia cases in Wuhan, China*, WORLD HEALTH ORGANIZATION (Jan. 9, 2020), <https://www.who.int/china/news/detail/09-01-2020-who-statement-regarding-cluster-of-pneumonia-cases-in-wuhan-china>; *Coronavirus Disease 2019 (COVID-19)*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/media/dpk/diseases-and-conditions/coronavirus/coronavirus-2020.html>.

² *First Travel-related Case of 2019 Novel Coronavirus Detected in United States*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

³ *WHO Director-General's opening remarks at the media briefing on COVID-19 – 11 March 2020*, WORLD HEALTH ORGANIZATION (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁴ California Governor's Proclamation of a State of Emergency (Mar. 4, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

⁵ California Governor's Exec. Order N-26-20 (Mar. 13, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.13.20-EO-N-26-20-Schools.pdf>.

⁶ County of Lake Health Services Dept., Order of the Health Officer of the County of Lake No. C20-3, Directing all Individuals Living in the County to Shelter at their Place of Residence (Mar. 18, 2020), <http://www.lakecountyca.gov/Government/PressReleases/c20-3.htm>. Lake County's first confirmed case of the coronavirus was on April 5, 2020, and its first covid-19 related death was on July 3, 2020. County of Lake Health Services Dept., Press Release, *First Case of COVID-19 Identified in Lake County* (Apr. 5, 2020), <http://health.co.lake.ca.us/Assets/Departments/Health/Public+Health+Division/COVID-19/FirstCase.pdf>; County of Lake Health Services Dept., Press Release, *First COVID-19 Related Death in Lake County* (July 3, 2020), <http://health.co.lake.ca.us/Assets/Departments/Health/Public+Health+Division/Press+Releases/2020/7.3.20+-First+COVID-19-Related+Death+in+Lake+County.pdf>.

⁷ County of Lake Health Services Dept., Order of the Lake County Health Officer No. C20-3, Directing all Individuals Living in the County to Shelter at Their Place of Residence (Mar. 18, 2020); County of Lake California, Media Releases, *Shelter-in-Place Modified and Extended to 5/3, Lake County Schools to Deliver Distance-Based Instruction through End of School Year* (Apr. 6, 2020), <http://www.lakecountyca.gov/Government/PressReleases/covid040620.htm>; County of Lake Health Services Dept., Order of the Lake County Health Officer No. C20-06, Requiring Members of the Public to Wear Face Coverings When Entering Local Businesses and Facilities (May 21, 2020), <http://health.co.lake.ca.us/Assets/Departments/Health/Public+Health+Division/COVID-19/20-06.pdf>.

comment.⁸ Subsequently, the California Judicial Council approved various emergency rules of court providing for continued court operations amidst the challenges brought by the pandemic, including authorizing remote hearings and use of remote technology, temporarily setting bail statewide at \$0 for most misdemeanor and lower-level felonies, and extending deadlines for certain hearings in criminal cases.⁹ Through

January 2022 as a result of the pandemic, the Lake County Superior Court received six court emergency orders from the state judicial branch and issued 24 court orders that changed its ordinary court procedures.¹⁰

⁸ Judicial Council of California, Statewide Order by Hon. Tani G. Cantil-Sakauye, Chief Justice of California and Chair of the Judicial Council, at 2 (Mar. 23, 2020), <https://newsroom.courts.ca.gov/sites/default/files/newsroom/2020-09/Statewide%20Order%20by%20the%20Chief%20Justice-Chair%20of%20the%20Judicial%20Council%203-23-2020.pdf>. The chief justice's order of March 23, 2020 also suspended jury trials for 60 days; that order has since expired. *Id.*

⁹ *COVID-19 News Center: Judicial Branch Emergency Action*, CAL. CT. NEWSROOM, <https://newsroom.courts.ca.gov/covid-19-news-center/judicial-branch-emergency-actions>; CAL. RULES CT., Emergency Rules Related to COVID-19, Emergency Rule 3 (Use of technology for remote appearances) and Emergency Rule 5 (Personal appearance waivers of defendants during health emergency), <https://www.courts.ca.gov/documents/appendix-i.pdf>; CAL. RULES CT., Emergency Rules Related to COVID-19, Emergency Rule 4 (Emergency Bail Schedule, repealed effective June 20, 2020), <https://www.courts.ca.gov/documents/appendix-i.pdf>. Although the statewide emergency bail schedule was repealed effective June 20, 2020, local “courts may still keep COVID-19 emergency bail schedule or reduced bail schedules.” *COVID-19 News Center: Court Emergency Orders*, CALIFORNIA COURT NEWSROOM, <https://newsroom.courts.ca.gov/covid-19-news-center/judicial-branch-emergency-actions>; See e.g., CALIFORNIA JUDICIAL COUNCIL, Statewide Emergency Order by Tani G. Cantil-Sakauye, Chief Justice of California and Chair of the Judicial Council (Apr. 29, 2020), https://newsroom.courts.ca.gov/sites/default/files/newsroom/document/Chief_Justice_Statewide_Emergency-Order_04292020S.pdf; CALIFORNIA JUDICIAL COUNCIL, Statewide Emergency Order by Tani G. Cantil-Sakauye, Chief Justice of California and Chair of the Judicial Council

(June 10, 2020), <https://newsroom.courts.ca.gov/sites/default/files/newsroom/document/StatewideOrderonArraignmentsbyCJ-ChairofJC%25206-10-2020.pdf>.

¹⁰ *COVID-19 News Center: Court Emergency Orders*, CALIFORNIA COURT NEWSROOM, <https://newsroom.courts.ca.gov/covid-19-news-center/judicial-branch-emergency-actions>; *Information Regarding COVID-19 and Court Operations*, SUPERIOR COURT COUNTY OF LAKE, <https://www.lake.courts.ca.gov/gi/4853.htm>.

CHAPTER II. THE JUSTICE SYSTEM IN LAKE COUNTY

Criminal justice is often referred to metaphorically as a three-legged stool, relying on judges, prosecutors, and defense attorneys in equal measure. Each leg of the stool has different responsibilities, but the structures, policy decisions, and procedures of each affect the others.

The trial-level right to counsel in Lake County is carried out in the superior court. Decisions about the number and type of criminal cases in the superior court are made by law enforcement officers as they make arrests and by prosecutors in the district attorney's office as they institute cases. The indigent representation system in Lake County is layered on top of the court and prosecution. The indigent representation system has no control over its own workload, and each indigent defense system attorney must effectively represent each and every person to whom they are appointed.

A. The trial court

In each of California's 58 counties, there is one superior court that is the only trial court, and it has original jurisdiction over all cases, habeas corpus proceedings, and proceedings for extraordinary relief.³² At the time of this evaluation, the Lake County Superior Court has four judges, each elected countywide to a six-year term.³³ The Lake County Superior Court judges elect, by majority vote, a presiding judge and an assistant presiding judge.³⁴ The presiding judge serves a three-year term, "distribute[s] the business of the court among the judges, and prescribe[s] the order of business."³⁵ The assistant presiding judge undertakes the roles of the presiding judge in the presiding judge's absence.³⁶

There are two separate courthouses in Lake County, one located in the county seat of Lakeport and one located in Clearlake,³⁷ but all cases in which counsel is appointed to represent indigent people are heard by one of the four superior court judges at the main courthouse in Lakeport.³⁸

³² CAL. CONST. art. VI, §§ 4, 10.

³³ CAL. CONST. art. VI, § 16; *Court Calendars*, THE SUPERIOR COURT OF CALIFORNIA COUNTY OF LAKE, https://www.lake.courts.ca.gov/gi/court_calendars.htm. The specific number of judges assigned to the superior court in each county is established by statute, but to the extent that the legislature makes appropriation for them there are 100 or more additional superior court judges who are allocated across the state according to a judicial needs study carried out by the Judicial Council. CAL. GOV. CODE §§ 69580 through 69611, 69614, 69614.2, 69614.3, 69615 through 69619.6 (West 2021). All superior court judges must be, for 10 years before taking office, either a licensed California attorney or a California judge of a court of record. CAL. CONST. art. VI, §§ 1, 15. While in office, they may not practice law and may not have other public employment or public office except a part-time teaching position. CAL. CONST. art. VI, §§ 1, 17. The legislature establishes the compensation for judges, which may not be reduced during their terms of office, and provides for their retirement. CAL. CONST. art. III, § 4; CAL. CONST. art. VI, §§ 19, 20; CAL. GOV. CODE §§ 68202, 68203 (West 2021).

Lake County Superior Court also has a commissioner who presides over non-jailable infractions and other civil matters that are not relevant to this evaluation.

³⁴ SUPERIOR COURT, STATE OF CALIFORNIA COUNTY OF LAKE LOCAL RULES, r. 2.1, 2.2 (eff. Jan. 1, 2020).

³⁵ SUPERIOR COURT, STATE OF CALIFORNIA COUNTY OF LAKE LOCAL RULES, r. 2.1. CAL. GOV. CODE § 69508 (West 2021).

³⁶ SUPERIOR COURT, STATE OF CALIFORNIA COUNTY OF LAKE LOCAL RULES, r. 2.2. CAL. GOV. CODE §§ 69508, 69508.5 (West 2021).

³⁷ Each superior court is required to have chambers at its county seat, but it can also choose to hold sessions of court at other locations, holding as many sessions of court at the same time as its number of judges. CAL. GOV. CODE §§ 24261, 69740, 69741.5 (West 2021).

³⁸ Cases heard at the Lakeport courthouse are adult criminal, juvenile delinquency, appeals, habeas corpus, probate,

APPELLATE COURTS AND COURT ADMINISTRATION

The California Supreme Court is the court of last resort, may transfer any case on appeal from a court of appeal to itself, has jurisdiction over direct appeals in death penalty cases, and has original jurisdiction in habeas corpus proceedings and proceedings for extraordinary relief.¹ The state's supreme court is made up of the chief justice and six associate justices, all elected statewide to 12-year terms.²

The 58 counties of the state are divided into six districts, with a court of appeal sitting in each district.³ Every court of appeal has appellate jurisdiction over all cases originating in the superior courts and has original jurisdiction in habeas corpus proceedings and proceedings for extraordinary relief.⁴ Each court of appeal has one or more divisions, and every division has a presiding justice and two or more associate justices.⁵ Lake County is in the First Appellate District, along with the counties of San Francisco, Marin, Sonoma, Napa, Solano, Mendocino, Humboldt, Del Norte, Contra Costa, Alameda, and San Mateo. The First Appellate District has five divisions that each have four justices, all sitting in San Francisco.⁶ Courts of appeal justices are elected districtwide to 12-year terms.⁷

The Judicial Council is a body within the judicial branch of California government that took over all functions previously performed by the administrative office of the courts.⁸ The Judicial Council is the rule-making body for the entire judicial system, and it promulgates forms used in every court throughout the state.⁹

¹ CAL. CONST. art. VI, §§ 10, 11, 12.

² CAL. CONST. art. VI, §§ 2, 16(a).

³ CAL. CONST. art. VI, § 3; CAL. GOV. CODE § 69100 (West 2021).

⁴ CAL. CONST. art. VI, §§ 10, 11.

⁵ CAL. CONST. art. VI, § 3.

⁶ CAL. GOV. CODE §§ 69100(a), 69101 (West 2021).

⁷ CAL. CONST. art. VI, § 16(a).

⁸ CAL. CONST. art. VI, § 6; CAL. CONST. § 68500.3 (West 2021).

⁹ CAL. CONST. art. VI, § 6(c), (d); CAL. CONST. § 68511 (West 2021).

The main courthouse in Lakeport is located on the fourth floor of a building that was built in 1968 and that is shared with other county agencies, including the district attorney's office and the board of supervisors.³⁹

B. The prosecution

The district attorney for Lake County is elected countywide to a four-year term.⁴⁰ The district attorney is the “public prosecutor,” responsible for prosecuting all crimes in the county and prosecuting actions for recovery of debts, fines, penalties, and forfeitures due to the state or county.⁴¹

The district attorney's office in Lake County is divided into two divisions.⁴² The criminal division operates out of the same building as the main superior courthouse and county administration office, and it is responsible for prosecuting felony, misdemeanor, juvenile delinquency, and asset forfeiture cases in Lake County Superior Court. The victim-witness division operates out of a separate building located nearby, and it is described as the “victim's liaison to law enforcement and the prosecutor.”⁴³

C. The indigent representation system

The U.S. Supreme Court held in *Gideon v. Wainwright* that providing and protecting the Sixth Amendment right to effective assistance of counsel for the indigent accused in state courts is a constitutional obligation of the states under the due process clause of the Fourteenth Amendment.⁴⁴ As a result, every state in the nation must have a system for providing an attorney

guardianship, family law, juvenile dependency, mental health, eminent domain, equity, real property, and civil cases at or above \$25,000. *Lakeport Division*, THE SUPERIOR COURT OF CALIFORNIA COUNTY OF LAKE, <https://www.lake.courts.ca.gov/gi/lakeport.htm>.

Cases heard at the Clearlake courthouse are infractions, small claims, unlawful detainers, and child support. *Clearlake Branch*, THE SUPERIOR COURT OF CALIFORNIA COUNTY OF LAKE, <https://www.lake.courts.ca.gov/gi/clearlake.htm>.

³⁹ A new superior court facility is under construction in Lakeport. In 2011, the judicial council acquired a site located at 675 Lakeport Boulevard to build a modern two-story courthouse because the current Lakeport courthouse is “severely overcrowded, has seismic and foundation concerns, and lacks adequate security.” Construction was expected to be completed in summer 2021 but was not yet complete as of December 2021. See *Lake County, New Lakeport Courthouse*, CALIFORNIA COURTS THE JUDICIAL BRANCH OF CALIFORNIA, <https://www.courts.ca.gov/facilities-lake.htm>.

⁴⁰ CAL. CONST. art. XI, §§ 1, 4; CAL. GOV. CODE §§ 24000, 24009, 24200 (West 2021). Each county's elected district attorney must be a registered voter of the county and admitted to practice before the California Supreme Court. CAL. CONST. art. XI, §§ 1, 4; CAL. GOV. CODE §§ 24000, 24001, 24002, 24009, 24200 (West 2021). While in office, the district attorney cannot represent any person charged with a crime in any county and cannot represent any private plaintiff against any city, district, or political subdivision of the state. CAL. GOV. CODE §§ 26540, 26543 (West 2021).

⁴¹ CAL. GOV. CODE §§ 26500, 26501, 26502, 26521 (West 2021).

⁴² *About Us*, DISTRICT ATTORNEY COUNTY OF LAKE CALIFORNIA, http://www.lakecountyca.gov/Government/Directory/District_Attorney/About_Us.htm.

⁴³ *Victim-Witness Division*, DISTRICT ATTORNEY COUNTY OF LAKE CALIFORNIA, http://www.lakecountyca.gov/Government/Directory/District_Attorney/Victim-Witness_Division.htm.

⁴⁴ *Gideon v. Wainwright*, 372 U.S. 335, 341-45 (1963) (“[T]hose guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. . . . [A] provision of the Bill of Rights which is ‘fundamental and essential to a fair trial’ is made obligatory upon the States by the Fourteenth Amendment. . . . [I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . . The right of one charged with crime to counsel may not be deemed funda-

to represent each indigent defendant, adult or child, who is charged with a crime and faces the possible loss of their liberty. Because the “responsibility to provide defense services rests with the state,” national standards as summarized in the *ABA Ten Principles of a Public Defense Delivery System* unequivocally declare “there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.”⁴⁵

Despite these requirements by the U.S. Supreme Court and national standards, California has delegated to its counties the responsibility for providing effective assistance of counsel to indigent people at the trial court level in all the types of cases for which California guarantees a right to counsel.⁴⁶ When a state chooses to delegate its constitutional responsibilities to local governments, the state must guarantee not only that those local governments are capable of fulfilling those responsibilities but also that they are in fact doing so.⁴⁷

The State of California requires each county board of supervisors, or the individual superior court judges in the county, or the board and judges collectively, to determine the method(s) used to provide representation to indigent people at the trial court level. In each county, indigent people may be represented by a public defender office, a private attorney under contract, a private attorney appointed on a case-by-case basis, or almost any combination of these methods.⁴⁸ No matter what methods are used to provide representation to indigent people in the trial court, California makes the county responsible at the outset for funding all trial-level indigent representation services.⁴⁹

The Lake County board of supervisors has not chosen to establish a public defender office.⁵⁰ Instead, all court-appointed representation of indigent people at the trial court level is provided through a two-part system of private attorneys:

- Lake County contracts with an informal partnership of private attorneys, collectively known as Lake Indigent Defense LLP (LID). At the time of this evaluation there are three LID partner attorneys. The LID partner attorneys subcontract with individual private attorneys including themselves, to represent indigent people in all the types of cases

mental and essential to fair trials in some countries, but it is in ours.”).

⁴⁵ AMERICAN BAR ASS’N, *ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM*, Principle 2 cmt. (2002).

⁴⁶ Representation of indigent people on appeal and in later stages of cases is not the responsibility of the counties and is outside the scope of this evaluation.

⁴⁷ *Cf. Robertson v. Jackson*, 972 F.2d 529, 533 (4th Cir. 1992) (although administration of a food stamp program was turned over to local authorities, “ultimate responsibility” . . . remains at the state level.”); *Osmunson v. State*, 17 P.3d 236, 241 (Idaho 2000) (where a duty has been delegated to a local agency, the state maintains “ultimate responsibility” and must step in if the local agency cannot provide the necessary services); *Claremont School Dist. v. Governor*, 794 A.2d 744 (N.H. 2002) (“While the State may delegate [to local school districts] its duty to provide a constitutionally adequate education, the State may not abdicate its duty in the process.”); Letter and white paper from American Civil Liberties Union Foundation *et al* to the Nevada Supreme Court, regarding Obligation of States in Providing Constitutionally-Mandated Right to Counsel Services (Sept. 2, 2008) (“While a state may delegate obligations imposed by the constitution, ‘it must do so in a manner that does not abdicate the constitutional duty it owes to the people.’”).

⁴⁸ CAL. GOV. CODE § 27700 (West 2021); CAL. PENAL CODE § 987.2 (West 2021).

⁴⁹ Funding for indigent representation services is discussed in detail in chapter IV of this report.

⁵⁰ Reportedly, Lake County has contracted with individual private attorneys to provide indigent representation services “for decades” going back at least to the 1980s, and at one point before or during this period the county created a public defender office that existed for approximately one year.

that receive appointed counsel (other than juvenile dependency and most family law proceedings), whenever they are appointed by the superior court to do so.⁵¹

- The Lake County Superior Court appoints on a case-by-case basis private attorneys to represent indigent people in juvenile dependency and most family law proceedings,⁵² and the court also appoints private attorneys on a case-by-case basis in all other types of trial-level cases where none of the LID subcontractor attorneys are available.⁵³

This evaluation is limited in scope to the indigent representation services that Lake County contracts to provide through LID.

The county’s contract with the Lake Indigent Defense LLP partner attorneys. Lake County first contracted in 2017 with the private attorneys collectively referred to as Lake Indigent Defense (LID) to provide trial-level indigent representation services.⁵⁴ The initial contract has

⁵¹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer). *See* Lake County Administrative Office, Request for Proposal Number: 1012-0217 For Contract Indigent Defense Services ¶ 1.1 (Feb. 21, 2017) (stating that “All services related to juvenile dependency and family law proceedings are procured and contracted directly by the Courts . . .”).

⁵² *See* Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 1.1 (Feb. 21, 2017) (stating that “All services related to juvenile dependency and family law proceedings are procured and contracted directly by the Courts . . .”); “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer) (requiring LID to handle paternity cases, which are a type of family law proceeding).

⁵³ It is reported that there has never been an instance in which all of the LID subcontract attorneys were unavailable, and so the court has not been required to appoint counsel on this basis.

⁵⁴ “Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan (for the period of May 7, 2017 through May 6, 2018).

Since 1999, Lake County has reportedly contracted with a series of different legal entities to administer indigent representation services. Where previously the county had contracted directly with individual attorneys to provide representation, from 1999 to 2005 the county contracted with a “management company,” Indigent Representation Administration, that then subcontracted the work to individual private attorneys. *See Indigent Defense Services Blasted*, THE NATIONAL LAWYER JOURNAL (July 12, 2004); *Public Defender Services*, COUNTY OF LAKE 2004/2005 GRAND JURY REPORT; *Official Minutes of the Lake County Board of Supervisors Meeting Held August 2, 2005*. From 2005 through 2014, the county contracted with Lake Legal Defense Services, Inc. *See* “Indigent Criminal Legal Defense Services Agreement” between the County of Lake and Lake Legal Defense Services, Inc., October 1, 2005 to September 30, 2006 (eff. as amended Oct. 1, 2005 through Dec. 31, 2014). From 2014 through 2017, the county contracted with Lake Defense, Inc. “Indigent Criminal Legal Defense Services Agreement” between the County of Lake and Lake Defense, Inc. (eff. as amended Dec. 16, 2014 through Sept. 30, 2017).

been replaced and/or extended by amendment seven times,⁵⁵ and the existing LID contract concludes on December 31, 2022.⁵⁶

On February 21, 2017, Lake County issued a request for proposals from “from well-qualified individuals, firms, or associations of firms, interested in providing indigent public defense services in Lake County, including primary and multiple levels of conflict representation.”⁵⁷ In response, two private attorneys, each with separate private law practices, jointly submitted a proposal “to serve as co-contract administrators” of indigent defense services under the collective name of “Lake Indigent Defense (LID).”⁵⁸ Lake County awarded the contract to the two attorneys, “also known collectively as Lake Indigent Defense,” to commence on May 7, 2017.⁵⁹

Under the original 2017 contract, the two attorneys are named as the “contractor” and they are “jointly and severally” responsible for carrying out the contract obligations.⁶⁰ Over the years since then, the identities and number of the attorneys named as “contractor” have occasionally changed, but it has always been the individual attorneys who are named as the “contractor” and are responsible for carrying out the contract.⁶¹ In other words, Lake Indigent Defense (LID) is

⁵⁵ “Amendment No. 1 to the Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan (shortening the contract to end on January 31, 2018, and modifying the payment terms); “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan (for the period of February 1, 2018 through June 30, 2019); “Amendment No. 2 to Agreement for Indigent Defense Between County of Lake and Lake Indigent Defense LLP” (extending the contract to end on October 31, 2019); “Amendment No. 3 to the Agreement for Indigent Defense Services Between the County of Lake and Lake Indigent Defense, LLP” (extending the contract to end on December 31, 2020, and modifying the payment terms); “Amendment No. 4 to the Agreement for Indigent Defense Services Between the County of Lake and Lake Indigent Defense, LLP” (clarifying the payment terms of the contract ending on December 31, 2020); “Amendment No. 4 (*sic*) to the Agreement for Indigent Defense Services Between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2021, and modifying the payment terms); “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁵⁶ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁵⁷ Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 1.1 (Feb. 21, 2017).

⁵⁸ Letter from Anakalia K. Sullivan and David Markham to Lake County Board of Supervisors (no date) (in response to the Lake County Administrative Office’s Request for Proposal Number 1012-0217).

⁵⁹ “Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan (for the period of May 7, 2017 through May 6, 2018).

⁶⁰ “Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan ¶ 1.B. (for the period of May 7, 2017 through May 6, 2018).

⁶¹ The original contract was terminated early because one of the original contractor attorneys was appointed as a superior court judge. *See* “Amendment No. 1 to the Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan (shortening the contract to end on January 31, 2018, and modifying the payment terms). This necessitated a new contract, identifying Mitchell Hauptman and Anakalia K. Sullivan as the contractor attorneys responsible for carrying out the contract. “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan (for the period of February 1, 2018 through June 30, 2019). The most recent amendment to the contract, which is the existing agreement that terminates on December 31, 2022, added Thomas Feimer as the third contractor attorney. “Amendment No. 6 to the

simply a short-hand used within the county to refer collectively to the individual attorneys who have contracted with the county to carry out the contract. As a practical matter, there are two different aspects of the contract:

- the administration of the contract, which is performed by the LID partner attorneys who are named as the “contractor,” and for which they pay themselves a flat annual fee; and
- the direct representation of indigent people, which is provided pursuant to a series of subcontracts that the LID partner attorneys enter into with themselves and other private attorneys.

Lake County’s contract with the LID partner attorneys requires them to ensure representation is provided to indigent defendants, whenever appointed by the Lake County Superior Court, in an unlimited number of cases of specified types.⁶² The LID partner attorneys are required to provide at least 14 attorneys to be available for appointment under the contract, and each of those attorneys must have offices separate from each other to avoid conflicts of interest.⁶³ Among those 14 attorneys, there must be at least 7 available in any given felony case and at least 12 available in any given misdemeanor case (in order to provide representation to up to that number

Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁶² “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.A., 2.B. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

The types and stages of cases for which they are responsible as specified in the contract are:

- i. All non-capital criminal cases;
- ii. Capital Cases;
- iii. Civil Contempt cases;
- iv. Paternity cases;
- v. Welfare and Institutions Code 602 cases (Juvenile Delinquency);
- vi. Writs of Habeas Corpus stemming from underlying criminal cases;
- vii. Conservatorship proceedings pursuant to Welfare and Institutions Code sections 5350, et seq., Probate Code sections 1800, et seq., and Probate Code sections 1470, 1471, and 2365.5(f)(1)
- viii. Probation violations;
- ix. Motions for new trials;
- x. Motions to withdraw a plea;
- xi. Any proceedings in the appellate court prior to conviction which are deemed necessary by CONTRACTOR;
- xii. Any appeals of misdemeanor cases to the appellate department of the Superior Court which are deemed necessary by the CONTRACTOR

“Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.B. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁶³ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.F. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

of indigent codefendants in a single case).⁶⁴ The LID partner attorneys are also required to “retain a sufficient number of investigators . . . at all times to provide investigative services adequate to service the projected caseload.”⁶⁵ The LID partner attorneys are responsible for all overhead and case-related expenses in all cases appointed under the contract, except for certain expressly delineated “ancillary services” expenses that the county agrees to pay⁶⁶ (as discussed more fully in chapter IV).

In exchange for these services, Lake County pays a flat annual fee to the LID partnership, paid in monthly installments, and allows for the possibility of additional compensation for “complex cases requiring extraordinary attorney time” and hourly rate compensation if appointed to a death penalty case.⁶⁷ Under the present contract that terminates on December 31, 2022, the county pays to the LID partnership a flat annual contract value of \$1,620,000, paid in installments of \$135,000 per month.⁶⁸

The Lake Indigent Defense LLP partner attorneys’ subcontracts with individual attorneys. As required by their contract with Lake County,⁶⁹ the LID partner attorneys enter into subcontracts with individual private attorneys to be available for appointment to represent indigent people in the Lake County Superior Court. As of October 2021, there are 15 individual private attorneys identified as holding LID subcontracts (including the three LID partner attorneys who themselves subcontract to represent indigent people).⁷⁰

⁶⁴ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.D. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁶⁵ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.H. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁶⁶ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.H., 2.J., 2.N., 8., 12. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁶⁷ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.B., 2.C., 8. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁶⁸ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 8. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” ¶¶ C., D. (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁶⁹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.F. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁷⁰ During this evaluation, the LID partner attorneys produced to the Sixth Amendment Center copies of 16 subcon-

Each LID subcontract requires the subcontractor attorney to provide representation in an unlimited number of specified types of cases and proceedings, whenever appointed by the Lake County Superior Court on or after the date the subcontract commences. The copies of the subcontracts provided by the LID partner attorneys during this evaluation have commencement dates ranging from February 21, 2017 to June 1, 2020, and there is no specified end date for the subcontracts – each subcontract continues until it is terminated by the parties.⁷¹

The county’s contract with the LID partner attorneys requires that, among the subcontractor attorneys, there must be at least 7 available in any given felony case and at least 12 available in any given misdemeanor case (in order to provide representation for up to that number of indigent codefendants in a single case).⁷² The LID partner attorneys meet this requirement.

As of October 2021, the number of subcontractor attorneys for each type of case is:⁷³

- 8 felony case attorneys (including the three LID partner attorneys), all of whom are also responsible for providing representation in misdemeanor and juvenile delinquency cases when additional attorneys are needed beyond the number subcontracted for those case types or when all of the subcontractor attorneys for those case types have a conflict in an individual case;⁷⁴

tracts. One subcontract attorney holds two separate subcontracts. Additionally, the LID partner attorneys report that they pay an attorney to provide representation services in Veteran’s Court but without having executed a subcontract with that attorney.

⁷¹ “Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

⁷² “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.D. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently* by “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

⁷³ In addition to the subcontractor attorney’s primary responsibilities, the subcontracts usually require the subcontractor attorney to provide additional representation services “as needed” or have more detailed language about particular proceedings for which the subcontractor attorney is responsible. Although the language of each subcontract differs slightly:

- felony subcontracts require the subcontractor attorney to provide services at both the preliminary hearing level and trial court;
- felony subcontracts and misdemeanor subcontracts require the subcontractor attorney to provide services for “Fifth Amendment as needed;” and
- three of the four misdemeanor subcontracts “oblige” the subcontractor attorney, “on a rotating basis with the other misdemeanor subcontractors, to appear at the daily in custody arraignment calendars held on Mondays and Tuesdays. This typically occurs for each misdemeanor subcontractor for one week out of every four weeks. The four misdemeanor contractors are free to arrange whatever schedule amongst themselves as may be convenient to them . . .,” and the subcontracts explain that “[m]isdemeanor calendars currently include all day Monday and Tuesday each week with trial assignments occurring Friday mornings. Long cause matters typically commence on Wednesdays. . . .”; while the fourth misdemeanor subcontract requires the subcontractor attorney to provide services at “appearances on arraignment calendar.”

“Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

⁷⁴ “Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date) (felony).

- 4 misdemeanor case attorneys,⁷⁵ who along with the eight felony attorneys available for misdemeanor conflicts provide in total at least 12 misdemeanor attorneys;
- 2 juvenile delinquency case attorneys;⁷⁶
- 1 conservatorship case attorney;⁷⁷
- 1 paternity case and civil contempt case attorney;⁷⁸
- 1 veterans' court attorney.

Although only 15 attorneys are identified as holding subcontracts, one of the 15 attorneys holds separate subcontracts for both misdemeanor and juvenile delinquency cases, and there is no written subcontract for one additional attorney who is paid by the LID partner attorneys to provide representation in veterans' court, altogether accounting for the 17 subcontractor attorney positions.

Each subcontractor attorney is responsible for all overhead and case-related expenses in all cases to which they are appointed under their subcontract, except for: (1) the use of an investigator, because the LID partner attorneys are required by their contract with the county to provide investigators; and (2) those expressly delineated "ancillary services" expenses for which the county agreed to pay in its contract with the LID partner attorneys (all as discussed more fully in chapter IV).⁷⁹

In exchange for the services that the subcontractor attorney is required to provide, the LID partner attorneys pay a flat annual fee to the subcontractor attorney, paid in twelve equal monthly

⁷⁵ "Contract for Indigent Defense Services" between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date) (misdemeanor).

⁷⁶ "Contract for Indigent Defense Services" between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date) (juvenile delinquency).

⁷⁷ "Contract for Indigent Defense Services" between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date) (conservatorship).

⁷⁸ "Contract for Indigent Defense Services" between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date) (paternity and civil contempt).

⁷⁹ Although the language of each subcontract differs slightly, each states something similar to:

Subcontractor shall furnish his or her own transportation and shall pay for all costs associated with all materials required in performance of Subcontractor's duties under this Contract, including office expenses, clerical staff, copying expenses, mileage, meals, lodging, personal items or any other item or expense associated with Subcontractor's duties under this Contract, excluding ancillary expenses for which prior approval was obtained from the Courts.

...

In order to maintain cost efficiency, and pursuant to LID's obligations to the County of Lake, LID has contracted with 3 qualified investigators for the provision of investigative services. In all assigned cases, Subcontractors shall be obligated to use the investigative personnel provided by LID unless a conflict of interest is stated by all said investigative personnel. In such instances, ... Subcontractor shall seek Court approval to expend public funds for such employment. . . .

In the event Subcontractor believes it is necessary to obtain expert assistance, Subcontractor shall apply for funding for such assistance to the Superior Court. LID shall not be involved in such appointments, nor shall LID compensate any such expert. Subcontractor shall not seek compensation for clerical or administrative staff without first obtaining written approval from LID.

"Contract for Indigent Defense Services" between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

installments.⁸⁰ (For the LID partner attorneys, the amount they are paid for their subcontract is separate from and in addition to the amount they are paid for their administrative services.) It is not clear whether the subcontracts allow for the possibility of any additional compensation under any circumstances.⁸¹ The amount of the flat annual fee paid to the subcontractor attorney is not necessarily the amount stated in the subcontract, because the LID partner attorneys do not execute new subcontracts with subcontractor attorneys when their compensation changes. As explained more fully in chapter IV, the LID partner attorneys determine the amount of the flat fee paid for each subcontract and they determine whether and when to increase the amount of the flat fee.

⁸⁰ “Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

⁸¹ In each of the copies of the subcontracts provided to the Sixth Amendment Center, at least a portion of the compensation terms was redacted, so the subcontracts may contain references to the possibility of additional compensation. Although the language of each subcontract differs slightly, each states something similar to:

In the event that Subcontractor is assigned a “complex” case, they shall, at the earliest opportunity advise LID administrative staff by email of the details of the assignment, including . . . a brief statement of the reason why Subcontractor believes the case is “complex”. A “complex” case potentially includes, without limitation, all capital cases, any 1st degree murder charge, cases involving allegations of sexual misconduct, cases in which an indeterminate life sentence might be imposed, complex white collar cases, and any other case which potentially requires an extraordinary expenditure of time.

“Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

CHAPTER III. PROVIDING QUALIFIED, TRAINED, AND SUPERVISED ATTORNEYS TO REPRESENT INDIGENT PEOPLE

Before any individual attorney can be appointed to represent any individual defendant, the indigent defense system must first select the attorneys who are available to be appointed. In *Powell v. Alabama* – the case the U.S. Supreme Court points to in *United States v. Cronin* as representative of the constructive denial of the right to counsel⁸² – the judge overseeing the Scottsboro Boys’ Alabama trial appointed as defense counsel a real estate lawyer from Chattanooga, Tennessee, who was not licensed in Alabama and was admittedly unfamiliar with the state’s rules of criminal procedure.⁸³ The *Powell* Court concluded that defendants require the “guiding hand” of counsel;⁸⁴ that is, the attorneys a government provides to represent indigent people must be qualified and trained to help those people advocate for their stated legal interests.

Although attorneys graduate from law school with a strong understanding of the principles of law and legal theory and generally how to think like a lawyer, no law school graduate enters the legal profession automatically knowing how to be a criminal defense lawyer or a juvenile delinquency defense attorney.⁸⁵ Expertise and skill must be developed. Just as one would not go to a dermatologist for heart surgery, a real estate or divorce lawyer cannot be expected to handle a complex criminal case competently. Attorneys must know what legal tasks need to be considered in each and every case they handle, and then how to perform them.

Once an attorney is available to be appointed to represent indigent people, that attorney must receive on-going training in order to maintain the qualifications necessary to provide effective assistance of counsel. To ensure that attorneys continue to be competent from year to year to represent indigent people in the types of cases they are assigned, national standards require that the indigent representation system provide attorneys with access to a “systematic and

⁸² *United States v. Cronin*, 466 U.S. 648, 659-60 (1984) (“[I]f counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. . . . Circumstances of that magnitude may be present on some occasions when, although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. *Powell v. Alabama*, 287 U.S. 45 (1932), was such a case.”)

⁸³ *Powell v. Alabama*, 287 U.S. 45, 53-56 (1932). A retired local Alabama attorney who had not practiced in years was also appointed to assist in the representation of all nine co-defendants.

⁸⁴ *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932) (“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.”).

⁸⁵ Christopher Sabnis and Daniel Webert, *Understanding the Knowledge Requirement of Attorney Competence: A Roadmap for Novice Attorneys*, 15 GEO. J. LEGAL ETHICS 915, 915 (2001-2002) (“[B]ecause legal education has long been criticized as being out of touch with the realities of legal practice and because novice attorneys often lack substantive experience, meeting the knowledge requirements of attorney competence may be particularly difficult for a lawyer who recently graduated from law school or who enters practice as a solo practitioner.”).

comprehensive” training program,⁸⁶ at which attorney attendance is compulsory.⁸⁷ Training must be tailored to the types and levels of cases for which the attorney is appointed.⁸⁸ For example, an attorney who is appointed in drug-related cases must be trained in the latest forensic sciences and case law related to drugs. Likewise, an attorney who is appointed in juvenile matters must be trained in the latest developmental sciences, effective adolescent interviewing techniques, and the operations and laws governing schools, social service agencies, mental health agencies, and other institutions serving children.⁸⁹ Ongoing training, therefore, is an active part of the job of being an indigent defense system attorney.

Attorneys who were once well-qualified and well-trained can, for any number of reasons, lose their competency to handle cases over time, and indigent people do not get to choose which attorney is assigned to represent them. For these reasons, national standards require that all indigent representation system attorneys must be “supervised and systematically reviewed” to ensure that they continue to provide effective assistance of counsel to each and every indigent client.⁹⁰ Implicit within supervision is that the supervisor has authority to ensure an attorney is no longer assigned if they are no longer competent.

For all of these reasons, national standards require that each attorney must have the qualifications, training, and experience necessary for each specific type of case to which they are appointed.⁹¹ As national standards explain, an attorney’s ability to provide effective representation in a criminal case depends on their familiarity with the “substantive criminal law and the law of criminal procedure and its application in the particular jurisdiction.”⁹² The American Bar Association observed nearly 30 years ago that “[c]riminal law is a complex and difficult legal area, and the skills necessary for provision of a full range of services must be carefully developed. Moreover, the consequences of mistakes in defense representation may be substantial, including wrongful conviction and death or the loss of liberty.”⁹³ To the extent that the same attorneys are appointed in juvenile delinquency cases or other civil cases (such as paternity, guardianship, and conservatorship proceedings) as are appointed in criminal cases, those attorneys must have different qualifications and experience and must receive different training and supervision to effectively represent clients in all of these case types.

As previously explained, California has delegated to its counties the responsibility for providing effective assistance of counsel to indigent people at the trial court level in all the types of cases for which California guarantees a right to counsel. This chapter focuses on the qualifications, training, and supervision of the attorneys who are available to represent indigent people pursuant to Lake County’s contract with the LID partner attorneys.

⁸⁶ NATIONAL ADVISORY COMM’N ON CRIM. JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch. 13 (The Defense), std. 13.16 (1973). *See also* AMERICAN BAR ASS’N, CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION, std. 4-1.12(b) (4th ed. 2017).

⁸⁷ AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 9 & cmt. (2002).

⁸⁸ AMERICAN BAR ASS’N, CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION, std. 4-1.12(c) (4th ed. 2017).

⁸⁹ *See* NATIONAL JUV. DEF. CTR., NATIONAL JUVENILE DEFENSE STANDARDS std. 1.3 (2013).

⁹⁰ *See* AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 10 (2002).

⁹¹ *See, e.g.,* AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 6 & cmt. (2002).

⁹² NATIONAL LEGAL AID & DEF. ASS’N, PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION, guideline 1.2(a) (1995).

⁹³ AMERICAN BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES, § 5-1.5 & cmt. (3d ed. 1992).

A. Selecting qualified indigent representation system attorneys

Before the Lake County Superior Court can appoint any attorney to represent any indigent person, the indigent representation system established by Lake County through its contract with the LID partner attorneys must first select the attorneys whom it makes available to be appointed.

Among the types of cases for which Lake County must provide effective assistance of counsel to indigent people at the trial court level, California statutes and court rules establish particular qualifications that attorneys must meet before they are appointed in: death penalty cases;⁹⁴ representation of children in delinquency cases;⁹⁵ representation of children in family law custody and visitation proceedings;⁹⁶ and certain types of appointments in guardianship and conservatorship proceedings.⁹⁷ The state does not establish any particular qualifications that an attorney must have before being appointed to represent an indigent person in any of the other types of trial-level cases for which Lake County and/or its superior court must provide the right to counsel for indigent people, including all non-death penalty adult criminal cases.

Lake County is free to require additional qualifications for the attorneys selected to be available for representation of indigent people at the trial court level.

Lake County’s role in the selection of qualified attorneys. The most recent time at which Lake County set out the qualifications it requires for the attorneys it makes available to represent indigent people at the trial court level was in February 2017 when it issued a request for proposals from “from well-qualified individuals, firms, or associations of firms, interested in providing indigent public defense services in Lake County, including primary and multiple levels of conflict representation.”⁹⁸ The county’s RFP established some qualifications for the attorney(s) to whom the contract would be awarded and some qualifications for the attorneys that were proposed to provide representation to indigent people pursuant to the ensuing contract:

- *Qualifications required by Lake County for attorney(s) awarded the county contract.* To be eligible to be awarded the county contract, the county required that attorneys must be:
 - active members of the California Bar Association and in good standing;⁹⁹ and
 - familiar with Rule 3-320 of the State Bar of California’s Rules of Professional Conduct.¹⁰⁰

⁹⁴ See CAL. RULES OF COURT r. 4.117 (qualifications for appointed trial counsel in capital cases).

⁹⁵ See CAL. RULES OF COURT r. 5.664 (qualifications for counsel appointed to represent children in delinquency proceeding under Welfare & Institutions Code §§ 601, 602). The attorney must either: have practiced at least 50% juvenile delinquency law with demonstrated competence during each of the three most recent calendar years; or have completed a minimum of 12 hours of training or education in juvenile delinquency during the past 12 months. CAL. RULES OF COURT r. 5.664(b).

⁹⁶ See CAL. RULES OF COURT r. 5.242 (qualifications for counsel appointed to represent the best interest of the child in a custody or visitation proceeding under Family Code § 3150).

⁹⁷ See CAL. RULES OF COURT r. 7.1101 (qualifications and continuing education required of counsel appointed by the court in guardianships and conservatorships).

⁹⁸ Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 1.1 (Feb. 21, 2017).

⁹⁹ Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶¶ 3.2.1.a., 3.3.9.c. (Feb. 21, 2017).

¹⁰⁰ Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 3.2.1.c. (Feb. 21, 2017).

The county's RFP did not require that the attorney(s) awarded the contract must themselves directly represent indigent people,¹⁰¹ but to whatever extent they would do so, those attorneys must also meet the qualifications required by the county of attorneys who provide representation pursuant to the contract.

- *Qualifications required by Lake County for attorneys available to provide representation pursuant to the county contract.* The mandatory qualifications stated by the county for attorneys made available to represent indigent people pursuant to the contract were that they must:
 - be active members of the California Bar Association and in good standing;¹⁰²
 - have an office in the Lake area that complies with federal law regarding access to persons with disabilities;¹⁰³
 - “have the requisite skill and experience to handle” the types of cases to which they would be assigned, with the county contractor attorneys held responsible for establishing qualifications “based upon criteria reflecting the necessary relevant experience and training for the various categories of cases;”¹⁰⁴
 - for “special circumstance cases including death penalty cases shall have the necessary training, experience, and continuing education as required by law;”¹⁰⁵ and
 - for juvenile delinquency cases, “be in compliance with the training standards and requirements of California Rules of Court, rule 5.664.”¹⁰⁶

Lake County's process for awarding the county contract. The most recent time at which Lake County selected the attorneys to whom it awards the county contract was when it awarded the contract to two attorneys, “also known collectively as Lake Indigent Defense,” to commence on May 7, 2017.¹⁰⁷ Reportedly, the county selected the LID partner attorneys because the proposal they submitted “demonstrate[d] to be the most qualified, responsive and advantageous to the County” from among the proposals received by the county in response to its RFP.¹⁰⁸ Once the county awarded the contract to the private attorneys collectively known as LID, the terms of that contract impose some additional requirements for the LID partner attorneys that are unrelated to their initial qualifications to represent indigent defendants, which are addressed

¹⁰¹ The county's RFP stated that “[t]he successful Proposer will administer defense services and provide attorneys and such other services as are necessary . . .” and that “[s]ubcontracts for services provided under this RFP are allowable.” Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶¶ 3.2.1.g., 3.3.1. (Feb. 21, 2017).

¹⁰² Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 3.3.9.c. (Feb. 21, 2017).

¹⁰³ Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 3.5.1.a., c. (Feb. 21, 2017).

¹⁰⁴ Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 3.3.7. (Feb. 21, 2017).

¹⁰⁵ Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 3.3.9.c.iii. (Feb. 21, 2017).

¹⁰⁶ Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 3.3.9.c.iv. (Feb. 21, 2017).

¹⁰⁷ “Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan (for the period of May 7, 2017 through May 6, 2018).

¹⁰⁸ See Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 5.1. (Feb. 21, 2017).

where relevant throughout this report. Of significance here, the county’s contract holds the LID partner attorneys responsible for ensuring that the attorneys they provide to represent indigent people pursuant to the contract “possess at all times [during the term of the contract] the requisite experience, training, skill and competence to provide competent legal services.”¹⁰⁹

The LID partner attorneys’ role in the selection of qualified attorneys. Lake County’s contract with the LID partner attorneys requires them to provide a sufficient number of attorneys to represent indigent people, whenever appointed by the Lake County Superior Court, in all of the types of cases specified in the contract.¹¹⁰ The county contract with the LID partner attorneys specifies that at least 14 attorneys must be available to represent indigent people under the contract, and among those 14 attorneys, there must be at least 7 available for felony cases and at least 12 available for misdemeanor cases.¹¹¹

The county’s contract with the LID partner attorneys requires some specific qualifications for each of the attorneys that the LID partner attorneys make available to represent indigent people

¹⁰⁹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.N. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹¹⁰ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.A., 2.B. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

The types and stages of cases for which they are responsible as specified in the contract are:

- i. All non-capital criminal cases;
- ii. Capital Cases;
- iii. Civil Contempt cases;
- iv. Paternity cases;
- v. Welfare and Institutions Code 602 cases (Juvenile Delinquency);
- vi. Writs of Habeas Corpus stemming from underlying criminal cases;
- vii. Conservatorship proceedings pursuant to Welfare and Institutions Code sections 5350, et seq., Probate Code sections 1800, et seq., and Probate Code sections 1470, 1471, and 2365.5(f)(1)
- viii. Probation violations;
- ix. Motions for new trials;
- x. Motions to withdraw a plea;
- xi. Any proceedings in the appellate court prior to conviction which are deemed necessary by CONTRACTOR;
- xii. Any appeals of misdemeanor cases to the appellate department of the Superior Court which are deemed necessary by the CONTRACTOR

“Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.B. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹¹¹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.D., 2.F. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

under the LID contract. They must:¹¹²

- be active members of the California Bar Association and in good standing;
- have an office separate from all other LID provided attorneys;
- have and provide proof of insurance, of specified types and in specified amounts, naming the county as an additional insured;
- have “the requisite experience, training, skill and competence to provide competent legal services” in the cases for which they are available under the LID contract; and
- if available for death penalty cases, have the qualifications, experience, and competence to provide representation in those cases.

The county’s contract with the LID partner attorneys requires them to “develop and establish categories of minimum special qualifications and categories of cases” that each subcontractor attorney is eligible to be assigned.¹¹³

There is no indication that the LID partner attorneys have established any required qualifications for an attorney to be subcontracted for availability to represent indigent people. For example, the LID partner attorneys do not require an attorney to have any legal experience, even to receive a subcontract for the types of cases in which California law or county policy require specific qualifications. The existing subcontractor attorneys vary significantly in the qualifications they possessed at the time they were selected by the LID partner attorneys to be available to represent indigent defendants. Three of the existing subcontractor attorneys had no previous criminal defense experience, and two of those attorneys were awarded *felony* subcontracts.

The LID partner attorneys have not established any formal process for advertising the availability of open positions or for the application process; the process has varied each time there is an open position. For example, in August 2019, when seeking to subcontract a misdemeanor attorney, the LID partner attorneys posted the following advertisement on their Facebook page, requesting interested applicants to submit a resume and job history and to call the LID office manager to arrange an interview:¹¹⁴

Misdemeanor contract public defender position available now in scenic Lake County. Congenial setting, can be accomplished as part time position for the ideal candidate who wants to work on developing criminal defense skills. This is the perfect opportunity to get a head start on a private practice in rural Lake County. Great position for independently driven person who does not want regular hours or micro management.

¹¹² “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.A., 2.C.ii., 2.F., 2.N., 4., 5., 12. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹¹³ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 5. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹¹⁴ *Lake Indigent*, FACEBOOK, <https://www.facebook.com/lake.indigent.7> (post from Aug. 26, 2019).

By contrast, to fill an expected vacancy for a misdemeanor subcontract in November 2021, one of the LID partner attorneys used their own professional network to recruit an attorney from a different county.

The LID partner attorneys report that they did not engage in any process to select many of the existing 15 subcontractor attorneys. Although not required to do so, the three LID partner attorneys have chosen to subcontract with themselves to provide representation in felony cases under the contract. The LID partner attorneys “automatically grandfathered” into a subcontract at least five of the felony attorneys and both juvenile delinquency attorneys because they had been providing indigent representation services in the county through other entities prior to the 2017 county contract. One subcontractor attorney commented that “there was no real application process” involved beyond stating they “would do the work.”

Once the LID partner attorneys enter into a subcontract with a private attorney, the subcontract imposes some requirements on the subcontractor attorney, which are explained where relevant throughout this report.

B. Training indigent representation system attorneys

California requires all licensed attorneys to complete, within 36-month periods, at least 25 hours of continuing legal education (CLE), four hours of which must be in legal ethics.¹¹⁵ Court rules establish particular ongoing training requirements for attorneys who are appointed to represent indigent people in death penalty cases,¹¹⁶ representation of children in delinquency cases,¹¹⁷ representation of children in family law custody and visitation proceedings,¹¹⁸ and certain types of appointments in guardianship and conservatorship proceedings.¹¹⁹

The state does not establish any particular ongoing training requirements for attorneys appointed to represent an indigent person in any of the other types of trial-level cases for which Lake County and/or its superior court must provide the right to counsel for indigent people, including non-death penalty adult criminal cases. Lake County has not established any particular ongoing training requirements to ensure that the attorneys it provides to represent indigent people maintain the qualifications necessary to provide effective assistance of counsel. Rather, Lake County’s contract with the LID partner attorneys requires them to “ensure that the ongoing legal education of [the subcontractor attorneys] includes formal training likely to assist the individual attorney’s professional development in providing indigent defense services.”¹²⁰

Despite the county contract requirement, the LID partner attorneys do not require the subcontractor attorneys to receive training related to their representation of indigent defendants.

¹¹⁵ CAL. RULES OF COURT r. 9.31(c); CAL. BUS. & PROF. CODE § 6070 (West 2021).

¹¹⁶ See CAL. RULES OF COURT r. 4.117.

¹¹⁷ See CAL. RULES OF COURT r. 5.664.

¹¹⁸ See CAL. RULES OF COURT r. 5.242.

¹¹⁹ See CAL. RULES OF COURT r. 7.1103.

¹²⁰ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 7 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

Instead, the LID partner attorneys require each subcontractor attorney to obtain, at the subcontractor attorney's own expense, the state-required 25 hours of continuing legal education necessary for all California attorneys.¹²¹ The LID partner attorneys say that subcontractor attorneys who are appointed in cases that have training requirements mandated by court rules do obtain the required training.

In the words of the LID partner attorneys, they do “not have any meaningful mandate for CLE.” The LID partner attorneys committed, in their contract with the county, to “partner with the Lake County Bar Association” to provide some CLEs each year about conflicts of interest,¹²² and the LID partner attorneys pay for subcontractor attorneys to attend CLEs produced by the Lake County Bar Association, although attendance is not mandatory. The LID partner attorneys organize monthly meetings for the subcontractor attorneys that can include case strategizing, however attendance at these meetings is optional and training is not provided at the meetings.

One stakeholder explains that some subcontractor attorneys “could use help and training” and questions the ability of some to “practice competently” without guidance. As another stakeholder describes it, “no one teaches anyone what to do” – there is no “professional development, nobody getting taught how to be a public defender.” In short, a subcontractor attorney who joins LID with no prior legal or criminal defense experience is not required to receive any training related to the non-death penalty adult criminal cases in which they are appointed to represent indigent people.

C. Supervising indigent representation system attorneys

Lake County creates and enforces supervisory responsibilities through the terms of its contract with the LID partner attorneys. The LID partner attorneys are “jointly and severally” responsible for carrying out all of the contract obligations;¹²³ both the administration of the contract and the direct representation of indigent people pursuant to the contract. The contract provides that the county designates a representative to administer and ensure enforcement of the contract terms

¹²¹ Although the language of each subcontract differs slightly, each states something similar to:

Subcontractor shall at all times comply with the requirements of the California State Bar, remain an attorney in good standing and maintain the required minimum continuing legal education (MCLE), at Subcontractor's own cost and expense as an independent contractor. Subcontractor shall immediately notify LID in writing should his or her license to practice law in State of California be suspended, revoked or surrendered.

“Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

¹²² “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A ¶ III(d)(1) (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹²³ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 1.B., 2.A., 2.F. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

and to coordinate the duties of the LID partner attorneys.¹²⁴ Lake County has designated as its representative its assistant county administrative officer, who is not an attorney.

Lake County’s supervision of the LID partner attorneys. The county’s contract with the LID partner attorneys contains numerous mechanisms by which the county can, if it chooses to do so, provide oversight of the LID partner attorneys’ performance of their contractual obligations. The county contract requires the LID partner attorneys to provide information – through notices, reports, and meetings with county officials, the superior court, and interested professional groups – that can be grouped into four substantive areas:

- the LID partner attorneys’ overall performance of the contract;
- the identity of and representation provided by the subcontractor attorneys;
- the number and types of cases of indigent people to which the superior court appoints attorneys pursuant to the contract; and
- the monetary cost of carrying out the contract.

The LID partner attorneys state that, from the outset of the contract and continuing through January 2022, the county has not made any requests of the LID partner attorneys to fulfill their contractual reporting obligations and the LID partner attorneys have not submitted any reports to the county. As a result, the county does not know whether or to what extent the LID partner attorneys are fulfilling, or failing to fulfill, their contractual responsibility to ensure representation to indigent people in cases appointed by the superior court.

LID partner attorneys’ overall performance. Each of the LID partner attorneys is individually responsible for carrying out the contract responsibilities.¹²⁵ They are required to notify the county if, at any time, they change their operating structure “from an informal partnership arrangement to another type of” structure or entity, so that any necessary changes can be made in the county contract.¹²⁶ The LID partner attorneys continue to operate as an informal partnership.

During the first six months of the contract (February 1, 2018 through July 31, 2018), the LID partner attorneys were required to meet monthly with the county’s Public Defender Oversight Committee for that committee to assess the LID partner attorneys’ compliance with the contractual performance standards and their ability to document their compliance (including case management system, form & content of monthly reports, and client complaint management).¹²⁷

¹²⁴ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 21 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹²⁵ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 1.B., 2.A., 2.F. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹²⁶ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 19. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹²⁷ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K.

At the end of that six-month period, the committee was to make a report of its assessment to the county board of supervisors.¹²⁸ In fact, the committee has been “inactive” since at least 2017¹²⁹ and, as a result, did not hold any meetings with the LID partner attorneys during the first six months of the contract, or at any time, and there was no committee report to the county board of supervisors.¹³⁰ The LID partner attorneys say they have continually encouraged the county to put the committee into operation, but the county has not done so.

The LID partner attorneys are required to maintain at all times “full and accurate records,” to which the county must be allowed “free access,” of “the work or services undertaken . . . , the costs and obligations incurred . . . , and any other matters covered by” the contract.¹³¹ If requested by the county, the LID partner attorneys must meet with the county about any modifications needed in the indigent legal services system and “to coordinate indigent defense services being provided and improve any inefficiency,” and at least every six months the LID partner attorneys must meet with the county to “review changes or refinements to the Agreement or the parties’ implementation thereto that are reasonably needed to minimize the number of conflicts resulting in court-appointments of private attorneys.”¹³²

The LID partner attorneys maintain some records related to their contract with Lake County to administer and provide indigent representation services, including copies of subcontracts, some financial records (*see* chapter IV), and an electronic case management system (*see* chapter VI).

Sullivan ¶ 2.R. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹²⁸ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.R. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹²⁹ According to the county’s website, the county formed a seven-member Public Defender Oversight Committee on November 22, 2005 to “monitor and oversee the Public Defender Program.” *Public Defender Oversight Committee*, COUNTY OF LAKE CALIFORNIA, <http://www.lakecountycalifornia.gov/Government/Boards/PDOC.htm>. The county board of supervisors’ committee assignments for 2021 show that there were only two members assigned to the committee during 2020 and 2021, and the committee is listed as “inactive” and having no meetings scheduled during 2021. Board of Supervisors 2021 Committee Assignments, <http://www.lakecountycalifornia.gov/Assets/Departments/BOS/docs/Assignments2021v6.pdf>.

¹³⁰ The county’s original 2017 contract with the LID partner attorneys contained the same requirements (for meetings between the LID partner attorneys and the county Public Defender Oversight Committee, followed by a committee report to the county board of supervisors) during the first six months of that contract (i.e., May 7, 2017 through November 6, 2017). Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan ¶ 2.R. (for the period of May 7, 2017 through May 6, 2018). Reportedly no meetings or report occurred during that time period.

¹³¹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 15. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹³² “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.F. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

The LID partner attorneys state that, from the outset of the contract and continuing through at least January 2022, the county has not made any requests of the LID partner attorneys to fulfill their contractual reporting obligations and the LID partner attorneys have not submitted any reports to the county. The LID partner attorneys say that, since the original 2017 LID contract with the county, there have not been any conflicts in cases covered by the contract that required the court to appoint a private attorney who was not a LID subcontractor attorney.

The LID partner attorneys must:

- notify the county if, at any time, they cannot provide all of the representation services required by the contract;¹³³
- notify the county, within 24 hours of their becoming aware, if any of the LID partner attorneys or other subcontractor attorneys is the subject of any pending disciplinary matter;¹³⁴
- have ongoing communication with the local bar association and other interested professional groups to assure that the LID partner attorneys' "operations meet the established professional standards for adequate representation;"¹³⁵
- provide an annual letter to the county describing the LID partner attorneys' compliance with Rule 3-320 of the *California Rules of Professional Conduct*,¹³⁶ and
- maintain at all times insurance of specified types and amounts, with the county approving the policies.¹³⁷

¹³³ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 4. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹³⁴ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 5 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹³⁵ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 5 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹³⁶ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 4 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

The *California Rules of Professional Conduct* were reorganized and revised effective November 1, 2018, nine months after the execution of the county's contract with the LID partner attorneys that commenced on February 1, 2018. Despite the rules revision, the county's contract provision refers to former rule 3-320 of the *1992 Rules of Professional Conduct*, which were no longer in effect. Language similar to that of the former rule 3-320 appears in rule 1.7(c)(2) of the *California Rules of Professional Conduct* in effect at the time that the county's contract with the LID partner attorneys commenced, and which is only a small part of rule 1.7 governing conflicts of interest in the representation of current clients. See CAL. R. PROF'L CONDUCT r. 1.7 and Cross-Reference Chart.

¹³⁷ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 12. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining

The LID partner attorneys have never notified the county of any inability to provide all of the representation services required by the contract. The LID partner attorneys state that they are “not aware of any disciplinary actions relating to any of our contract attorneys arising during the past 4 years” and that each subcontractor attorney is required to “immediately notify LID in writing should his or her license to practice law in State of California be suspended, revoked or surrendered.”¹³⁸ The LID partner attorneys say that the Lake County Bar Association is the only interested professional group in the county and that they maintain communication with the association through their conservatorship subcontractor attorney who is currently the president of the association. The LID partner attorneys have not provided annual letters describing their compliance with the specified *California Rules of Professional Conduct* rule.

Identity of and representation provided by subcontractor attorneys. As previously explained, all direct representation of indigent people provided pursuant to the county contract is performed by subcontractor attorneys, and the LID partner attorneys are themselves also subcontractor attorneys. The county requires the LID partner attorneys to provide, at the commencement of the contract: a list of the subcontractor attorneys including their names, experience, qualifications, areas of specialization, and a “brief biographical sketch pertaining to each attorney’s professional experience,” with a similar list provided to the superior court for its use in appointing attorneys;¹³⁹ and “written plans setting forth the deployment of [subcontract attorneys] in the court.”¹⁴⁰ The LID partner attorneys are required to notify both the county and the superior court in advance of making any changes to the subcontractor attorney staffing.¹⁴¹

The LID partner attorneys say they did not provide to the county a list of the subcontractor attorneys at the outset of the contract and do not routinely notify the county when there is a change among the subcontractor attorneys, explaining the county has “never” requested the information. The LID partner attorneys point to the public website they maintain as the location where the county could find “information relating to our staffing and their qualifications generally,” but they caution that the website is “infrequently updated” (and the website in fact shows some different lawyers than those identified as subcontractor attorneys during this evaluation¹⁴²). Occasionally, most often in the context of negotiating amendments to the

“contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹³⁸ See “Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

¹³⁹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.L. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁴⁰ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.K. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁴¹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.L., 5. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁴² See LAKE INDIGENT DEFENSE, <https://www.defend.biz/lid/> (on Jan. 31, 2022, showing two attorneys not identified

contract’s payment terms, the LID partner attorneys disclose to the county the then-existing list of subcontractor attorneys. The LID partner attorneys state that they have not drafted any written plans for deployment of subcontractor attorneys in the superior court.

Cases appointed by superior court pursuant to the contract. Lake County’s contract with the LID partner attorneys requires them to ensure representation is provided to indigent defendants, whenever appointed by the Lake County Superior Court, in an unlimited number of cases of specified types.¹⁴³ The LID partner attorneys are required by the county’s contract to provide monthly statistical reports to the county, stating the number of cases during the month that were:¹⁴⁴

- received by the LID partner attorneys;
- assigned to the LID subcontractor attorneys, itemized by type of case;
- declared a conflict by a LID subcontractor attorney;
- open;
- closed, showing the disposition; and
- assigned to, open during, and closed by each private investigator.

as current LID subcontractors during this evaluation, and not showing two attorneys identified as current LID subcontractors during this evaluation).

¹⁴³ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.A., 2.B. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

The types and stages of cases for which they are responsible as specified in the contract are:

- i. All non-capital criminal cases;
- ii. Capital Cases;
- iii. Civil Contempt cases;
- iv. Paternity cases;
- v. Welfare and Institutions Code 602 cases (Juvenile Delinquency);
- vi. Writs of Habeas Corpus stemming from underlying criminal cases;
- vii. Conservatorship proceedings pursuant to Welfare and Institutions Code sections 5350, et seq., Probate Code sections 1800, et seq., and Probate Code sections 1470, 1471, and 2365.5(f)(1)
- viii. Probation violations;
- ix. Motions for new trials;
- x. Motions to withdraw a plea;
- xi. Any proceedings in the appellate court prior to conviction which are deemed necessary by CONTRACTOR;
- xii. Any appeals of misdemeanor cases to the appellate department of the Superior Court which are deemed necessary by the CONTRACTOR

“Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.B. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁴⁴ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.O., 15., 17. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

In these monthly reports, the LID partner attorneys must specifically identify cases involving homicide, special circumstance, not guilty by reason of insanity, and sexually violent predator civil commitments.¹⁴⁵ The LID partner attorneys state that, through January 2022, they have not submitted any monthly statistical reports to the county at any time. (*See* discussion of caseloads and workloads in chapter VI.)

The LID partner attorneys are required by the county’s contract to provide to the superior court on an ongoing basis information about the status of pending cases, and as early as possible advise as to “whether cases will be settled or go to trial, whether continuances are needed, whether and whenever interpreters will be needed, and other such matters bearing on the scheduling of cases.”¹⁴⁶ The LID partner attorneys do not keep the court informed about the status of cases appointed through the contract, and they say they cannot do so because “they are not our cases” – rather they are the cases of the individual LID subcontractor attorneys. (*See* discussion in chapter V regarding how a specific LID subcontractor attorney is appointed to represent each indigent defendant.)

Monetary cost of the contract. The LID partner attorneys are required to maintain at all times “full and accurate records,” to which the county must be allowed “free access,” of “the costs and obligations incurred” in carrying out the contract.¹⁴⁷

As explained more fully in chapter IV, the State of California makes some reimbursements to counties for some costs of indigent representation services. To assist Lake County “in obtaining qualifying reimbursements” from the state, the LID partner attorneys are required by the county’s contract to report annually the total costs for any cases handled under the contract that involve homicide, special circumstance, not guilty by reason of insanity, or sexually violent predator civil commitments.¹⁴⁸ The LID partner attorneys state that, from the outset of the contract and continuing through at least January 2022, they have not submitted these annual cost reports to the county.

¹⁴⁵ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.O. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁴⁶ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.K. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁴⁷ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 15. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁴⁸ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.O. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

The LID partner attorneys’ role in supervising the LID subcontractor attorneys. The county’s contract with the LID partner attorneys holds them “legally responsible” for all work performed pursuant to the contract by the subcontractor attorneys.¹⁴⁹ The county delegates to the LID partner attorneys all responsibility for supervising the LID subcontractor attorneys (which includes the LID partner attorneys themselves, leaving them responsible for their own supervision).

The county does specify in the contract many things that the LID partner attorneys must do and require in connection with the LID subcontract attorneys and the direct representation services they provide to indigent people. The county’s contract requires the LID partner attorneys to ensure that each of the subcontractor attorneys:¹⁵⁰

- “are active members in good standing of the State Bar of California;”
- are “qualified to perform” the legal services they provide;
- “possess at all times [during the term of the contract] the requisite experience, training, skill and competence to provide competent legal services” in the cases they are assigned; and
- subject to court approval, “obtain” the ancillary and support services “necessary to provide adequate representation” or that the LID partner attorneys require.

The county does not, however, know whether these requirements are met.

For each private attorney who provides representation services under the county contract (including the LID partner attorneys), the LID partner attorneys are required by the county to execute a written subcontract that must contain some specified provisions.¹⁵¹ The LID partner attorneys have provided to the county a copy of a “master felony contract,”¹⁵² but they have not

¹⁴⁹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.F., 5 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁵⁰ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.H., 2.N., 5 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁵¹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.E., 2.F., 2.I., 2.N., 2.O., 4, 6, 10.B., 12., 14., 16., 30 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁵² The “master felony contract” is an unsigned nine-page agreement with one of the current felony subcontractor attorneys and bearing the date of September 1, 2019. The terms of the “master felony contract” differ from the six-page “sample independent contractor agreement” that was included in the county’s existing contract with the LID partner attorneys and in the county’s original 2017 contract with the predecessor LID partner attorneys. *See* “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A attachment (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer); “Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan, Exh.

provided to the county each of the individual subcontracts, so the county has no way of knowing what they contain. The terms of the subcontracts executed between the LID partner attorneys and each of the LID subcontractor attorneys differ from one to the next.¹⁵³ For example:

- all subcontractor attorneys are required to carry insurance, but the required policies and coverage amounts vary amongst the subcontractor attorneys;
- all subcontractor attorneys are required to maintain a physical office space within Lake County, but only some subcontractor attorneys are required to hold regular office hours at that location;
- all of the subcontracts provide a procedure for declaring conflicts of interest in appointed cases, but the procedure varies amongst the subcontractor attorneys;
- all of the subcontracts provide that the agreement is terminated upon the subcontractor attorney's "refusal . . . to provide services," but the actions or conduct that constitute "refusal" are defined differently amongst the subcontractor attorneys;
- all subcontractor attorneys are required to report information to the LID partner attorneys, but the reporting requirements vary amongst the subcontractor attorneys; and
- some LID subcontracts quote in full the performance standards that are set out in the county contract, some subcontracts attach a copy of the county contract and incorporate its performance standards by reference, and at least one subcontract does not mention any performance standards.

The LID partner attorneys are confident that every subcontractor attorney has a physical office space in Lake County. Each of the three LID partner attorneys (who are also LID subcontractor attorneys) has a private individual office in the LID central office located at 390 N. Forbes Street in Lakeport. All of the other LID subcontract attorneys maintain physical office spaces in other areas of Lakeport, and at least five of them separately rent office space in the building located at 301 N. Forbes Street, directly across the street from the LID central office. The LID partner attorneys periodically visit the California State Bar's website to confirm that the subcontractor attorneys remain active members. Whenever any of the LID partner attorneys find themselves in court at the same time as a subcontractor attorney, they observe the subcontractor attorney's in-court performance and skills.

Otherwise, the LID partner attorneys purposefully avoid supervising the LID subcontractor attorneys. The LID partner attorneys say they "cannot maintain multiple conflict free counsel if [they] engage[] in *any* form of supervision" of the subcontractor attorneys (including the other LID partner attorneys). The LID partner attorneys do not believe they "can simultaneously have truly conflict free counsel and also engage in any significant effort to compel any performance which requires or hints at supervision." The LID partner attorneys say they do not conduct any type of performance evaluation of the LID subcontractor attorneys because "there is no way to do a performance evaluation without supervising the attorneys, which we are not allowed to do." The LID partner attorneys believe they cannot "ethically or practically" ensure that the subcontractor attorneys obtain the ancillary and support services necessary to provide adequate representation, because these are "strategic legal decision[s] uniquely within the purview of the attorney assigned to the case."

A. attachment (for the period of May 7, 2017 through May 6, 2018).

¹⁵³ "Contract for Indigent Defense Services" between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

Since the outset of the contract with the county, the LID partner attorneys have terminated an attorney's subcontract once, because the subcontractor attorney "acted in a very unprofessional and at times abusive manner." Although clients occasionally call the LID central office to express concerns about their appointed subcontractor attorney or ask the court to remove their appointed attorney and provide a different one, the LID partner attorneys typically only consider contacting the subcontractor attorney to discuss the situation when complaints are made "over and over" about the same attorney, or in once instance when a complaint was made directly to the Lake County Board of Supervisors.

Even though required by the county's contract to do so,¹⁵⁴ the LID partner attorneys have not created written practices and procedures for the subcontractor attorneys, have not established minimum qualifications for them, do not require them to receive ongoing training in the types of cases to which they are appointed, and have not established maximum caseloads or workloads allowed for the subcontractor attorneys.

¹⁵⁴ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.L., 4, 5, 7 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

CHAPTER IV. INDIGENT REPRESENTATION SYSTEM FUNDING

The U.S. Supreme Court explained in *Cronic* that “[t]he right to the effective assistance of counsel” means that the defense must put the prosecution’s case through the “crucible of meaningful adversarial testing.”¹⁵⁵ For this to occur, an indigent person’s attorney must have the resources necessary to challenge the prosecution’s case. If the attorney lacks the necessary resources to challenge the state’s case – “if the process loses its character as a confrontation between adversaries”¹⁵⁶ – this is a structural impediment that results in a constructive denial of the right to counsel.

The U.S. Constitution holds the State of California responsible for ensuring adequate funding for the right to counsel under the Sixth and Fourteenth Amendments.¹⁵⁷ California has delegated to its counties all responsibility at the outset for funding trial-level indigent representation services.

A. The fiscal resources necessary for effective representation

The American Bar Association’s *Standards for Criminal Justice* explain that attorneys must have adequate resources and support (including secretarial, investigative, and expert services) and adequate facilities and equipment (such as computers, telephones, photocopying equipment, and office space to meet with clients) in order to render effective assistance of counsel.¹⁵⁸ To prevent financial conflicts of interests, all national standards require that: “Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.”¹⁵⁹ Therefore, an attorney needs three types of resources to effectively represent each client:

- *Law office overhead.* For an attorney to be available to represent clients each day, certain expenses must be funded. These include office rent, furniture and equipment, computers and cellphones, telephone and internet and other utilities, office supplies including stationery, malpractice insurance, state licensing and bar dues, and legal research materials, plus the cost of staff such as a secretary or legal assistant. Private attorneys must incur all of these expenses, commonly referred to as “overhead,” before representing a single client.¹⁶⁰

¹⁵⁵ *United States v. Cronic*, 466 U.S. 648, 656-57 (1984) (“The right to the effective assistance of counsel is thus the right of the accused to require the prosecution’s case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted – even if defense counsel may have made demonstrable errors – the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated.”).

¹⁵⁶ *United States v. Cronic*, 466 U.S. 648, 656-57 (1984).

¹⁵⁷ *Gideon v. Wainwright*, 372 U.S. 335, 341-45 (1963) (“[T]hose guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. . . . [A] provision of the Bill of Rights which is ‘fundamental and essential to a fair trial’ is made obligatory upon the States by the Fourteenth Amendment. . . . [R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”).

¹⁵⁸ AMERICAN BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE – PROVIDING DEFENSE SERVICES, std. 5-1.4 cmt. (3d ed. 1992).

¹⁵⁹ AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 8 cmt. (2002).

¹⁶⁰ “The 2012 Survey of Law Firm Economics by ALM Legal Intelligence estimates that over 50 percent of revenue generated by attorneys goes to pay overhead expenses,” NATIONAL ASS’N OF CRIM. DEFENSE LAWYERS, RATIONING JUSTICE: THE UNDERFUNDING OF ASSIGNED COUNSEL SYSTEMS 8 (Mar. 2013), and overhead tends to be a higher percentage of gross receipts for smaller law offices. See ALM LEGAL INTELLIGENCER, 2012 SURVEY OF LAW FIRM ECONOMICS,

- *Case-related expenses.* Once an attorney is designated to represent a client in a given case, additional expenses inevitably arise. These are expenses that the attorney would not incur but for representing that client, and they include, for example, postage to communicate with the client and witnesses and the court system, long-distance and collect telephone charges, mileage and other travel costs to and from court and to conduct investigations, preparation of copies and exhibits, and costs incurred in obtaining discovery, along with the costs of hiring necessary investigators and experts in the case. These costs vary from case to case; some cases requiring very little in the way of expense, other cases costing quite a lot.
- *Fair lawyer compensation.* This is the attorney's pay.

The government is responsible for providing the resources needed in each indigent person's case. It can do so by providing a government-funded building stocked with all the necessary supplies and equipment and a budget for investigation, experts, and support staff. Or it can do so by paying or repaying the appointed private attorneys for these expenses. What government *cannot do*, as has been held by state supreme courts all across the country, is place the burden of paying for the indigent representation system onto appointed private attorneys.¹⁶¹

B. Lake County's available revenue and actual expenditures for indigent representation services

National standards call for state funding of indigent representation services¹⁶² in part because local jurisdictions most in need of indigent defense services are often the ones least able to afford them. In many instances, the circumstances that limit a county's revenue – such as low

Executive Summary at 4 (showing overhead ranging from 38.9 percent of receipts in the largest law firms to 47.2 percent in smaller law offices).

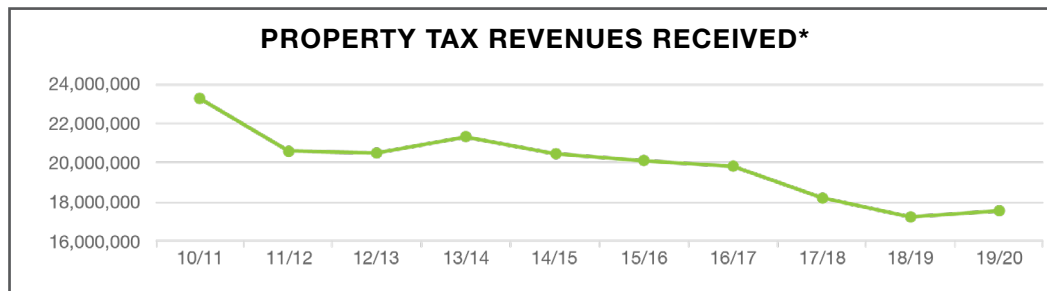
¹⁶¹ See, e.g., *Wright v. Childree*, 972 So. 2d 771, 780-81 (Ala. 2006) (determining assigned counsel are entitled to a reasonable fee in addition to overhead expenses); *DeLisio v. Alaska Superior Court*, 740 P.2d 437, 443 (Alaska 1987) (concluding that “requiring an attorney to represent an indigent criminal defendant for only nominal compensation unfairly burdens the attorney by disproportionately placing the cost of a program intended to benefit the public upon the attorney rather than upon the citizenry as a whole;” and that Alaska’s constitution “does not permit the state to deny reasonable compensation to an attorney who is appointed to assist the state in discharging its constitutional burden,” because doing so would be taking “private property for a public purpose without just compensation”); *Kansas ex rel Stephan v. Smith*, 747 P.2d 816, 242 Kan. 336, 383 (Kan. 1987) (the state “has an obligation to pay appointed counsel such sums as will fairly compensate the attorney, not at the top rate an attorney might charge, but at a rate which is not confiscatory, considering overhead and expenses”); *Louisiana v. Wigley*, 624 So.2d 425, 429 (La. 1993) (finding that “in order to be reasonable and not oppressive, any assignment of counsel to defend an indigent defendant must provide for reimbursement to the assigned attorney of properly incurred and reasonable out-of-pocket expenses and overhead costs”); *Wilson v. Mississippi*, 574 So.2d 1338, 1340 (Miss. 1990) (holding indigent defense attorneys are entitled to “reimbursement of actual expenses” including “all actual costs to the lawyer for the purpose of keeping his or her door open to handle this case,” in addition to a reasonable sum); *Oklahoma v. Lynch*, 796 P.2d 1150, 1161 (Okla. 1990) (finding that the state government “has an obligation to pay appointed lawyers sums which will fairly compensate the lawyer, not at the top rate which a lawyer might charge, but at a rate which is not confiscatory, after considering overhead and expenses”); *Jewell v. Maynard*, 383 S.E.2d 536, 540 (W. Va. 1989) (finding that, because compensation rates did not cover attorney overhead, court appointed attorneys were forced to “involuntarily subsidize the State with out-of-pocket cash;” “[p]erhaps the most serious defect of the present system is that the low hourly fee may prompt an appointed lawyer to advise a client to plead guilty, although the same lawyer would advise a paying client in a similar case to demand a jury trial”).

¹⁶² See, e.g., AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 2 cmt. (2002).

property values, high unemployment, high poverty rates, limited household incomes, and limited educational attainment – are correlated with high crime rates. In high poverty areas, more people accused of crime are indigent and entitled to public defense services. Further, these counties typically spend more on social services such as public health needs, unemployment compensation, or housing assistance, leaving fewer resources available for protecting people’s rights under the Sixth Amendment. Lake County fits this profile squarely.

California state law places significant limitations on how counties can raise revenue, restricting Lake County’s ability to make the substantial investment required to ensure effective representation under the Sixth Amendment. The primary source of general fund revenue for California’s counties is local property taxes and sales & use taxes.¹⁶³ But the state legislature controls the maximum rate of property taxes, and it controls the allocation of local property taxes among the counties, cities, and special districts.¹⁶⁴ Additionally, two-thirds of the voters must approve any change in local taxes.¹⁶⁵

For the fiscal year ending June 30, 2020, Lake County’s total general fund revenue was just slightly over \$57 million,¹⁶⁶ over half of which was the \$29.4 million that the county collected in property taxes.¹⁶⁷ As the county explained in its financial report for that year, “Property Tax revenues, the largest source of discretionary County General Fund Revenue, have still not reached prerecession levels when adjusted for inflation as shown in the table below.”¹⁶⁸



Many factors can cause property values to be low and limit a county’s property tax revenue, such as high unemployment, high poverty rates, and limited household incomes. Lake County struggles with some of these factors .

The most obvious factor is the property available to be taxed. Lake County is land-locked, with no possibility of geographic expansion beyond its existing 1,256 square miles.¹⁶⁹ While the cost of real estate in California is high compared to much of the nation, the median value of

¹⁶³ See INSTITUTE FOR LOCAL GOVERNMENT, UNDERSTANDING THE BASICS OF MUNICIPAL REVENUES IN CALIFORNIA: CITIES, COUNTIES AND SPECIAL DISTRICTS 5 (2016).

¹⁶⁴ CAL. CONST. art. XIII, § 20; see COUNTY OF LAKE, STATE OF CALIFORNIA, COMPREHENSIVE ANNUAL FINANCIAL REPORT, FISCAL YEAR ENDED JUNE 30, 2020, at 47-48.

¹⁶⁵ CAL. CONST. art. XIII A, § 4; CAL. CONST. art. XIII C, §§ 1, 2, 3.

¹⁶⁶ COUNTY OF LAKE, STATE OF CALIFORNIA, COMPREHENSIVE ANNUAL FINANCIAL REPORT, FISCAL YEAR ENDED JUNE 30, 2020, at 28.

¹⁶⁷ COUNTY OF LAKE, STATE OF CALIFORNIA, COMPREHENSIVE ANNUAL FINANCIAL REPORT, FISCAL YEAR ENDED JUNE 30, 2020, at 169.

¹⁶⁸ COUNTY OF LAKE, STATE OF CALIFORNIA, COMPREHENSIVE ANNUAL FINANCIAL REPORT, FISCAL YEAR ENDED JUNE 30, 2020, at 3.

¹⁶⁹ U.S. CENSUS BUREAU, QUICK FACTS (comparing Lake County, California, and the United States), <https://www.census.gov/quickfacts/fact/table/CA,lakecountycalifornia,US/PST045221>.

owner-occupied housing in Lake County is \$238,000, not even half that of the median value of \$538,500 throughout California.¹⁷⁰ When the value of homeowners' property is low, the property taxes that the county can assess and collect are also low.

Lake County had a 2020 federal census population of 68,163, making it the 19th smallest by population of California's 58 counties.¹⁷¹ Fewer people living in a county means fewer people to tax. Meanwhile, among Lake County's total population, 44.3% are either 65 years old and over or under the age of 18, leaving just 55.7% at prime workforce age – a significantly lower percentage of potential earners than in the state overall (62.7%) and nationally (61.2%).¹⁷² Median household income in Lake County is only \$49,254, far lower than the median income of \$78,672 throughout California and of \$64,994 nationally.¹⁷³

All of this leads to increasing poverty within a county. As of July 1, 2021, Lake County has 15.9% of its people living in poverty; worse than for the state as a whole (11.5%) and for the nation (11.4%).¹⁷⁴ Counties with higher levels of poverty are called on to spend more on social services, such as medical care for the uninsured and housing and food needs for the un- and under-employed, leaving lesser fiscal resources available to spend on the criminal justice system overall.

And in fact, the provision of the right to counsel for indigent people is just one among many services that Lake County provides. Out of the revenue available to it, Lake County provides “public safety, highways and streets, sanitation, health and social services, culture and recreation, public improvements, planning and zoning, and general administrative services” to the residents of the county.¹⁷⁵

Whatever the amount of crime that occurs in Lake County, and whether committed by residents or people passing through, California requires Lake County to fund all of the cost of the trial-level indigent representation system at the outset. For the fiscal year ending June 30, 2020, Lake County spent a total of \$1,479,122 on the entirety of its indigent defense system, including counsel and case-related expenses provided through the LID contract and those provided through the superior court.¹⁷⁶ Faced with significant poverty in Lake County, a larger percentage

¹⁷⁰ U.S. CENSUS BUREAU, QUICK FACTS (comparing Lake County, California, and the United States), <https://www.census.gov/quickfacts/fact/table/CA,lakecountycalifornia,US/PST045221>.

¹⁷¹ U.S. CENSUS BUREAU, QUICK FACTS (comparing Lake County, California, and the United States), <https://www.census.gov/quickfacts/fact/table/CA,lakecountycalifornia,US/PST045221>.

¹⁷² U.S. CENSUS BUREAU, QUICK FACTS (comparing Lake County, California, and the United States), <https://www.census.gov/quickfacts/fact/table/CA,lakecountycalifornia,US/PST045221>.

¹⁷³ U.S. CENSUS BUREAU, QUICK FACTS (comparing Lake County, California, and the United States), <https://www.census.gov/quickfacts/fact/table/CA,lakecountycalifornia,US/PST045221>.

¹⁷⁴ U.S. CENSUS BUREAU, QUICK FACTS (comparing Lake County, California, and the United States), <https://www.census.gov/quickfacts/fact/table/CA,lakecountycalifornia,US/PST045221>.

¹⁷⁵ COUNTY OF LAKE, STATE OF CALIFORNIA, COMPREHENSIVE ANNUAL FINANCIAL REPORT, FISCAL YEAR ENDED JUNE 30, 2020, at 1.

¹⁷⁶ COUNTY OF LAKE, CALIFORNIA, ADOPTED BUDGET FISCAL YEAR 2020-2021, schedule 9 at B-37. Lake County provides all funding for the county's entire indigent representation system through a single budgetary unit identified as “2111 - Public Defender.” *See, e.g.*, COUNTY OF LAKE, CALIFORNIA, ADOPTED BUDGET FISCAL YEAR 2020-2021, schedule 9 at B-37. Through that budget unit, the county pays:

- the flat fee & possible additional compensation for the LID contract;

of people accused of crime are indigent and qualify for appointed counsel, even though Lake County has fewer resources available from which to provide indigent representation services.

Limited state funding available to Lake County. California counties can receive state funding or apply for state reimbursement for the following types of indigent representation expenditures:

- *Crimes and involuntary detentions* – The state is allowed to reimburse counties for not more than 10% of the funds actually expended for providing appointed counsel for indigent people “charged with violations of state criminal law or involuntarily detained under the Lanterman-Petris-Short Act.”¹⁷⁷
- *Homicide cases* – A county can apply to the state controller for state reimbursement of a portion of certain costs incurred in homicide cases, in accordance with rules and regulations established by the state controller.¹⁷⁸ The reimbursable costs include those incurred “by the public defender or court-appointed attorney or attorneys in investigation and defense,” but exclude “normal salaries and expenses” and also exclude any costs for which the superior court is responsible.”¹⁷⁹ Lake County has not spent enough on the costs of homicide cases to be eligible for this state reimbursement.
- *Post-conviction indigent defense providers* – In fiscal year 2021-2022, the state legislature established a three-year grant program to provide some state funding for the workload of indigent defense providers in certain criminal postconviction proceedings, with the program administered by the state’s Board of State and Community Corrections.¹⁸⁰ Lake County is eligible to receive \$81,403.94 per year for three years through this grant program, and in January 2022 the county applied for this state grant funding that begins March 2022.
- *County public defender offices* – In fiscal year 2020-2021, the state legislature established a one-time grant program to help in addressing the “staffing, training, case management needs or other attorney support” of eligible county public defender offices, with the program administered by the state’s Board of State and Community Corrections.¹⁸¹ Lake County was not eligible for this grant because it does not have a county public defender office.¹⁸²
- *Training* – Local public defenders can be reimbursed out of the state’s “Local Public Prosecutors and Public Defenders Training Fund” for attending “statewide programs of

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- the “ancillary services” expressly identified in the LID contract; and
 - the fees and expenses of counsel appointed by the court outside of the LID contract (and outside the scope of this evaluation).

¹⁷⁷ CAL. PENAL CODE § 987.6 (West 2021).

¹⁷⁸ CAL. GOV. CODE §§ 15202, 15204 (West 2021) (allowing county to seek state “reimbursement of the costs incurred by the county in excess of the amount of money derived by the county from a tax of 0.0125 of 1 percent of the full value of property assessed for purposes of taxation within the county” in a homicide case).

¹⁷⁹ CAL. GOV. CODE § 15201 (West 2021).

¹⁸⁰ Budget Act of 2021 (enacted June 28, 2021) (appropriating \$50 million per year for three years, of which \$49,500,000 is required to be available to counties on a pro rata basis according to each county’s “share of the total adult population in the state” for “workload associated with” postconviction representation under Cal. Penal Code §§ 1170(d)(1), 1170.95, 1473.7, and 3051).

¹⁸¹ Budget Act of 2020 (enacted June 26, 2020) (appropriating \$10 million to “support grants to eligible county public defender’s offices for indigent defense services” from which \$200,000 “shall be available to Board of State and Community Corrections to contract for an evaluation of the grant program.”).

¹⁸² The Board of State and Community Corrections restricted grant eligibility to counties with a public defender office and with a population of 550,000 residents or fewer. The eligible counties were: El Dorado, Humboldt, Imperial, Lassen, Marin, Mendocino, Merced, Monterey, Napa, Nevada, Santa Barbara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Tulare, Tuolumne, and Yolo. See Indigent Defense Grant Program Application Package.

education, training, and research,” in accordance with eligibility guidelines developed by the state’s Office of Emergency Services,¹⁸³ Lake County is not eligible for this state reimbursement because it does not have a county public defender’s office. Beginning in fiscal year 2020-2021, the state legislature allocated funding for and expanded the duties of the office of the state public defender to include “provid[ing] assistance and training” to county indigent representation systems.¹⁸⁴

Up through March 2022, Lake County has never received funding from the state government for trial-level right to counsel indigent representation services.

Lake County funding of the “flat fee” and possible additional compensation for the LID contract. Lake County follows a fiscal year that starts July 1 and ends June 30,¹⁸⁵ and Lake County’s contracts with the LID partner attorneys for indigent defense services do not always align with the county’s fiscal year.¹⁸⁶ Under the contract currently in place, which terminates on December 31, 2022, the county pays to the LID partnership a flat annual contract value of \$1,620,000, paid in installments of \$135,000 per month.¹⁸⁷ The flat fee that the county pays to the LID partnership has increased three times between 2017 and 2022.¹⁸⁸

¹⁸³ CAL. PENAL CODE §§ 11501 through 11504 (West 2021).

¹⁸⁴ CAL. GOV. CODE §§ 15420 through 15422 (West 2021). In May 2021, the state public defender established the Indigent Defense Improvement Division and appointed the division’s first director to administer the newly-authorized support to counties. *Press Room: OSPD welcomes Executive Director of OSPD’s new Indigent Defense Improvement Division*, OFFICE OF THE STATE PUBLIC DEFENDER (May 17, 2021), <https://www.ospd.ca.gov/press-room/>.

¹⁸⁵ See generally COUNTY OF LAKE, ADOPTED BUDGET FISCAL YEAR 2020-2021.

¹⁸⁶ Compare, e.g., “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan (for the period of February 1, 2018 through June 30, 2019) with “Amendment No. 2 to Agreement for Indigent Defense Between County of Lake and Lake Indigent Defense LLP” (effective May 14, 2019, extending the contract to end on October 31, 2019) and with “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (effective January 1, 2022, extending the term of the contract to end on December 31, 2022).

¹⁸⁷ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 8. (for the period of February 1, 2018 through June 30, 2019), as amended most recently by “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” ¶¶ C., D. (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁸⁸ “Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan (for the period of May 7, 2017 through May 6, 2018); “Amendment No. 1 to the Agreement for Indigent Defense Services” between the County of Lake and J. David Markham and Anakalia K. Sullivan (shortening the contract to end on January 31, 2018, and modifying the payment terms); “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan (for the period of February 1, 2018 through June 30, 2019); “Amendment No. 2 to Agreement for Indigent Defense Between County of Lake and Lake Indigent Defense LLP” (extending the contract to end on October 31, 2019); “Amendment No. 3 to the Agreement for Indigent Defense Services Between the County of Lake and Lake Indigent Defense, LLP” (extending the contract to end on December 31, 2020, and modifying the payment terms); “Amendment No. 4 to the Agreement for Indigent Defense Services Between the County of Lake and Lake Indigent Defense, LLP” (clarifying the payment terms of the contract ending on December 31, 2020); “Amendment No. 4 (*sic*) to the Agreement for Indigent Defense Services Between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2021, and modifying the payment terms); “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

PERIOD	MONTHLY FLAT FEE	ANNUAL CONTRACT VALUE
May 7, 2017 to Oct. 31, 2019	\$110,000	\$1,320,000
Nov.1, 2019 to Dec. 31, 2020	\$118,000	\$1,416,000
Jan. 1, 2021 to Dec. 31, 2021	\$125,000	\$1,500,000
Jan. 1, 2022 to Dec. 31, 2022	\$135,000	\$1,620,000

The only allowance in the contract for possible additional compensation is in “complex cases requiring extraordinary time” and in death penalty cases.¹⁸⁹ Since the county first contracted with the LID partner attorneys in 2017, LID has not requested additional compensation for complex cases and the prosecution has not filed a case seeking the death penalty.

Lake County funding of “ancillary services” for LID cases.¹⁹⁰ In addition to the compensation paid to the LID partnership, the county pays for certain “ancillary services” in cases appointed through the LID contract, expressly identified in the contract as:¹⁹¹

- i. Expert witness fees, payable in accordance with State law;
- ii. Transcription Fees;
- iii. Interpreter Services;
- iv. Polygraph Services;
- v. Costs for Psychological Evaluations and Reports;
- vi. Laboratory and Forensic Services;
- vii. Extraordinary costs/expenses related to defense representation (with prior approval); and
- viii. Other specialized services which cannot reasonably be provided by the contract attorneys.

When an expert or interpreter is needed in the cases of indigent people represented under the LID contract, the appointed subcontractor attorney submits a motion to the Lake County Superior Court seeking the necessary funding, and all documents are filed in the confidential section in the court file. The county then pays for these case-related expenses whenever ordered by the court to do so. All subcontractor attorneys report that they have not experienced any difficulty in receiving funding for interpreters or expert assistance in appointed cases whenever they request it.

¹⁸⁹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.C. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁹⁰ The county funding for “ancillary services” in cases appointed through the LID contract is in the “Professional & Specialize” line item of the “2111 - Public Defender” budget unit, but this line item also contains funding for attorney fees and ancillary services in cases that are not appointed through the LID contract.

¹⁹¹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.H., 8.C. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

C. The revenue and expenses of the LID partner attorneys

The LID partner attorneys provided the following table showing the LID partnership's monthly revenues and estimated average monthly expenses from January 2018 through October 2021.

	2018	2019	2020	JAN-SEPT 2021	OCT 2021
MONTHLY REVENUES	\$110,000	\$110,000*	\$118,000	\$125,000	\$125,000
MONTHLY EXPENSES					
LID office manager salary	\$2,200	\$2,475	\$3,250	\$3,600	\$3,600
LID investigators' fees	\$8,000	\$8,000	\$11,000	\$11,000	\$11,000
Subcontractor attorneys' fees	\$59,500	\$76,250	\$90,800	\$94,750	\$98,900
Operating costs (rent, utilities, equipment, software licensing, bar dues, etc.)	--	\$5,000	\$5,200	\$5,200	\$6,400
LID partners' administrator fees	\$7,600	\$7,600	\$6,600	\$5,600	\$7,400
TOTAL MONTHLY EXPENSES	--	\$99,325	\$116,850	\$120,150	\$127,300
MONTHLY PROFIT (LOSS)	--	\$10,675	\$1,150	\$4,850	(\$2,300)

* Lake County paid the LID partner attorneys a flat fee of \$110,000 per month through October 31, 2019. Beginning November 1, 2019 and through December 31, 2020, the county paid a flat fee of \$118,000 per month. Therefore, in November and December 2019, with the flat fee payment being \$118,000 per month, after paying all expenses the LID partner attorneys gained a profit of \$18,675 in each of those two months.

Revenue. The LID partner attorneys' sole source of revenue under the contract with Lake County is the flat fee compensation paid by the county. As of January 2022, the county pays \$135,000 per month (or \$1,620,000 per year).¹⁹²

Contractually required expenses. The LID partner attorneys are required by the contract to pay for *all* costs of fulfilling the contract, *except* for the expressly identified "ancillary services" that the county pays directly to service providers when ordered to do so by the superior court (*see* discussion at page 55).

Out of the compensation that the county pays to the LID partner attorneys, the contract requires the LID partner attorneys to pay for the costs of administering, managing, and supervising the

¹⁹² See "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.C. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

contract performance.¹⁹³ The LID partner attorneys are required to provide for the cost of:¹⁹⁴

- operations, including:
 - multiple insurance policies, including not less than \$1,000,000 in “Workers’ Compensation Insurance and Employer’s Liability Insurance as required by the State of California,” not less than \$1,000,000 in commercial general liability insurance, and not less than \$1,000,000 in comprehensive automobile liability insurance;
 - an office location within the county, and a published telephone number and answering service;
 - a system for maintaining “full and accurate records;”
 - all necessary out-of-pocket costs “such as computer time, freight, long distance telephone charges, travel expenses, copying, telecopying, faxing and postage;”
- a “sufficient” number of support staff;
- a “sufficient” number of investigators; and
- a “sufficient” number of subcontractor attorneys (no fewer than 14).

Operating costs. As shown in the table on page 56, as of October 2021, the LID partner attorneys estimate average operating costs of \$6,400 per month.

The LID partner attorneys maintain each of the contractually required insurance policies.

The LID partner attorneys maintain a LID central office, located at 390 N. Forbes Street in Lakeport and less than a five-minute walk from the Lakeport courthouse. A sign outside the front of the LID central office reads:

Lake Indigent Defense
Putting a LID on Injustice
Law Office of Anakalia Sullivan
390 N. Forbes Street

Posted outside the front door entrance is a sheet of paper that lists all LID subcontractor attorneys with their telephone numbers. Upon entering the front door to the LID central office, the office manager works in the reception area, to the right is a seating area and mailboxes for all subcontractor attorneys, and displayed on the left is a whiteboard that charts each LID subcontractor attorney’s caseload (updated weekly by the office manager). Each of the three LID partner attorneys has a private individual office within the LID central office, and there is a sizeable conference room.

The LID central office has two computers, one central printer/scanner/fax machine, two internet service providers, a central wi-fi server with multiple terabyte capacity, cloud storage, a cloud-based case management system, and Dropbox.

¹⁹³ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 8. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁹⁴ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.B., 2.H., 2.J., 2.N., 8., 12. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

Support staff. The only support staff at the LID central office is one full-time equivalent office manager who is paid a monthly salary but does not receive any health insurance or retirement benefits. The LID partner attorneys' total monthly cost for support staff is \$3,600.

Investigators. The LID partner attorneys are contractually required to provide investigators for LID subcontractor attorneys to use in representing the clients to whom they are appointed under the county contract.¹⁹⁵ The LID partner attorneys contract with two investigators, who are each paid a flat monthly fee, at a total monthly cost of \$11,000.

The investigators are not prevented from doing work for others outside of the LID contract and they are not expected to work full-time on LID cases. Both of the investigators previously worked in law enforcement and neither of them speak Spanish, which several of the subcontractor attorneys find to be an impediment to the investigators' ability to conduct investigations.

To request investigation, LID subcontractor attorneys email the case number and defendant's name to the LID office manager, who assigns one of the two investigators on a rotating basis. The LID office manager emails the assigned investigator and subcontractor attorney to notify them of the assignment, and then the LID subcontractor attorney submits a written investigation request directly to the assigned investigator.

The U.S. Supreme Court has determined that the failure to conduct adequate investigation can be grounds for a finding of ineffective assistance of counsel.¹⁹⁶ The American Bar Association's *Criminal Justice Standards for the Defense Function* explain the duty of every defense attorney to independently investigate the facts of each client's case, stating:

Defense counsel's investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter, consequences of the criminal proceedings, and potential dispositions and penalties. Although investigation will vary depending on the circumstances, it should always be shaped by what is in the client's best interests, after consultation with the client. Defense counsel's investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, as well as independent investigation. Counsel's investigation should also include evaluation of the prosecution's evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses, and other possible suspects and alternative theories that the evidence may raise.¹⁹⁷

¹⁹⁵ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.H., 8. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

¹⁹⁶ *Kimmelman v. Morison*, 477 U.S. 365, 385 (1986) ("[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.").

¹⁹⁷ AMERICAN BAR ASS'N, *CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION*, std. 4-4.1(c) (4th ed. 2017).

As national standards explain, it is crucial that an investigator be available to assist the attorney with interviewing witnesses, else “the attorney may be placed in the untenable position of either taking the stand to challenge the witnesses’ credibility if their testimony conflicts with statements previously given or withdrawing from the case.”¹⁹⁸

Subcontractor attorneys. The county’s contract with the LID partner attorneys requires them to provide at least 14 subcontractor attorneys, including at least 7 available in any given felony case and at least 12 available in any given misdemeanor case (in order to provide representation to up to that number of indigent codefendants in a single case).¹⁹⁹

As of October 2021, the LID partner attorneys pay each of 15 subcontractor attorneys (including themselves) a flat annual fee, paid in twelve equal monthly installments, resulting in the LID partner attorneys spending a total of \$98,900 per month on subcontractor attorneys’ compensation.

Although only 15 attorneys are identified as holding subcontracts, one of the 15 attorneys holds separate subcontracts for both misdemeanor and juvenile delinquency cases, and there is no written subcontract for one additional attorney who is paid by the LID partner attorneys to provide representation in veterans’ court, altogether accounting for the 17 subcontractor attorney positions.

Expenses not required by contract. In addition to the expenses that the LID partner attorneys are contractually required to provide, the LID partner attorneys also choose to spend money on certain costs that are not expressly required by the contract:

- administrator fees; and
- operations, including:
 - registration costs for subcontractor attorneys to attend CLEs provided by the Lake County Bar Association; and
 - the cost of legal representation of the LID partner attorneys in connection with performance of their duties under the contract.

Administrator fees. The LID partner attorneys pay themselves a monthly fee for administering the LID contract. As of October 2021, the three LID partner attorneys pay themselves a collective total of \$7,400 per month for administrator fees.²⁰⁰

¹⁹⁸ AMERICAN BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE – PROVIDING DEFENSE SERVICES, std. 5-1.4 cmt. (3d ed. 1992).

¹⁹⁹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.D. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

²⁰⁰ Prior to October 2021, there were two LID partner attorneys, and they paid themselves a collective total of \$5,600 per month for administrator fees. The LID partner attorneys list their administrative responsibilities as including hiring, salary, equipment purchases, finances, contract negotiations, weekly arraignment calendar assignments, and implementing systems that allow for the administration of the contract. All decisions are made by consensus of the partners.

Other operating costs. The LID partner attorneys have at times paid for subcontractor attorneys' annual bar licensing fees, and the partners regularly pay for subcontractor attorneys to attend CLEs provided by the Lake County Bar Association. During 2021, the LID partner attorneys retained private legal counsel to represent them during an audit by the California Employment Development Department.²⁰¹

Profits. Anything that remains from flat fee compensation paid by the county, after paying the LID partnership's monthly expenses, is profit that belongs to the LID partner attorneys. The more that the partners can minimize their expenses, the more money the partners will have at their disposal to do with as they see fit. One LID partner attorney explained that the partnership has "about \$30,000-\$50,000 of surplus in the bank," which is "just good business and is used for bonuses, lunches, raises for next year." For the final three months of 2021, after covering all expenses, the LID partner attorneys had estimated average losses of \$2,300 per month, but the Lake County compensation to the LID partner attorneys increased to \$135,000 per month beginning in January 2022 (an increase of \$10,000 per month). Assuming the LID partner attorneys' estimated average monthly expenses remain the same (as is expected), the LID partnership should have a monthly profit of \$7,700 beginning January 2022.

D. The revenue and expenses of the LID subcontractor attorneys

As of October 2021, there are 15 individual private attorneys identified as holding LID subcontracts (including the three LID partner attorneys who themselves subcontract to represent indigent people).²⁰² Each LID subcontract requires the subcontractor attorney to provide representation in an unlimited number of specified types of cases and proceedings, whenever appointed by the Lake County Superior Court on or after the date the subcontract commences.

Revenues. The LID partner attorneys determine the amount of the compensation they pay to each subcontractor attorney. Each subcontractor attorney receives a flat annual fee paid in monthly installments, and most received a raise within the past two years. LID subcontractor attorneys are paid differently depending on their experience level and the case types for which they provide indigent representation services.²⁰³

Contractually required expenses. The LID subcontractor attorneys are required by the subcontract to pay for *all* costs of fulfilling the subcontract, *except* for investigation and the expressly identified "ancillary services" that the county pays directly to service providers when ordered to do so by the superior court.²⁰⁴

²⁰¹ While this evaluation was under way in 2021, the California Employment Development Department (EDD) initiated an audit of the LID partners, examining whether the LID partners properly classify their subcontractor attorneys as "independent contractors" under California law or whether the subcontractor attorneys should instead be classified as "employees" who could be entitled to unemployment, disability, or paid family leave benefits.

The Sixth Amendment Center takes no position regarding the EDD audit.

²⁰² During this evaluation, the LID partner attorneys produced to the Sixth Amendment Center copies of 16 subcontracts; one attorney holds two separate subcontracts. Additionally, the LID partner attorneys report that they pay an attorney to provide representation services in Veteran's Court but without having executed a subcontract with that attorney.

²⁰³ For example, as of October 2021, LID felony subcontractor attorneys are paid \$7,500 per month. Depending on the attorney, misdemeanor subcontractor attorneys are paid \$5,500, \$6,000, or \$6,250 per month, and a subcontractor who is responsible for "misd+motions" is paid \$6,750 per month.

²⁰⁴ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia

By subcontract with the LID partner attorneys, each LID subcontractor attorney must:²⁰⁵

- have and pay for insurance, including for most subcontractor attorneys (the specific policies and coverages required vary by subcontractor):
 - worker’s compensation and employer’s liability insurance for \$1,000,000;
 - commercial general liability insurance for \$300,000;
 - automobile liability insurance for \$300,000; and
 - professional liability insurance for \$500,000;
- maintain the qualifications required to remain eligible for appointments through the county’s contract with the LID partners, which include:
 - having a physical office within the city limits of Lakeport or Clearlake, which includes the cost of rent and utilities;
 - having a working phone that can accept voice messages, which requires the attorney to pay for both the equipment and the services;
 - having a means of transportation, which often requires the attorney to pay for or have access to a vehicle; and
 - being a member in good standing of the California bar, which requires the attorney to pay the cost of completing at least 25 hours of continuing legal education during a 36-month period (of which at least four hours must be in legal ethics) and pay the cost of annual bar dues;²⁰⁶
- maintain specific qualifications required for appointment through the county’s contract with the LID partners in specific types of cases, which may include additional training or CLE for which the attorney must pay;
- pay for all necessary out-of-pocket costs, such as office furniture, fax machine, copier, printer, postage, and other office supplies; and
- employ or contract with “sufficient” support staff.

The subcontractor attorney’s fee. Whatever is left over, after paying for expenses, is the subcontractor attorney’s pay for their indigent representation system work. Many of the subcontractor attorneys struggle to pay the required overhead and case-related expenses in their Lake County appointed cases and, as a result, they make compromises that affect their personal lives and the quality of services they provide to their indigent clients.

K. Sullivan ¶¶ 2.H., 8. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer); *see also* “Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

²⁰⁵ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.F., 5., 6., 7., 12.D. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer); *see also* “Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

²⁰⁶ Lake Indigent Defense has, at times, paid for subcontractor attorneys’ annual bar licensing fees and pays for continuing legal education trainings that are produced by the Lake County Bar Association.

One subcontractor attorney estimates that their compensation through the subcontract works out to less than \$50 per hour, in light of the number of hours they must devote to representing their appointed clients in exchange for the flat fee compensation they receive, which leaves them with no take-home pay after paying their overhead costs. Most of the LID subcontractor attorneys do not live in Lake County and the county is described as difficult to get to, causing the subcontractor attorneys to incur up to \$400 per month in transportation and mileage costs. Since the onset of the covid-19 pandemic, several subcontractor attorneys have incurred \$300-\$400 per month for postage to resolve appointed cases by plea, explaining “it takes two \$4 mailings to get a plea form signed.”

Some subcontractor attorneys find creative ways to acquire the resources they need to represent their clients, while other subcontractor attorneys do without necessary resources. For example, one subcontractor attorney gives the office next door \$15 worth of paper each month and in return is allowed to use the neighbor’s Internet access. Several of the subcontractor attorneys do not pay for any legal research tools, instead relying on free resources at the local law library and on other lawyers and organizations to share materials with them. At least one subcontractor attorney works alone because they are unable to afford a receptionist or secretary, but that causes the subcontractor attorney to spend “a lot of time” doing tasks like answering the phone, making copies, and punching holes in documents and files instead of performing substantive legal work for appointed clients.

Several subcontractor attorneys receive personal healthcare coverage through Medicare, veteran services, or a partner’s family plan, but those who do not sometimes go without health insurance because the premiums available to them can cost up to \$1200 each month. To make ends meet, some subcontractor attorneys say they must devote a significant portion of their available hours each month to private paying clients, correspondingly reducing the time they devote to their Lake County appointed clients.

CHAPTER V. EARLY APPOINTMENT OF COUNSEL & CONTINUOUS REPRESENTATION IN CRIMINAL CASES

“Most obvious[ly],” as the U.S. Supreme Court said in *Cronic*, each state is responsible for ensuring that every indigent defendant who does not choose to self-represent and who faces possible loss of liberty in a criminal case is actually represented by an attorney at every critical stage of the proceeding.²⁰⁷ All misdemeanors and felonies in California carry the possibility of incarceration as a punishment,²⁰⁸ so every person charged with any of these crimes who cannot afford to hire their own attorney is entitled under the Sixth and Fourteenth Amendments to have an attorney provided at public expense to represent them.²⁰⁹

In 2008, the U.S. Supreme Court reaffirmed in *Rothgery v. Gillespie County* that the right to counsel attaches when “formal judicial proceedings have begun.”²¹⁰ For a person who is arrested, the beginning of formal judicial proceedings is at “a criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction,”²¹¹ without regard to whether a prosecutor is aware of the arrest.²¹² For all defendants, both in and out of custody, the beginning of formal judicial proceedings is signaled when prosecution is commenced, “whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.”²¹³

The Court in *Rothgery* carefully explains that the question of whether the right to counsel has attached is distinct from the question of whether a particular proceeding is a “critical stage” at which counsel must be present as a participant.²¹⁴ In other words, according to the Court, the Constitution does not necessarily require that defense counsel be present at the moment the right to counsel attaches, but from that moment forward, no critical stage in a criminal or juvenile delinquency case can occur unless the defendant is represented by counsel or has made an informed and intelligent waiver of counsel.²¹⁵ If an indigent defendant is actually deprived of counsel at a critical stage, the U.S. Supreme Court says that is unfair and so likely to prejudice the accused that “no amount of showing of want of prejudice would cure it.”²¹⁶

²⁰⁷ *United States v. Cronic*, 466 U.S. 648, 659 (1984). See also *In re Gault*, 387 U.S. 1, 36 (1967) (“The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child ‘requires the guiding hand of counsel at every step in the proceedings against him.’”) (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932)).

²⁰⁸ CAL. PENAL CODE § 17 (West 2019) (eff. Jan. 1, 2019).

²⁰⁹ *Halbert v. Michigan*, 545 U.S. 605 (2005); *Alabama v. Shelton*, 505 U.S. 654 (2002); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *In re Gault*, 387 U.S. 1 (1967); *Douglas v. California*, 372 U.S. 353 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963).

²¹⁰ *Rothgery v. Gillespie County*, 554 U.S. 191, 211 (2008). See also *Michigan v. Jackson*, 475 U.S. 625, 629 n.3 (1986); *Brewer v. Williams*, 430 U.S. 387, 388-89 (1977).

²¹¹ *Rothgery v. Gillespie County*, 554 U.S. 191, 213 (2008).

²¹² *Rothgery v. Gillespie County*, 554 U.S. 191, 194 (2008).

²¹³ *Brewer v. Williams*, 430 U.S. 387, 398 (1977) (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972)). See also *Michigan v. Jackson*, 475 U.S. 625, 629 n.3 (1986).

²¹⁴ *Rothgery v. Gillespie County*, 554 U.S. 191, 211 (2008).

²¹⁵ *Rothgery v. Gillespie County*, 554 U.S. 191, 212 (2008).

²¹⁶ *United States v. Cronic*, 466 U.S. 648, 658-59 (1984) (quoting *Davis v. Alaska*, 415 U.S. 308, 318 (1974)).

Although Lake County’s contract with the LID partner attorneys requires LID subcontractor attorneys to represent indigent people in juvenile delinquency cases and in some civil proceedings, for simplicity this chapter focuses only on the manner in which counsel is appointed to represent indigent defendants in adult criminal cases.

COVID-19 CHANGES TO COURT PROCEEDINGS

Prior to covid-19, all adult criminal defendants and LID subcontractor attorneys physically appeared in court for all proceedings. Beginning with its first pandemic-related emergency order in March 2020 and often during the two subsequent years, the Lake County Superior Court implemented a variety of changes to its criminal and court procedures in response to the pandemic. These include using remote technology for court appearances, implementing an emergency bail schedule, and

extending statutory time periods to hold some proceedings such as criminal jury trials and preliminary hearings. At the time of this report, it remains unknown to the Lake County Superior Court whether these changes are temporary, or whether some or all of them will be made permanent, and the superior court has not yet reverted to its pre-pandemic criminal and court procedures. Accordingly, this chapter details the process of an adult criminal case as it exists in Lake County after the onset of the covid-19 pandemic.

A. Citation or arrest

Citation/summons (“cite out”). For most infractions and misdemeanors, a person can be issued a citation to appear in court on a certain date.²¹⁷ The date the person is to appear in court, pursuant to a citation or summons, is the first time they will appear in court before a judge.

Most people accused of misdemeanor offenses, and some people accused of felony offenses in Lake County, are given a citation to appear in court by the officer rather than being arrested and transported to the Lake County jail.²¹⁸

Arrest. A person can be arrested in California for any public offense, including an infraction.²¹⁹

²¹⁷ CAL. PENAL CODE §§ 816a, 827.1 (West 2021). For a felony in which only a complaint has been filed, upon request of the prosecutor, a magistrate can issue a summons (instead of an arrest warrant) for the person to appear in court on a certain date. CAL. PENAL CODE § 813 (West 2021).

²¹⁸ Prior to the covid-19 pandemic, the “cite date” was usually two to three months after the date of the offense. During covid-19, the cite date is typically four to six months after the date of the offense.

²¹⁹ See, e.g., CAL. PENAL CODE § 836 (West 2021) (warrantless arrest for any public offense committed in presence of a peace officer); CAL. PENAL CODE § 853.5 (West 2021) (discussing arrest for infraction); CAL. PENAL CODE § 1427 (West 2021) (discussing issuance of arrest warrant for misdemeanor or infraction); CAL. PENAL CODE §§ 816a, 827.1, 853.6 (West 2021) (discussing arrest for misdemeanor); CAL. PENAL CODE § 813 (West 2021) (discussing issuance of arrest warrant for felony).

In Lake County, if a person is instead arrested, they are transported to the Lake County jail for booking. At the jail, an officer uses the uniform countywide bail schedule²²⁰ to determine the person's bail based on the offense on which the defendant was arrested.²²¹

If not released (for example, because they cannot afford the bail amount required or they are arrested on an offense that is not bailable without a hearing²²²), a person who is arrested must be taken “without unnecessary delay” before a magistrate, “and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays.”²²³ (*See* arraignment on the complaint, page 66.)

Probable cause determination following warrantless arrest. In *County of Riverside v. McLaughlin*, the United States Supreme Court held that a judge must make a probable cause determination within 48 clock hours of a warrantless arrest or the government risks being held responsible for an illegal detention.²²⁴ It is not necessary for there to be an actual hearing, and a judge can make this determination without ever seeing the defendant. Instead, the court reviews the paperwork signed under oath by the officer. If the judge finds that there was not probable cause for the arrest, the person is released from jail. If the judge finds, based on the officer's declaration, that there was probable cause for the arrest, the person remains in jail.

In Lake County, for any person arrested without a warrant who does not appear before the judge for arraignment on the complaint within 48 clock hours of the warrantless arrest (typically on weekends or holidays²²⁵), an on-call judge determines probable cause by phone or video, usually the same day as the arrest or the next calendar day. A deputy at the Lake County jail calls the on-call judge and reads the officer's probable cause declaration aloud for the on-call judge to make the probable cause determination.

Despite the requirements of *County of Riverside v. McLaughlin*, for any person arrested without a warrant but who does appear before a judge for arraignment on the complaint within 48 clock hours of the arrest, the Lake County Superior Court *does not* make a probable cause determination within 48 clock hours of the warrantless arrest. Prior to a person appearing before

²²⁰ In response to the covid-19 pandemic, the Lake County Superior Court implemented the Emergency Countywide Bail Schedule on June 20, 2020. The Emergency Countywide Bail Schedule “sets bail for the release of persons arrested without a warrant on felony charges and on all misdemeanor charges” and requires the monetary bail amount for all felony and misdemeanor offenses be set at zero dollars except for specific enumerated offenses. Lake County Superior Court Emergency Countywide Bail Schedule (eff. June 20, 2020) (listing numerous felony offenses and 16 misdemeanor offenses from the penal, health and safety, and vehicle codes that require a monetary bail that is more than zero dollars). Jail officials do not have the authority to impose conditions of release.

²²¹ To impose bail greater than amount allowed by the countywide bail schedule, jail officials must receive advance authorization from the on-call judge, who is on rotation at the Lake County Superior Court, prior to bail being imposed and prior to the defendant's initial appearance before the judge.

²²² CAL. PENAL CODE § 1270 (West 2021) (court order required for release on own recognizance); CAL. PENAL CODE § 1270.1 (West 2021) (hearing required to set different amount of bail in certain cases).

²²³ CAL. PENAL CODE §§ 821, 825, 849 (West 2021).

²²⁴ *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). *See also* *Gerstein v. Pugh*, 420 U.S. 103, 117 (1975) (the probable cause determination must be made by a neutral magistrate who is “independent of the police and prosecution.”).

²²⁵ If a defendant is arrested on a Friday before 5:00pm, arraignment takes place on Monday, and if a defendant is arrested between Friday at 5:00pm and Sunday, arraignment takes place on Tuesday.

the judge for arraignment, the judge is provided with only the complaint that is filed and signed by the district attorney's office²²⁶ – the judge is not provided any oral or written declaration of an officer that would offer a factual justification for the person's arrest and continued detention.²²⁷ Instead, for these defendants, the probable cause determination on a warrantless felony arrest is not made until the preliminary hearing, which can occur weeks after a person is arrested and awaits in custody, after which a judge may find that there was no probable cause that one or more crimes were committed by the defendant. Judges in Lake County never make a probable cause determination on a warrantless misdemeanor arrest unless the defendant argues the issue, which in practice never occurs during arraignment and rarely ever occurs at any subsequent court proceeding.²²⁸

B. "Arraignment on the complaint" and the right to counsel

The next step after a person is either arrested or cited is to appear in court before a judge at a proceeding referred to in Lake County as the "arraignment on the complaint." Some defendants are in custody, while other defendants are out of custody. This is the proceeding in Lake County that triggers the right to counsel under *Rothgery v. Gillespie County*.²²⁹

In-custody arraignments of adult criminal defendants (felony and misdemeanor) are conducted every weekday at 1:30 p.m., and they most often take place in Department 2. An in-custody defendant appears for arraignment over video from the Lake County jail,²³⁰ usually on the next court date following the defendant's arrest.²³¹ The judge, prosecutor, a LID subcontractor attorney, and the defendant are all present during the arraignment on the complaint. The judge is physically in the courtroom, the prosecutor is either in the courtroom or appears remotely by video, and a LID subcontractor attorney is either physically in the courtroom or appears remotely by video but is not physically at the jail with the defendant. The LID partner attorneys assign a *felony* subcontractor attorney to be on duty ("on-duty LID attorney") to represent all felony and

²²⁶ The complaint includes the defendant's name, alleged victim's name, date of offense, and statute that was alleged to have been violated. The complaint is filed by the district attorney's office with the court every weekday by noon in advance of the 1:30 p.m. call of the in-custody arraignment list and the judge often receives the complaint "a few minutes" before the arraignment.

²²⁷ See *Jones v. City of Santa Monica*, 382 F. 3d 1052, 1056 (9th Cir. 2004) (explaining that when a defendant is arrested without a warrant, the city's use of a pre-printed probable cause application is sufficient so long as it is accompanied by a "sworn complaint which incorporates by reference *other factual materials which, together with the complaint*, establish probable cause for detention.") (emphasis added) (citing *In re Walters*, 15 Cal. 3d 738, 751 (1975)). The Lake County jail does not use and files away probable cause declarations that it receives on weekdays.

²²⁸ Few defendants are arrested and appear for arraignment in custody on a misdemeanor complaint in Lake County. A person in custody on a misdemeanor-only complaint who has pled not guilty has the statutory right to argue to the judge that there is insufficient probable cause to support the charge in the complaint at the arraignment, however, this is not a practice in Lake County. CAL. PENAL CODE § 991 (West 2021).

²²⁹ *Rothgery v. Gillespie County*, 554 U.S. 191, 211 (2008). See also *Michigan v. Jackson*, 475 U.S. 625, 629 n.3 (1986); *Brewer v. Williams*, 430 U.S. 387, 388-89 (1977).

²³⁰ Remote proceedings in Lake County Superior Court are conducted through an Internet-based video conferencing platform, Zoom Video Communications, Inc. (Zoom). Prior to covid-19, Lake County Superior Court did not conduct remote hearings in criminal cases. All in-custody arraignments took place in the courthouse with the judge, prosecutor, LID attorney, and defendant physically in the same courtroom.

²³¹ If a defendant is arrested between Friday at 5:00 p.m. and Sunday, arraignment generally takes place on the following Tuesday.

misdemeanor in-custody defendants every weekday at arraignment, and they rotate the on-duty LID attorney every week.

Out-of-custody arraignments are held on Tuesdays at 8:15 a.m., in Department 2 for felony cases and in Department 4 for misdemeanor cases.²³² The judge, prosecutor, a LID subcontractor attorney, and the defendant are present during the arraignment on the complaint. Out-of-custody arraignments, whether felony or misdemeanor, occur with the defendant appearing either physically in the courtroom or remotely by phone or video. At least one LID subcontractor attorney is always present in the department (either remotely or by video) to accept new appointments because they are representing defendants on other cases. The judge is physically in the courtroom and the prosecutor may be physically in the courtroom or appear remotely by video.

Broadly, there are three things that occur at the arraignment on the complaint proceeding:

1. the judge informs the defendant of the rights to which they are entitled including the right to appointed counsel if indigent, allows the defendant to request appointed counsel if they so desire, and appoints counsel;
2. the defendant is notified of the charge,²³³ and the defendant may enter a plea to the charge; and
3. for a defendant who is in custody on a bailable offense, the judge may set conditions of release and set or reconsider previously-set bail after considering the defendant's financial ability to pay bail.²³⁴

1. Notice of the right to counsel

Every indigent person “who is charged with the commission of any contempt or offense triable in the superior courts” (all misdemeanors and all felonies²³⁵) is entitled to public counsel “at all

²³² Beginning January 2022, cases where at least one felony charge is filed will be heard in Department 3 and misdemeanor-only cases will be heard in Department 2.

²³³ At the arraignment on the complaint, the charge is the written complaint.

Misdemeanor complaint. A misdemeanor prosecution is commenced by the filing of a complaint. CAL. PENAL CODE §§ 740, 804(b), 904 (West 2021). If a defendant was released from custody after signing a written notice to appear that was filed with a magistrate, that written notice constitutes a complaint to which the defendant may enter a plea. CAL. PENAL CODE § 853.9 (West 2021). If a defendant was released from custody after signing a written notice to appear that was not filed with a magistrate, the prosecutor can initiate prosecution by filing, within 25 days of the arrest, either that written notice to appear or a formal complaint with the magistrate before whom the defendant was ordered to appear in the notice. CAL. PENAL CODE § 853.6(e)(3)(B) (West 2021).

Felony complaint. A complaint is used to commence a felony proceeding against a person at a time when a grand jury indictment has not been returned and a prosecutor cannot yet file an information, and it causes the person accused to come before a magistrate for a preliminary examination. CAL. CONST. art. I, § 14; CAL. PENAL CODE §§ 738, 806 (West 2021). “A person charged with a felony by complaint . . . shall be taken without unnecessary delay before a magistrate . . . [who] shall immediately give the defendant a copy of the complaint, inform the defendant of the defendant's right to counsel, allow the defendant a reasonable time to send for counsel, and on the defendant's request read the complaint to the defendant.” CAL. CONST. art. I, § 14; *see also* CAL. PENAL CODE § 859 (West 2021).

²³⁴ CAL. CONST. art. I, § 14; CAL. PENAL CODE §§ 858, 859, 859a, 976, 987, 988, 1270, 1270.1 (West 2021). The judge may require the probation department to monitor a defendant's compliance with conditions of pretrial release that a judge imposes. However, in Lake County, most defendants on pretrial conditions of release are not monitored by the probation department.

²³⁵ CAL. PENAL CODE § 17 (West 2021).

stages of the proceedings, including the preliminary examination.”²³⁶ This is the right to counsel about which the judge must advise defendants at the arraignment on the complaint.

California law provides that, in all cases other than death penalty cases, the judge must tell the defendant they have the right to counsel before the defendant is required to plead to the charge and ask if the defendant “desires the assistance of counsel.”²³⁷ A defendant can: notify the judge that they intend to or have obtained their own private attorney; request that the judge appoint counsel; or (in any non-capital case) waive the right to counsel and choose to self-represent.²³⁸

At the beginning of the arraignment, the judge tells the defendant (in a single group announcement to all defendants together at in-custody arraignments; to each defendant individually at out-of-custody arraignments):

- you have the right to be represented by an attorney;
- if you want an attorney but cannot afford to hire one, the court will appoint an attorney for you at no cost;
- if you are charged with a felony, you have the right to a preliminary hearing within 30 court days of the arraignment or entry of plea, whichever occurs later;
- the following rights do not apply if you are charged with a violation of probation or other form of supervision:
 - you are entitled to a speedy and public trial, and
 - you have the right to a jury trial;
- if you are charged with a violation of probation or supervision, you are entitled to a formal hearing on the alleged violations of probation at which time the district attorney is required to present evidence of the alleged violations;
- you have the right to appear and present evidence on your own behalf at your hearing or trial;
- you have the right to request the court issue subpoenas for witnesses or any evidence you want to present;
- you have the right to see and hear the witnesses who testify against you, and through your attorney, question those witnesses; and
- you have the right to testify at your own trial or hearing if you choose to do so, however you cannot be forced to testify against yourself.

Next, as each defendant’s case is called, the judge asks the defendant:

- is that your true name?
- did you hear the rights I outlined?
- did you understand them?

²³⁶ CAL. GOV. CODE § 27706(a) (West 2021); CAL. WELF. & INST. CODE §§ 634, 679 (West 2021).

²³⁷ CAL. PENAL CODE § 987(a) (West 2021).

²³⁸ In Lake County Superior Court, a defendant must sign an “Advisement and Waiver of Right to Counsel” (colloquially called “a *Faretta* waiver”) before the court can accept the defendant’s waiver of the right counsel, and the court appoints a LID subcontractor attorney to ensure that the defendant understands all rights prior to the execution of the *Faretta* waiver. *See Faretta v. California*, 422 U.S. 806 (1975). Various stakeholders noted it is rare for any defendant in Lake County to waive their right to counsel, estimating that it occurs once every 6 to 12 months and commenting “when that happens, everyone knows about it.”

In a death penalty case, a defendant is not allowed to waive the right to counsel at the arraignment on the complaint. CAL. PENAL CODE § 987(b) (West 2021).

- do you have any questions about them?
- do you want a lawyer?

2. Requesting appointed counsel and indigency determinations

State law requires that, when a defendant requests that the judge appoint counsel, the judge must determine whether the person “is financially able to employ counsel and qualifies for the services,”²³⁹ and the judge can require the person “to file a financial statement under penalty of perjury.”²⁴⁰

In Lake County, the judges presume that defendants who appear without counsel are indigent.²⁴¹ If the defendant says they would like to have a lawyer but cannot afford to hire one, the judge finds that the defendant qualifies for court-appointed counsel. In Lake County, it is estimated that approximately 90-95% of defendants charged with a criminal offense receive court-appointed counsel.

3. How a specific LID subcontractor attorney is appointed to represent each indigent defendant

If the defendant “desires and is unable to employ counsel the court shall assign counsel to defend him or her.”²⁴²

Misdemeanor. There are four misdemeanor subcontractor attorneys, and at the arraignment on a misdemeanor complaint, the judge appoints one of those four misdemeanor subcontractor attorneys to represent the defendant.

²³⁹ CAL. GOV. CODE § 27707 (West 2021).

²⁴⁰ CAL. GOV. CODE § 27707 (West 2021); CAL. PENAL CODE § 987(c) (West 2021). “The financial statement shall be confidential and privileged and shall not be admissible as evidence in any criminal proceeding except the prosecution of an alleged offense of perjury based upon false material contained in the financial statement. The financial statement shall be made available to the prosecution only for purposes of investigation of an alleged offense of perjury based upon false material contained in the financial statement at the conclusion of the proceedings for which such financial statement was required to be submitted. The financial statement shall not be confidential and privileged in a proceeding under Section 987.8 of the Penal Code.” CAL. GOV. CODE § 27707 (West 2021).

²⁴¹ The court has a declaration of income form (“Defendant’s Financial Statement and Notice to Defendant”) that a defendant can complete and submit to the judge, but it is rarely submitted.

During covid-19, because in-custody defendants are not physically brought into the courthouse for arraignment, the jail officials provide defendants with a blank declaration of income form after booking. Once the defendant fills out the form, the jail electronically submits the form to the court prior to arraignment.

²⁴² CAL. PENAL CODE § 987(a) (West 2021). Before actually appointing counsel, the judge must notify the “defendant that the court may, after a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel” and that, “if the court determines that the defendant has the present ability, the court shall order him or her to pay all or a part of the cost . . . [and] that the order shall have the same force and effect as a judgment in a civil action and shall be subject to enforcement against the property of the defendant in the same manner as any other money judgment.” CAL. PENAL CODE § 987.8(f) (West 2021). Under state law, any such hearing and assessment of the defendant’s ability to pay does not occur until the conclusion of the proceedings at the trial court level. CAL. GOV. CODE § 27712 (West 2021); CAL. PENAL CODE §§ 987.8(b), 987.8(c), 987.8(i), 987.81 (West 2021).

Lake County does not require indigent defendants to pay any portion of the cost of appointed counsel.

At the arraignment for an out-of-custody misdemeanor defendant, the judge “randomly picks one [LID] attorney” who is present in the department (either remotely or in person) to represent the defendant, and the subcontractor attorney orally accepts the appointment and represents the defendant during the arraignment and for the duration of the case.²⁴³ By contrast, since a misdemeanor subcontractor attorney is not present at arraignment of an in-custody misdemeanor defendant, the judge appoints one of the four misdemeanor subcontractor attorneys and rotates appointments through the subcontractor attorneys.. The on-duty LID attorney conveys the appointment to the LID office manager, who then notifies the appointed misdemeanor subcontractor attorney that same day.²⁴⁴

Felony. There are eight felony subcontractor attorneys, and at the arraignment on a felony complaint, the judge appoints one of those eight felony subcontractor attorneys to represent the defendant.

The eight felony subcontractor attorneys rotate duty so that one of them is present every weekday at 1:30 p.m. as the on-duty LID attorney for in-custody arraignments. At in-custody arraignment of a defendant, the judge asks the on-duty LID attorney to identify which subcontractor attorney the court should appoint. The on-duty LID attorney selects a felony subcontractor attorney based on the “arraignment worksheet” provided by the LID office manager,²⁴⁵ and the judge appoints the identified felony subcontractor attorney. The on-duty LID attorney conveys the appointment to the LID office manager, who then notifies the appointed felony subcontractor attorney that same day. The in-custody defendant is told the name of their appointed subcontractor attorney by either the judge or the on-duty LID attorney, and the jail provides the defendant with a business card that lists all subcontractor attorneys’ names and telephone numbers.

4. Pleading to the charge

Once a defendant has requested and received appointed counsel, no critical stage in the case can occur unless the attorney is present to represent the defendant. Arraignment and the entry of a plea are critical stages in a criminal case, during which the indigent defendant has the right to counsel and for that attorney to be present as an active participant in the proceedings.²⁴⁶

In Lake County, all indigent defendants except in-custody misdemeanor defendants enter a plea (typically not guilty) and deny all enhancements and allegations to the charge at the arraignment. In-custody misdemeanor defendants do not enter a plea at arraignment, and instead get set

²⁴³ Some attorneys disagree that the appointment process is entirely random. For example, one LID misdemeanor subcontractor attorney believes they are appointed 20% more cases than the other misdemeanor subcontractor attorneys because the judge sees that they are disposing more cases than the other attorneys.

²⁴⁴ The on-duty LID attorney electronically provides the LID office manager with all new attorney appointments and discovery received at the end of each arraignment day. The LID office manager forwards the case appointments and discovery to the appointed attorney that same day.

²⁴⁵ The “arraignment worksheet” is updated by the LID office manager weekly and it shows, for each LID felony subcontractor attorney, the attorney’s new client assignments for the present month, new client assignments from the prior month, total number of existing clients, and total number of clients assigned for the year to date. Based on these case numbers, the on-duty LID attorney makes judgment calls about which and how many cases to appoint to each felony subcontractor.

²⁴⁶ *Hamilton v. Alabama*, 368 U.S. 52, 53-55 (1961).

for a “further arraignment/appearance of counsel/entry of plea” date, at which the appointed subcontractor attorney is present and the defendant enters a plea to the charge.

5. Bail (for in-custody defendants)

At in-custody arraignment, the on-duty LID attorney and judge do not have access to any discovery except for the criminal complaint, while the prosecutor has access to all existing discovery, including the defendant’s criminal history, booking sheet, the probable cause declaration, and all police reports generated up to that point. The on-duty LID attorney also does not typically speak with the in-custody defendant prior to appearing before the judge – conversations between the on-duty LID attorney and the in-custody defendant occur for the first time publicly, in open court, while the arraignment is being held. The on-duty LID attorney’s representation of the defendant is limited to soliciting the defendant’s personal financial information publicly in open court, possibly arguing for the defendant’s release from custody based on the defendant’s inability to pay bail, and possibly entering a “general time waiver” on behalf of the defendant.²⁴⁷

Because the on-duty LID attorney has almost no access to the defendant or case information prior to or during the arraignment, stakeholders explain that the on-duty LID attorney “is not an attorney in any real sense of the word” because there is “no attorney client relationship” – there is “someone with a bar card who is present for people.” The on-duty LID attorney’s lack of information about the case or the defendant makes it “very difficult to argue bail against the prosecutor” and renders the proceeding, in one stakeholder’s words, “a joke.”

6. Next steps after arraignment

Misdemeanor-only. The next court date after arraignment for in-custody misdemeanor defendants is “further arraignment/appearance of counsel/entry of plea” where the appointed subcontractor attorney enters an appearance on the defendant’s case, enters a plea on behalf of the defendant for the first time, may enter a “general time waiver” on behalf of the defendant, and may argue for the defendant’s release from custody. This court date is typically scheduled less than three weeks from the arraignment, and a defendant can plead guilty, no contest, or otherwise resolve the case at this further arraignment date. After the entry of plea (at arraignment for out-of-custody misdemeanor defendants and further arraignment/appearance of counsel/entry of plea for in-custody defendants), the judge sets a “disposition or setting” (colloquially, “dispo/set”) date approximately three months later, where the case is supposed to either be disposed or scheduled for trial.

Felony. Once the judge sets bail in a felony case, the next court date is scheduled for preliminary hearing²⁴⁸ unless the defendant while accompanied by counsel waives the right to have a

²⁴⁷ A misdemeanor defendant has a right to trial in the superior court within 30 days if the defendant is in custody, or 45 days if the defendant is out of custody, after the defendant is arraigned or enters a plea to the charges (whichever occurs later). CAL. PENAL CODE § 1382 (West 2021). A felony defendant has the right to a preliminary hearing within 10 court days of the arraignment or entry of plea (whichever occurs later) and the right to a trial in the superior court within 60 calendar days from the date of the entry of a not guilty plea to the charges in an information. CAL. PENAL CODE § 859b (West 2021).

²⁴⁸ CAL. PENAL CODE § 859b (West 2021).

preliminary hearing.²⁴⁹ If the defendant waives the right to preliminary hearing, the judge enters an order holding the defendant to answer and the prosecutor is required to file an information in the superior court within 15 days.²⁵⁰

C. Preliminary hearing (in felony cases)

The preliminary hearing must be held within 10 court days²⁵¹ of the defendant's not guilty plea, unless both the state and the defendant waive that right (colloquially, to "waive time") or good cause exists for a continuance.²⁵² If the defendant does "waive time," then the preliminary hearing is set on the court's docket approximately six weeks from the date of arraignment or entry of plea.

The preliminary hearing is an adversarial hearing at which counsel for both the state and the defendant can examine witnesses and introduce evidence.²⁵³ The judge, a prosecutor, the appointed attorney, and the defendant are all physically present in the courtroom during the hearing.

The purpose of the preliminary hearing is for the judge to determine whether there is probable cause to believe that the alleged offense has been committed and that it was committed by the defendant.²⁵⁴

- If the judge finds that there is not probable cause, the defendant is discharged²⁵⁵ (though the prosecutor may still seek an indictment from a grand jury).
- If the judge finds probable cause, the judge enters an order holding the defendant to answer to the charge,²⁵⁶ and the prosecutor is required to file an information within 15 days.²⁵⁷ The appointed attorney who represents an indigent defendant at the preliminary hearing must continue representing that defendant until the date set for arraignment on the information, unless otherwise relieved.²⁵⁸

In Lake County, it is estimated that a preliminary hearing is held in approximately 50% of felony cases and waived in the remaining 50% of cases. Stakeholders suggest several possible strategic reasons for a defendant to waive the preliminary hearing, such as keeping open a plea offer from the prosecutor because the offer is contingent on the defendant not exercising the right to a preliminary hearing, or avoiding enhancements that the prosecutor did not charge in the original complaint but that could be added if a factual basis for enhancements is developed at the preliminary hearing. Some stakeholders say a preliminary hearing has "great value" in that

²⁴⁹ CAL. PENAL CODE § 860 (West 2021).

²⁵⁰ CAL. PENAL CODE § 860 (West 2021).

²⁵¹ During covid-19, a preliminary hearing must occur within 30 court days of the arraignment or entry of plea, whichever occurs later. If a preliminary hearing does not occur within 60 calendar days of arraignment or entry of plea (whichever occurs later) for an in- or out-of-custody defendant, then the case must be dismissed, unless the defendant personally waives time. CAL. PENAL CODE § 859b (West 2021).

²⁵² CAL. PENAL CODE § 859b (West 2021).

²⁵³ CAL. PENAL CODE §§ 864, 865, 866, 866.5, 868, 868.7 (West 2021).

²⁵⁴ CAL. PENAL CODE § 871 (West 2021).

²⁵⁵ CAL. PENAL CODE § 871 (West 2021).

²⁵⁶ CAL. PENAL CODE § 872 (West 2021).

²⁵⁷ CAL. PENAL CODE § 857 (West 2021).

²⁵⁸ CAL. PENAL CODE § 987.1 (West 2021).

it can lead to discovering new evidence, providing a basis for reducing the defendant's bail, or providing a basis for reducing a defendant's charges on the felony complaint.

D. Attorney-client communication from pre-trial through disposition

Once an individual attorney is appointed to represent an individual defendant, that attorney has a constitutional duty to provide effective assistance of counsel.²⁵⁹ The appointed attorney at every critical stage must be more than merely a warm body with a bar card²⁶⁰ – the attorney must be an active participant in the proceedings and provide constitutionally effective representation. While the attorney must decide in each case “what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence,” it is the defendant's decision about “whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal.”²⁶¹ To aid the defendant in making these decisions and to effectively represent the defendant, the *California Rules of Professional Conduct* requires the attorney to communicate with the client promptly and “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”²⁶²

As expressed by criminal justice system stakeholders throughout the evaluation, the greatest difficulty experienced by indigent defendants is in communicating with their appointed subcontractor attorneys. It is most often the situation that appointed subcontractor attorneys meet with their clients only on the dates of scheduled court proceedings, and often the only attorney-client conversations occur during the court proceedings. This causes confusion and frustration for indigent defendants, impeding their ability to make informed decisions about the exercise of their legal rights, and it creates a backlog of cases for the courts, the prosecution, and the subcontractor attorneys.

E. Ensuring conflict-free representation

The U.S. Supreme Court has repeatedly stated that every defendant has a right to effective representation that is free from conflicts of interest.²⁶³ As recognized by the *California Rules of Professional Conduct*, a conflict of interest can arise in basically three ways: between two

²⁵⁹ *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (“It has long been recognized that the right to counsel is the right to the effective assistance of counsel.”). To be effective, an attorney must be reasonably competent, providing to the particular defendant in the particular case the assistance demanded of attorneys in criminal cases under prevailing professional norms, such as those “reflected in American Bar Association standards and the like.” *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984).

²⁶⁰ As the Court noted in *Strickland v. Washington*, 466 U.S. 668, 685 (1984), “[t]hat a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command.”

²⁶¹ *McCoy v. Louisiana*, 584 U.S. ___, 138 S. Ct. 1500 (2018) (quoting *Jones v. Barnes*, 463 U.S. 745, 751 (1983)).

²⁶² CAL. R. PROF'L CONDUCT r. 1.4 (2021).

²⁶³ See, e.g., *Wood v. Georgia*, 450 U.S. 261, 271 (1981) (“Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest.”); *Cuyler v. Sullivan*, 446 U.S. 335, 346 (1980) (“Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial.”); *Glasser v. United States*, 315 U.S. 60, 70 (1942) (“[A]ssistance of counsel’ guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests.”).

clients represented by a single lawyer at the same time; between a lawyer’s current client and a lawyer’s former client or a third person with whom the lawyer has a relationship; and between the lawyer’s personal interests and the interests of the lawyer’s client.²⁶⁴ Generally, unless a client gives “informed written consent,” a lawyer cannot represent a client if the lawyer has a conflict of interest.²⁶⁵ Under the *California Rules of Professional Conduct*, in most instances, if one lawyer in a law firm is disqualified from representing a client due to a conflict of interest, then all of the lawyers in that same law firm are also disqualified from representing that client.²⁶⁶

Conflicts are easily seen in a multi-defendant case, where each indigent defendant is usually required to have a different appointed attorney than every other defendant in the same case. For other types of conflicts, though, a subcontractor attorney is unlikely to realize they exist until having an opportunity to conduct a thorough check of their own past clients and cases and learn more about the facts of a case through discovery and investigation. It may be days, weeks, or even months after a subcontractor attorney is appointed at the arraignment that the attorney becomes aware of having a conflict, resulting in the original subcontractor attorney having to withdraw and a new subcontractor attorney being appointed.

The LID partner attorneys are not involved in the subcontractor attorney’s decision as to whether a conflict exists requiring a need to withdraw and requesting the court to appoint new counsel – “LID attorneys declaring conflicts is strictly between the defense attorney and the judge.” Subcontractor attorneys are responsible for identifying conflicts of interest in their own cases and need only inform the court that they have identified a conflict in order to withdraw from a case (they do not have to file a written motion). It is not common for subcontractor attorneys to declare a conflict of interest. When a conflict is declared, the judge either appoints a different subcontractor attorney who happens to be present at the time the judge is making the appointment (either physically in the courtroom or remotely by video) or notifies the LID partner attorneys or LID office manager to assign a different subcontractor attorney.

Although subcontractor attorneys rarely declare a conflict of interest, stakeholders report that it is common in Lake County for indigent defendants to ask the court to remove the subcontractor attorney who is representing them and appoint a different attorney. This situation is referred to as a “*Marsden* motion,” arising most often because the defendant says their appointed subcontractor attorney “never talk[s] to them at the jail, never visit[s], or never talk[s] to witnesses.” Stakeholders explain that “almost everyone gets a *Marsden* filed against them once every several months.” One subcontractor attorney reports that they “have been *Marsden*-ed more times than [they] can count” in Lake County and more than in any other California county during their years of criminal defense practice.

²⁶⁴ CAL. R. PROF’L CONDUCT I. 1.7, 1.9 (2021).

²⁶⁵ CAL. R. PROF’L CONDUCT I. 1.7, 1.9 (2021).

²⁶⁶ CAL. R. PROF’L CONDUCT I. 1.10 (2021).

CHAPTER VI. SUFFICIENT TIME & CASELOADS

The U.S. Supreme Court in *Powell v. Alabama* notes that the lack of “sufficient time” to consult with counsel and to prepare an adequate defense was one of the primary reasons for finding that the Scottsboro Boys were constructively denied counsel.²⁶⁷ As one state supreme court observed over a quarter century ago, “as the practice of criminal law has become more specialized and technical, and as the standards for what constitutes reasonably effective assistance of counsel have changed, the time an appointed attorney must devote to an indigent’s defense has increased considerably.”²⁶⁸

Impeding counsel’s time “is not to proceed promptly in the calm spirit of regulated justice, but to go forward with the haste of the mob,” the *Powell* Court explained.²⁶⁹ The lack of sufficient time may be caused by any number of things, including but not limited to payment arrangements that create financial incentives for lawyers to dispose of cases quickly rather than in the best interests of their clients, or excessive workload. Whatever the cause, insufficient time to prepare and present an effective defense for each indigent defendant is a marker of the constructive denial of counsel.

A. Understanding caseloads & workloads of indigent defense system attorneys

No matter how complex or basic a case may seem at the outset, no matter how little or how much time an attorney wants to spend on a case, and no matter how financial matters weigh on an attorney, there are certain fundamental tasks each attorney must do on behalf of every client in every criminal case. Even in the simplest case, the attorney must, among other things:

- meet with and interview the client;
- attempt to secure pretrial release if the client remains in state custody (but, before doing so, learn from the client what conditions of release are most favorable to the client);
- keep the client informed throughout the duration of proceedings;
- request and review discovery from the prosecution;
- independently investigate the facts of the case, which may include learning about the defendant’s background and life, interviewing both lay and expert witnesses, viewing the crime scene, examining items of physical evidence, and locating and reviewing documentary evidence;
- assess each element of the charged crime to determine whether the prosecution can prove facts sufficient to establish guilt and whether there are justification or excuse defenses that should be asserted;
- prepare appropriate pretrial motions and read and respond to the prosecution’s motions;
- prepare for and appear at necessary pretrial hearings, wherein he must preserve his client’s rights;
- develop and continually reassess the theory of the case;
- assess all possible sentencing outcomes that could occur if the client is convicted of the charged crime or a lesser offense;

²⁶⁷ *Powell v. Alabama*, 287 U.S. 45, 59 (1932).

²⁶⁸ *Louisiana v. Wigley*, 624 So.2d 425, 428 (La. 1993).

²⁶⁹ *Powell v. Alabama*, 287 U.S. 45, 59 (1932).

- negotiate plea options with the prosecution, including sentencing outcomes; and
- all the while prepare for the case to go to trial (because the decision about whether to plead or go to trial belongs to the client, not to the attorney).²⁷⁰

The time an appointed attorney can devote to accomplishing each of these tasks in each defendant's case depends on the total amount of time the attorney has available for all professional endeavors and the total amount of work the attorney must accomplish in that available time. This discussion is often framed in terms of "caseloads" or "workloads."

Caseloads of indigent defense system attorneys. Caseload refers to the raw, quantifiable number of cases of each type that an attorney is responsible for during a particular period of time. A lawyer's total annual caseload is the count of all indigent representation system cases in which the lawyer was responsible for providing representation during a given year, starting with the number of cases the attorney had open at the beginning of the year and adding to that the number of cases appointed to the attorney during the year.

Workloads of indigent defense system attorneys. In addition to considering the raw number of cases of each type that an attorney handles, the U.S. Department of Justice has advised, and national standards agree, that "caseload limits are no replacement for a careful analysis of a public defender's *workload* . . ."²⁷¹ Workload includes an attorney's caseload within a given system (i.e., caseload), *plus* cases an attorney takes on privately, public representation cases for which the attorney is responsible in other jurisdictions, and the attorney's other professional obligations such as obtaining and providing training and supervision.²⁷² Further, national standards agree that the lawyer's workload must take into consideration "all of the factors affecting a public defender's ability to adequately represent clients, such as the complexity of cases on a defender's docket, the defender's skill and experience, the support services available to the defender, and the defender's other duties."²⁷³

²⁷⁰ See, e.g., NATIONAL LEGAL AID & DEFENDER ASS'N, PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION (1995).

²⁷¹ Statement of Interest of the United States at 9, *Wilbur v. City of Mount Vernon*, No. C11-1100RSL, ECF No. 322 (W.D. Wash. filed Dec. 4, 2013) (italics original), <http://www.justice.gov/crt/about/spl/documents/wilbursoi8-14-13.pdf>; AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 5 cmt. (2002) (emphasis added). See, e.g., Mary Sue Backus & Paul Marcus, *The Right to Counsel in Criminal Cases, A National Crisis*, 57 HASTINGS L. J. 1031, 1125 (2006) ("Although national caseload standards are available, states should consider their own circumstances in defining a reasonable defender workload. Factors such as availability of investigators, level of support staff, complexity of cases, and level of attorney experience all might affect a workable definition. Data collection and a consistent method of weighing cases are essential to determining current caseloads and setting reasonable workload standards.").

²⁷² AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, commentary to Principle 5 (2002).

²⁷³ Statement of Interest of the United States, *Wilbur v. City of Mount Vernon*, (W.D. Wash. filed Dec. 4, 2013) (No. C11-1100RSL), ECF No. 322, <http://www.justice.gov/crt/about/spl/documents/wilbursoi8-14-13.pdf>. See e.g., Mary Sue Backus & Paul Marcus, *The Right to Counsel in Criminal Cases, A National Crisis*, 57 HASTINGS L. J. 1031, 1125 (2006) ("Although national caseload standards are available, states should consider their own circumstances in defining a reasonable defender workload. Factors such as availability of investigators, level of support staff, complexity of cases, and level of attorney experience all might affect a workable definition. Data collection and a consistent method of weighing cases are essential to determining current caseloads and setting reasonable workload standards.").

B. Measuring whether attorneys have sufficient time to provide effective representation to each indigent person

To ensure that indigent defense system lawyers have adequate time to fulfill the duties they owe to each appointed client, national standards summarized in the *ABA Ten Principles of a Public Defense Delivery System* provide that an indigent defense system must control attorneys' workload.²⁷⁴

1. The National Advisory Commission (NAC) caseload standards

The first national standards for caseloads of attorneys appointed to represent indigent defendants were established by the National Advisory Commission on Criminal Justice Standards and Goals (NAC) in 1973, as part of an initiative funded by the U.S. Department of Justice.²⁷⁵ NAC *Standard 13.12* prescribes that a single attorney should not handle in a year any more than the absolute maximum numerical caseload of:

- 150 felonies; or
- 400 misdemeanors; or
- 200 juvenile delinquencies; or
- 200 mental health proceedings; or
- 25 appeals.²⁷⁶

It is these NAC caseload maximums to which national standards refer when they say that “in no event” should national caseload standards be exceeded.²⁷⁷

The NAC caseload limits presume that each lawyer devotes 100% of their time to providing representation in their appointed cases.²⁷⁸ When indigent representation system attorneys have

²⁷⁴ AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 5 & cmt. (2002).

²⁷⁵ Building on the work and findings of the 1967 President's Commission on Law Enforcement and Administration of Justice, the Administrator of the U.S. Department of Justice Law Enforcement Assistance Administration appointed the National Advisory Commission on Criminal Justice Standards and Goals in 1971, with DOJ/LEAA grant funding to develop standards for crime reduction and prevention at the state and local levels. The NAC crafted standards for all criminal justice functions, including law enforcement, corrections, the courts, and the prosecution. Chapter 13 of the NAC's report sets the standards for the defense function. NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch.13 (The Defense) (1973).

²⁷⁶ NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch.13 (The Defense), std. 13.12 (1973). This means a lawyer who is appointed to felony cases should not be responsible for more than a total of 150 felony cases in a given year, counting both cases the lawyer had when the year began and cases assigned to the lawyer during that year, and including all of the lawyer's cases (public, private, and pro bono). The NAC standards can be prorated for mixed caseloads. For example, an attorney could have a mixed caseload over the course of a given year of 75 felonies (50% of a maximum caseload) and 200 misdemeanors (50% of a maximum caseload) and be in compliance with the NAC caseload standards.

²⁷⁷ AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 5 cmt. (2002) (stating “National caseload standards should in no event be exceeded”).

²⁷⁸ See NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch.13 (The Defense), stds. 13.9, 13.14 (1973). See also NATIONAL LEGAL AID & DEFENDER ASS'N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES ¶¶ VII.D., VII.F. (2000); AMERICAN BAR ASS'N, STANDARDS FOR CRIMINAL JUSTICE – PROVIDING DEFENSE SERVICES, std. 5-1.4 cmt. (3d ed. 1992); NATIONAL LEGAL AID & DEFENDER ASS'N, GUIDELINES FOR NEGOTIATING AND AWARDING GOVERNMENTAL CONTRACTS FOR CRIMINAL DEFENSE SERVICES § III-6 (1984); NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES § 4.1 (1976).

managerial or supervisory responsibilities, this reduces the amount of their time that is available for representing clients, and so national standards require that for every ten attorneys who carry a full caseload there must additionally be one full-time supervisor.²⁷⁹ When indigent representation system attorneys have to perform tasks that do not require legal credentials or experience, this reduces the amount of their time that is available for representing clients, and so national standards require that for every four attorneys who carry a full caseload there must additionally be at least one legal secretary/assistant.²⁸⁰ When indigent representation system attorneys have to fulfill responsibilities in their appointed cases that require specialized skills the attorneys lack, this increases the amount of time the attorney must devote to each appointed case, and so national standards require that for every three attorneys who carry a full caseload there must be at least one investigator²⁸¹ and one social service caseworker.²⁸²

The NAC caseload limits were established to remain as *absolute maximums*. Since the adoption of the NAC caseload limits in 1973, increased complexity in forensic sciences and criminal justice technology have correspondingly increased demands on the time attorneys must devote to each case in order to provide effective assistance of counsel. For these reasons, many criminal justice professionals argue that the caseloads permitted by the NAC standards are far too high and that the maximum caseloads allowed should be much lower.²⁸³

²⁷⁹ NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES § 4.1 (1976).

²⁸⁰ NATIONAL LEGAL AID & DEFENDER ASS'N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES ¶¶ VII.D., VII.F. (2000). *See also* NATIONAL LEGAL AID & DEFENDER ASS'N, GUIDELINES FOR NEGOTIATING AND AWARDING GOVERNMENTAL CONTRACTS FOR CRIMINAL DEFENSE SERVICES § III-8 (1984); NATIONAL STUDY COMM'N ON DEFENSE SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES § 4.1 (1976).

²⁸¹ NATIONAL LEGAL AID & DEFENDER ASS'N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES ¶¶ VII.D., VII.F. (2000); NATIONAL STUDY COMM'N ON DEFENSE SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES § 4.1 (1976). *See also* AMERICAN BAR ASS'N, STANDARDS FOR CRIMINAL JUSTICE – PROVIDING DEFENSE SERVICES, std. 5-1.4 cmt. (3d ed. 1992); NATIONAL LEGAL AID & DEFENDER ASS'N, GUIDELINES FOR NEGOTIATING AND AWARDING GOVERNMENTAL CONTRACTS FOR CRIMINAL DEFENSE SERVICES § III-8 (1984).

²⁸² NATIONAL LEGAL AID & DEFENDER ASS'N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES ¶¶ VII.D., VII.F. (2000). *See also* AMERICAN BAR ASS'N, STANDARDS FOR CRIMINAL JUSTICE – PROVIDING DEFENSE SERVICES, std. 5-1.4 cmt. (3d ed. 1992); NATIONAL LEGAL AID & DEFENDER ASS'N, GUIDELINES FOR NEGOTIATING AND AWARDING GOVERNMENTAL CONTRACTS FOR CRIMINAL DEFENSE SERVICES § III-8 (1984); NATIONAL STUDY COMM'N ON DEFENSE SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES § 4.1 (1976).

²⁸³ *See, e.g.*, NORMAN LEFSTEIN, AMERICAN BAR ASS'N STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE 43-49 (2011) (commenting that the NAC standards “significant influence in the field of public defense respecting annual caseloads of public defenders” despite being “too high” and not suitable for reliance upon by local policymakers); AMERICAN COUNCIL OF CHIEF DEFENDERS, STATEMENT ON CASELOADS AND WORKLOADS (Aug. 24, 2007) (“In many jurisdictions, caseload limits should be lower than the NAC standards.”); STATE BAR OF CALIFORNIA, GUIDELINES ON INDIGENT DEFENSE SERVICES DELIVERY SYSTEMS, comment to Guideline VII (2006) (noting that, because “[n]umerical caseload goals can be affected by many variables, such as the policies and procedures within a local jurisdiction,” jurisdictions should adopt more localized caseload standards providing greater utility than the NAC standards).

Since 2014, the American Bar Association Standing Committee on Legal Aid & Indigent Defense has conducted seven caseload studies in various states to determine the average number of hours per case attorneys should exert by various case types, with results recommending caseloads in each state lower than the NAC standards allow. *See* AMERICAN BAR ASS'N STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENSE, RUBIN BROWN LLP, *The Colorado Project: An Analysis of the Colorado Indigent Defense System and Attorney Workload Standards* 16 (August 2017) (recommending an annual per-attorney maximum of 330 misdemeanors and 91 felonies); AMERICAN BAR ASS'N STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENSE, CROWE LLP, *The Indiana Project: An Analysis of the Indiana Public Defense System and Attorney Workload Standards* 1 (July 2020) (131 misd., 75 fel.); AMERICAN BAR

2. State and local caseload and workload standards

California does not charge any state agency to collect caseload or workload information nor even to ensure that cases are counted uniformly throughout the state.²⁸⁴ Moreover, there does not appear to be any California state law, regulation, or court rule imposing caseload limits for public counsel. Instead, the State Bar of California’s *Guidelines on Indigent Defense Services Delivery Systems* (“*Guidelines*”) call for indigent representation systems in each jurisdiction to “establish reasonable maximum caseload goals . . . after evaluating the workload that each type of case represents in the context of the criminal practices and procedures unique to that jurisdiction” and place responsibility with system administrators “for assuring that workloads are not excessive in volume.”²⁸⁵

Lake County’s contract with the LID partner attorneys requires that the LID subcontractor attorneys should not carry excessive caseloads that interfere with the lawyer’s obligation to provide effective assistance to each client in each case.²⁸⁶ Despite this, the county and the LID partner attorneys have never developed a process for monitoring or reporting subcontractor attorney caseloads.

The LID partner attorneys are expressly required to establish “[r]easonable maximum caseloads” that consider “the workload that each type of case represents in the context of the criminal practices and procedures used in Lake County” and to not assign more cases to any subcontractor attorney than they can effectively handle.²⁸⁷ The LID partner attorneys have not established any caseload or workload limits for their subcontractor attorneys.

ASS’N STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENSE, & POSTELTHWAITE & NETTERVILLE LLP, *The Louisiana Project: An Analysis of the Louisiana Public Defenders System and Attorney Workload Standards* 1 (Feb. 2017) (206 misd., 75 fel.); AMERICAN BAR ASS’N STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENSE, RUBIN BROWN LLP, *The Missouri Project: An Analysis of the Missouri Public Defender System and Attorney Workload Standards* 6 (June 2015) (138 misd., 66 fel.); AMERICAN BAR ASS’N STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENSE, MOSS ADAMS LLP, *The New Mexico Project: An Analysis of the New Mexico Public Defense System and Attorney Workload Standards* 3 (Jan. 2022) (217 misd., 75 fel.); AMERICAN BAR ASS’N STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENSE, MOSS ADAMS LLP, *The Oregon Project: An Analysis of the Oregon Indigent Defense System and Attorney Workload Standards* 69 (Jan. 2022) (75 misd., 74 fel.); AMERICAN BAR ASS’N STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENSE, NATIONAL ASS’N OF CRIMINAL DEFENSE LAWYERS, BLUM SHAPIRO LLP, *The Rhode Island Project: An Analysis of the Rhode Island Public Defender System and Attorney Workload Standards* 6 (November 2017) (130 misd., 55 fel.).

²⁸⁴ Although the California judiciary are state actors and conceivably *could* track this information, the Lake County Superior Court does not do so.

²⁸⁵ See STATE BAR OF CALIFORNIA, GUIDELINES ON INDIGENT DEFENSE SERVICES DELIVERY SYSTEMS § VII (workload) (2006), https://www.calbar.ca.gov/Portals/0/documents/ethics/Indigent_Defense_Guidelines_2006.pdf.

²⁸⁶ See “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 4 (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer). See also *id.*, ¶¶ 2.F., 2.N.

²⁸⁷ See “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 4 (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer). See also *id.*, ¶¶ 2.F., 2.N.

C. Applying caseload standards to the caseloads & workloads of indigent defense attorneys in Lake County

The workloads of the appointed attorneys may be the most salient factor in determining the ability of an indigent defense system to provide effective assistance of counsel. But in Lake County there is a significant lack of infrastructure to keep track of the appointed attorneys' workloads or even their actual caseloads.

Lake County adopted the California workload *Guidelines* in its request for proposals when letting the indigent defense contract: "Pursuant to State Bar of California Workload Standards, indigent defense providers shall not maintain excessive workloads that compromise the ability of the provider to provide appropriate and competent representation in a timely manner."²⁸⁸ However, the county then passed onto the potential contractors the obligation for ensuring that workloads are not excessive. The county indigent defense request for proposals stated that the proposer must "include a plan or policy to track and monitor case assignments per attorney to ensure that no attorney is assigned more cases than he or she can effectively handle, and the method to monitor the need to redistribute and balance attorney caseloads as needed."²⁸⁹ The Lake County request for proposals was clear that the county "cannot specify the exact number of cases that will be appointed to Contractor,"²⁹⁰ but the county made equally clear that the proposer was responsible for "submit[ing] to the Lake County Administrative Office, a report reflecting caseload data for the prior three-month period."²⁹¹ The request for proposals acknowledged that the details of workload reporting "will be mutually developed by the Contractor and County."²⁹²

²⁸⁸ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

²⁸⁹ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

²⁹⁰ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

²⁹¹ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

²⁹² "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

The LID partner attorneys choose how much infrastructure they are willing to pay for. They are obliged under the contract to have whatever is necessary to fulfill all contractual obligations. Yet, the LID partner attorneys have limited infrastructure to track cases.

The LID partner attorneys' database system is "home made" and "largely reflects the old axiom 'garbage in – garbage out'." The LID partner attorneys and subcontractor attorneys use a cloud-based, confidential database system – "defend.biz" – for tracking case numbers, case dispositions, declared conflicts, and client-initiated contact. Every subcontractor attorney is assigned a unique username and password to log into an individualized account²⁹³ that *can* include information that a subcontractor attorney inputs about their new case assignments, case information (e.g., defendant's name, case number, charge information, prosecutor, bail, next court event, date, time, and department), running case notes for each case (e.g., jail visits, investigator, court appearances), and case disposition (e.g., guilty plea, *Marsden* motion, conflict). However, the onus is on each subcontractor attorney to accurately input this information for all their cases on an ongoing basis, and many of the subcontractor attorneys do not do this. While new case assignments tend to be reliably tracked because the LID office manager directly inputs this information into the database, the number of open pending cases for each subcontractor attorney is less reliable because the attorneys often do not timely report in the database when they close their cases.

Every Monday, the LID office manager uses the database to run a report and update the whiteboard in the LID central office that displays: total number of clients, new clients assigned per week, new clients assigned per month, new clients assigned in the prior month, new clients assigned in the year to date, new cases assigned per week, new cases assigned per month, new cases assigned in the prior month, new cases assigned in the year to date, number of open cases, number of other types of hearings, and number of trials for each subcontractor attorney. This weekly report is also used during arraignments by the rotating on-duty LID attorney to assign new cases. (See pages 69 to 70, describing the process for assigning individual cases to individual LID subcontractor attorneys.) The LID partner attorneys do not accurately know the number of open cases for each of the subcontractor attorneys because the LID partner attorneys conduct "no meaningful audit" of the actual data entry in the database "due to limitation on administrative staff (1 person) time."

Instead, the LID partner attorneys pass their contractual duty to maintain reasonable caseloads onto the individual subcontractor attorneys. Although the various subcontracts differ, many of the subcontracts contain the following language: "If at any time, Subcontractor believes they are receiving case assignments in excess of their ability to perform their assignment in an ethical manner, then [Subcontractor] shall provide written notification to LID to arrange a meeting with the LID management to discuss alternative means of reducing the Subcontractors caseload, or suggest such other alternatives as may be appropriate." The onus is on each subcontractor attorney to understand, evaluate, and raise the issue of an excessive caseload to the LID partner attorneys. During this evaluation however, none of the subcontractor attorneys were able to provide their actual caseload numbers and few could give a ballpark estimate of their number of open cases. This, despite the LID partners guaranteeing in their proposal that "LID will

²⁹³ One LID partner attorney and the LID office manager can access all subcontractor attorneys' accounts, and there are separate login pages for "administrator," "criminal team," "juvenile," "conservatorship," "investigator," and "contempt."

employ one full-time non-attorney employee to assist with the reporting requirements of the contract,” including coordinating “caseload report[s] from sub-contractors,” and assist “contract administrators in compiling and monitoring caseloads of sub-contractors to ensure that caseloads are in compliance with State Bar of California Workload Standards.”²⁹⁴

In sum, no one at the state, county, or local levels tracks accurate data on the number of cases appointed to the subcontractor attorneys who provide indigent representation services. Therefore, no one has any way of knowing whether LID subcontractor attorney caseloads are excessive. Answering that question requires further analysis in relation to the NAC workload standards.

In the first instance, Lake County places the responsibility for accurately predicting workloads onto the LID partner attorneys. The 2017 request for proposals states: “Proposer must rely upon its own projection of caseloads over the anticipated term of this Proposal, its own investigation of the facts and circumstances surrounding the provision of indigent criminal defense services in Lake County, and its own experience in the criminal law field representing indigent criminal defendants to recommend a staffing level that will meet all the requirements of this RFP.”²⁹⁵

To the credit of the LID partner attorneys, in their proposal they did turn to the NAC standards to project the number of subcontract attorneys required for indigent defense services in Lake County: “In determining the number of attorneys to be assigned to misdemeanor and felony caseloads, LID has relied on the National Advisory Commission on Criminal Justice Standards and Goals (NAC) Standard 13.12. LID has determined that in order to provide effective representation to indigent defendants in Lake County, 7 felony attorneys and 5 misdemeanor attorneys are necessary.”²⁹⁶ However, the LID partner attorneys did not explain in their proposal where or how they derived the number and types of cases for which counsel would be appointed, in order to apply the NAC standards and determine the number of attorneys necessary. Moreover, the county contract with the LID partner attorneys underscores that the LID partner attorneys bear all of the risk of error in their own projections:

²⁹⁴ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

²⁹⁵ Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services ¶ 3.3.8(a)-(b) (Feb. 21, 2017).

The Lake County request for proposals contained some information about the number of “filings” for felonies and misdemeanors in the Lake County Superior Court during FY 2014, FY 2015, and FY 2016. Lake County Administrative Office, Request for Proposal Number: 1012-0217, For Contract Indigent Defense Services Exh. 2 (Feb. 21, 2017). The county did not distinguish between the “filings” that required appointed counsel and those that did not. No information at all was provided for the other case types for which subcontractor attorneys are appointed under the LID contract (e.g., juvenile delinquency, paternity, etc.). It appears that Lake County did not collect complete and accurate indigent defense caseload data during the three years prior to awarding the county contract to the LID partner attorneys in 2017, just as the county has not done in the years since 2017.

²⁹⁶ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

COUNTY has disclosed to CONTRACTOR all information it possesses concerning the type and number of cases handled by COUNTY's prior contractors for this service. . . . CONTRACTOR's projections are based upon its independent investigation and consideration of the circumstances, policies and practices within Lake County and has recommended a flat fee rate for the provision of services hereunder. CONTRACTOR and COUNTY acknowledge that many factors outside the control of the parties can affect the ability of CONTRACTOR to accurately project caseloads and/or work levels with certainty. . . . CONTRACTOR has anticipated and liquidated in its flat fee and projected yearly increases, to the extent possible, all additional expenses arising from such change, and CONTRACTOR assumes the risk of and hereby waives any claim(s) to additional compensation for expenses which may be incurred by reason of such or similar circumstances.²⁹⁷

Available data in Lake County and its limitations. This evaluation sought to determine whether there is a sufficient number of LID subcontractor attorneys to handle Lake County's indigent representation system obligations effectively, as analyzed against NAC standards. This effort was greatly hindered by a lack of basic caseload data.

There are only two data sets that provide any information from which to answer questions about caseloads in Lake County: the Lake County Superior Court's "new assignment" data; and the LID indigent defense data (described as "raw" assignment data). Both data sets have limitations.

- *Lake County Superior Court caseload data.* The Lake County Superior Court provided new case assignments associated with the name of each subcontractor attorney, by case type for fiscal year 2021 (July 1, 2020 – June 30, 2021), but the court data does not distinguish between whether a named attorney was connected to the case as a privately retained attorney or as an appointed subcontractor attorney. The court staff noted that there are several types of cases that are not contained in the data, including: cases that remain active during FY 2021 but in which the attorney was appointed in an earlier year; cases where the defendant had previously absconded and the inactive case became active after the defendant appeared during FY 2021; and cases "such as new violations of probation when the attorney was previously appointed on the case, or any other post disposition work."
- *LID's data on "raw" case assignments.* The LID partner attorneys provided the "raw" numbers of new case assignments to 13 subcontractor attorneys from April 2020 through August 2021 (inclusive of FY 2021 (July 1, 2020 – June 30, 2021)). Like the superior court's data, the LID data does not include cases that remained active but in which the subcontractor attorney was appointed at an earlier time. While the LID data does include the total number of the new appointed case assignments for each of the subcontractor attorneys, it does not break down that total number by type of case (e.g., felony, misdemeanor, delinquency, dependence, etc.).

²⁹⁷ "Agreement for Indigent Defense Services" between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, ¶ 3. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* "Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP" (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining "contractor" to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

Estimating the number of attorneys required based on available data. Each LID subcontract requires the subcontractor attorney to provide representation in specific types of cases, and most of the subcontracts also identify types of cases in which the subcontractor attorney agrees to be appointed in conflicts.²⁹⁸ As of October 2021, there are 15 individual private attorneys identified as holding LID subcontracts, of which eight are felony subcontractor attorneys and four are misdemeanor subcontractor attorneys.²⁹⁹ (A ninth felony subcontractor attorney terminated their LID subcontract in September 2021, and so is included in the LID “raw” data.)

Using the LID “raw” new assignment data, the tables below show the total number of new assignments per month for the four misdemeanor subcontractor attorneys and the nine felony subcontractor attorneys during the one-year period from July 1, 2020 through June 30, 2021.

	NUMBER OF LID “RAW” NEW ASSIGNMENTS FOR ALL CASE TYPES													
	2020						2021							NAC STND 400
LID ATTORNEY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL	
Misd Atty 1	31	29	42	42	39	50	33	17	28	26	20	45	402	101%
Misd Atty 2	32	26	51	55	43	41	33	30	41	26	34	32	444	111%
Misd Atty 3	22	27	18	22	33	22	34	32	48	36	34	34	362	91%
Misd Atty 4	15	46	51	53	43	36	36	47	55	34	36	28	480	120%
TOTAL	100	128	162	172	158	149	136	126	172	122	124	139	1688	

	2020						2021						TOTAL	NAC STND 150
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL	
Felony Atty 1	21	12	11	11	12	18	15	14	13	9	20	19	175	117%
Felony Atty 2	0	0	3	10	6	17	6	3	1	4	3	13	66	44%
Felony Atty 3	9	13	11	2	31	7	11	23	23	8	23	7	168	112%
Felony Atty 4	11	19	16	26	26	23	27	15	20	13	19	10	225	150%
Felony Atty 5	15	7	34	14	8	32	11	14	27	13	14	26	215	143%
Felony Atty 6	8	16	16	22	7	29	14	4	23	20	10	11	180	120%
Felony Atty 7	18	15	14	8	10	14	20	11	17	7	16	6	156	104%
Felony Atty 8	20	9	20	4	6	32	12	13	13	10	12	17	168	112%
Felony Atty 9	11	7	16	23	19	21	10	19	29	20	18	29	222	148%
TOTAL	113	98	141	120	125	193	126	116	166	104	135	138	1575	

²⁹⁸ “Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

²⁹⁹ “Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

The caseloads of three of the four misdemeanor subcontractor attorneys exceed national caseload limits for misdemeanor cases (NAC standard of 400 misdemeanor cases per year) based on new assignments alone (and acknowledging this may include other types of cases besides misdemeanors). Similarly, eight of the nine felony subcontractor attorneys exceed national caseload limits for felonies (NAC standard of 150 felony cases per year), again based on only new assigned cases (and acknowledging this may include other types of cases besides felonies).

As explained, the LID “raw” new assignment data does not distinguish by the type of case that was assigned to the subcontractor attorney. All of the felony subcontract attorneys are also available to be appointed in misdemeanor conflict cases and juvenile delinquency conflict cases, and one of the misdemeanor subcontractor attorneys also holds a juvenile delinquency subcontract. Without knowing the types of cases represented by the LID “raw” new assignment data, a more nuanced picture of LID subcontractor attorney caseloads is unavailable.

What is known is that the LID subcontractor attorneys’ caseloads are higher – and more excessive under the NAC standards – than is shown through the LID “raw” data, for several reasons.

The NAC standards are based on the total number of new assignments *plus* open and active cases at the start of the year.

The NAC caseload limits presume that each lawyer devotes 100% of their time to providing representation in their appointed cases,³⁰⁰ but the subcontractor attorneys are allowed to take on private cases, accept appointed cases in other jurisdictions, and engage in other professional endeavors during their available working hours. For example:

- Some subcontractor attorneys accept appointments to represent indigent defendants in other counties, including for example, Mendocino County (whose county seat Ukiah is 36 miles from Lakeport), Humboldt County (179 miles), and Trinity County (212 miles). At the time of this evaluation, one of the subcontractor attorneys had appointments in serious felony cases in all three of these counties, requiring the subcontractor attorney to be “gone for weeks at a time” from Lake County and unavailable to Lake County appointed clients.
- Some subcontractor attorneys maintain a private retained practice of paying clients. For example, one felony subcontractor attorney whose “raw” new case appointments in Lake County already exceed the NAC standards, estimated spending 30% of their working hours on private cases, leaving only 70% of their time available to Lake County appointed clients’ cases.
- The three LID partner attorneys are contractually required to spend some professional hours administering the Lake County indigent defense system. One LID partner attorney estimated that 20% of their time is spent on administrative duties, including budgeting

³⁰⁰ See NATIONAL ADVISORY COMM’N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch.13 (The Defense), stds. 13.9, 13.14 (1973). See also NATIONAL LEGAL AID & DEFENDER ASS’N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES ¶¶ VII.D., VII.F. (2000); AMERICAN BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE – PROVIDING DEFENSE SERVICES, std. 5-1.4 cmt. (3d ed. 1992); NATIONAL LEGAL AID & DEFENDER ASS’N, GUIDELINES FOR NEGOTIATING AND AWARDING GOVERNMENTAL CONTRACTS FOR CRIMINAL DEFENSE SERVICES § III-6 (1984); NATIONAL STUDY COMM’N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES § 4.1 (1976).

and scheduling in-custody arraignment coverage. This too reduces the amount of each of the LID partners' time that is available to represent clients, and so national standards require that for every ten attorneys who carry a full caseload there must additionally be one full-time supervisor.³⁰¹

The NAC standards presume that the indigent defense system has a full contingent of support available to the attorneys. When indigent representation system attorneys must perform tasks that do not require legal credentials or experience (such as tasks that can be performed by a paralegal or legal secretary), this reduces the amount of their time that is available for representing clients. And when indigent representation system attorneys must fulfill responsibilities in their appointed cases that require specialized skills that the attorneys lack (such as the skills of a trained investigator or social worker), this *increases* the amount of time the attorney must devote to each appointed case.³⁰² For these reasons, national standards require one full-time investigator and one full-time social worker for every three attorneys, and one full-time legal secretary for every four attorneys.³⁰³

D. Dangers of excessive workloads

Each and every defendant has a right to effective representation that is free from conflicts of interest.³⁰⁴ The U.S. Supreme Court cautions in *Strickland v. Washington* that “[g]overnment violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense”³⁰⁵ and that an attorney can “deprive a defendant of the right to effective assistance” by virtue of an actual conflict of interest.³⁰⁶ When the indigent representation system established by the government creates a conflict of interest between appointed attorneys and their clients, this interferes with an indigent person’s right to receive effective representation.

The *California Rules of Professional Conduct* expressly prohibit all lawyers from representing a client whenever a conflict of interest exists,³⁰⁷ because “[l]oyalty and independent judgment are essential elements in the lawyer’s relationship to a client.”³⁰⁸ An attorney cannot represent two

³⁰¹ NATIONAL STUDY COMM’N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES § 4.1 (1976).

³⁰² Lack of assistance, for example in discovery review and investigation, increases the amount of time it takes attorneys to adequately prepare for cases.

³⁰³ NATIONAL STUDY COMM’N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES § 4.1 (1976).

³⁰⁴ *See, e.g.*, *Wood v. Georgia*, 450 U.S. 261, 271 (1981) (“Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest.”); *Cuyler v. Sullivan*, 446 U.S. 335, 346 (1980) (“Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial.”); *Glasser v. United States*, 315 U.S. 60, 70 (1942) (“[A]ssistance of counsel’ guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests.”).

³⁰⁵ *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

³⁰⁶ *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (citing *Cuyler v. Sullivan*, 446 U.S. 335, 344, 345-350 (1980)).

³⁰⁷ CAL. R. PROF’L CONDUCT r. 1.7.

³⁰⁸ CAL. R. PROF’L CONDUCT r. 1.7 cmt 1.

or more clients at the same time whose interests might be at odds with each other.³⁰⁹ If a lawyer simply has so many clients that the lawyer no longer has sufficient time or sufficient funding to devote to the next client’s case – a situation often referred to as “case overload” or “excessive workload” – then the attorney cannot represent the next new client.³¹⁰

For these reasons, national standards, as summarized in *ABA Principle 5*, require that “[d]efense counsel’s workload is controlled to permit the rendering of quality representation.”³¹¹ Excessive workloads cause lawyers to proceed without sufficient time to adequately prepare for and zealously advocate on behalf of every client. *ABA Principle 5* further clarifies that defense counsel should refuse new case appointments when those appointments would create a conflict of interest because the attorney would have insufficient time to dedicate to all cases given the workload.³¹²

The anecdotal evidence, on top of the limited available caseload data, suggests that LID subcontract attorneys have excessive workloads that affect their ability to provide effective assistance of counsel to each individual defendant. Throughout this evaluation, various stakeholders expressed frustration about ways in which the representation provided by the subcontractor attorneys is often impeded by the subcontractor attorneys’ attempts to represent too many people at the same time.

Prosecutors and judges commented at length that the subcontractor attorneys often seem unprepared for their court appearances and have not communicated with their clients in advance of scheduled court proceedings. The subcontractor attorneys frequently confer with their clients for the first time *during* court proceedings, causing confusion and frustration for indigent defendants that impedes their ability to make informed decisions about the exercise of their legal rights. Especially during the pandemic with subcontractor attorneys and other court actors participating in proceedings remotely, this results in delays during the court proceedings to allow time for the subcontractor attorneys to talk with their appointed clients.

Because the subcontractor attorneys are paid a flat monthly fee for their LID-appointed work but are not required to devote all of their working hours to their LID-appointed work, they often take on other paying work to increase their income, as explained in chapter IV. For example, one subcontractor attorney estimates devoting 10% of their practice to private clients and appointed work in other counties, which at the time of this evaluation included three homicide cases in Humboldt County and two homicide cases in Mendocino County. This leaves fewer working hours for the subcontractor attorneys to devote to their appointed Lake County clients, as discussed by subcontractor attorneys, prosecutors, and judges alike. Frequently, subcontractor attorneys are in a different county representing other clients when they are scheduled to be in court for their LID-appointed clients. This results in many continuances of Lake County cases,

³⁰⁹ CAL. R. PROF’L CONDUCT r. 1.7(b) (“A lawyer shall not . . . represent a client if there is a significant risk the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client . . .”).

³¹⁰ CAL. R. PROF’L CONDUCT r. 1.16(a)(2) (“[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if . . . the representation will result in violation of these rules or of the State Bar Act . . .”).

³¹¹ AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 5 & cmt. (2002).

³¹² AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 5 & cmt. (2002).

creating a backlog of cases for the courts, the prosecution, and the subcontractor attorneys, and forcing indigent defendants to return again and again to court before their cases can be resolved.

With 52 weeks in a year, and if there were no holidays and subcontractor attorneys were never absent for illness or vacation, there would be 260 business days in the year, and at eight hours per day that provides 2,080 working hours in a year. Under the NAC misdemeanor caseload standard of no more than 400 cases spread throughout a year, an attorney should have at least 5.2 hours to devote to each misdemeanor defendant's case. But the LID-appointed caseloads of misdemeanor subcontractor attorneys are sometimes at least as high as 450 misdemeanor cases all open at the same time, allowing only 4.6 hours per case, and leaving no time at all for that subcontractor attorney to be appointed to any additional cases during the year (not to mention for any non-LID work). The subcontractor attorneys must do all of the necessary preparation in every case, consulting with and advising each client so that the client can make informed decisions about exercising their legal rights, but the subcontractor attorneys cannot control when and how many of their cases are set for trial. For example, at the time of this evaluation, one subcontractor attorney had six misdemeanor cases set for trial during every week for the next ten weeks – 60 cases all needing trial preparation at the same time – without accounting for any time to devote to the subcontractor attorney's other 300 open case (not to mention for any non-LID work).

As summed up by a Lake County stakeholder: the subcontractor attorneys “have too many cases, and they're too busy, and should not be appointed new cases,” wishing that “the attorneys would decline to take cases” because of their excessive caseloads – “clients do not have their day in court.”

CHAPTER VII. FINDINGS & RECOMMENDATIONS

This report explains the indigent representation services that Lake County contracts to provide through the informal partnership of private attorneys collectively known as Lake Indigent Defense LLP (LID). It is difficult, at best, to make recommendations for ways that Lake County officials can improve indigent representation services in the trial court, because so many of the problems described throughout this report are inherently tied to decisions made by the state. Even as the policymakers and justice system stakeholders in Lake County try to effectively implement the Sixth Amendment right to counsel for indigent defendants, often they fall short because of a lack of oversight and funding from the state, over which they have no control. For so long, though, as the State of California makes county officials and trial court judges responsible for ensuring the effective right to counsel for indigent defendants, the trial court judges and county officials in Lake County *are* responsible.

A. Findings

FINDING 1. The State of California delegates to the Lake County Board of Supervisors and the judges of the Lake County Superior Court most of the state’s constitutional obligation to provide effective assistance of counsel to indigent people at the trial court level in Lake County in all the types of cases for which the state guarantees the right to counsel. Meanwhile, the State of California has not established any means to ensure that Lake County provides to every indigent defendant an attorney who has the time, training, and resources to provide effective representation at every critical stage of a criminal or juvenile delinquency case.

In *Gideon v. Wainwright*, the U.S. Supreme Court declared it an “obvious truth” that anyone accused of a crime who cannot afford the cost of a lawyer “cannot be assured a fair trial unless counsel is provided for him.”³¹³ As the U.S. Supreme Court has noted, “[o]f all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.”³¹⁴

Gideon determined that the obligation to provide effective Sixth Amendment right to counsel services rests with the state government under the Fourteenth Amendment. Subsequent caselaw makes clear that state governments have an affirmative duty to provide, at government expense, the effective assistance of counsel at all critical stages of a case to every person (adult and juvenile) accused of a crime whenever that person is facing the potential loss of their liberty, is unable to afford their own attorney, and does not waive their right to counsel.³¹⁵

³¹³ *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

³¹⁴ *United States v. Cronin*, 466 U.S. 648, 654 (1984). *See also* *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932) (“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.”).

³¹⁵ *Halbert v. Michigan*, 545 U.S. 605 (2005); *Alabama v. Shelton*, 505 U.S. 654 (2002); *Argersinger v. Hamlin*, 407

Indigent people do not choose the lawyers who are appointed to represent them; instead, those lawyers are provided by and through the governmentally created indigent defense system.³¹⁶ The state is responsible for ensuring that each indigent person is represented by a qualified and trained attorney, who has sufficient time and resources to provide effective representation under independent supervision. If the attorneys provided by the state's indigent defense system lack the qualifications, training, independent supervision, time, or resources necessary to provide effective assistance of counsel, this is a structural impediment that results in the constructive denial of the right to counsel.³¹⁷

The State of California has delegated to the Lake County Board of Supervisors and the judges of the Lake County Superior Court most of the state's constitutional obligations for ensuring the effective right to counsel. Yet, the State of California has no means to ensure that Lake County is capable of fulfilling the state's constitutional obligations and is in fact doing so. "If the State [of California] created an indigent defense system that is systematically flawed and underfunded, . . . the State remains responsible, even if it delegated this responsibility to political subdivisions."³¹⁸

FINDING 2. Lake County contracts with an informal partnership of private attorneys, known as Lake Indigent Defense ("LID"), to administer and provide the right to counsel for which the State of California is responsible under the U.S. Constitution. Although the contract provides means by which the county can oversee the partnership's administration and provision of the right to counsel, Lake County does not do so. The county does not know, on an on-going basis, whether the right to counsel is being provided effectively, to how many people and in how many cases of what types, by whom, and how much the provision of the effective right to counsel should cost.

Lake County has established an indigent representation system that is devoid of basic oversight. Neither the State of California, Lake County, nor the LID partner attorneys know whether each indigent defendant in the Lake County Superior Court who is entitled to public counsel is in fact represented by a qualified and trained attorney who has sufficient time and resources to provide effective representation under independent supervision.

U.S. 25 (1972); *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970); *In re Gault*, 387 U.S. 1 (1967); *Douglas v. California*, 372 U.S. 353 (1963).

³¹⁶ See *Morris v. Slappy*, 461 U.S. 1, 13-15 (1983) (rejecting the claim that "the Sixth Amendment guarantees a meaningful relationship between an accused and his counsel" in holding that the substitution of one staff attorney at the public defender's office for another did not violate defendant's right to counsel). *Cf. Wheat v. United States*, 486 U.S. 153, 159 (1988) ("[T]he right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment."); *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006) (holding a criminal defendant is entitled to reversal of conviction where erroneously deprived of choice of counsel at trial). Thus, the right to counsel of one's choice, constitutionally protected for those with financial means to afford private counsel, is uniquely restricted for the indigent accused. See John Rappaport, *The Structural Function of the Sixth Amendment Right to Counsel of Choice*, SUP. CT. REV. 2016 (Univ. of Chi. Press) (summarizing U.S. Supreme Court case law as holding that "indigent defendants—who number more than four out of every five—simply have no right to choose their counsel at all."), <https://doi.org/10.1086/691355>.

³¹⁷ *United States v. Cronin*, 466 U.S. 648, 657-59 (1984).

³¹⁸ Ruling on Demurrers in *Phillips v. California*, No. 15CECG02201 at 4 (Cal. Super. Ct. Fresno County filed Apr. 13, 2016). See also Settlement Agreement in *Phillips v. California* (Cal. Super. Ct. Fresno County filed citing Jan. 7, 2020) (quoting trial court's Apr. 2016 ruling on demurrers).

Lake County contracts with an informal partnership of three private attorneys, collectively known as Lake Indigent Defense LLP (“LID”), to administer and provide the right to counsel for which the State of California is responsible under the U.S. Constitution. Through this contract, Lake County has delegated to the LID partner attorneys all responsibility to provide representation to indigent defendants, whenever appointed by the Lake County Superior Court, in an unlimited number of cases of specified types, in exchange for which Lake County pays a flat annual fee to the LID partner attorneys.³¹⁹ Lake County makes the LID partner attorneys “jointly and severally” responsible for carrying out all of the contract obligations,³²⁰ including, among other things:³²¹

- providing through subcontracts the individual private attorneys who are appointed to represent indigent people;
- establishing minimum qualifications for and ongoing training of the subcontractor attorneys;
- deciding the amount of compensation paid to the subcontractor attorneys;
- establishing “[r]easonable maximum caseloads” that can be assigned to each of the subcontractor attorneys; and
- ensuring that the subcontractor attorneys “obtain” the ancillary and support services “necessary to provide adequate representation.”

The contract between Lake County and the LID partner attorneys contains numerous provisions that require the LID partner attorneys to provide information to the county about whether and how the LID partner attorneys fulfill their contractual obligations. Yet, Lake County does not enforce these obligations and the LID partner attorneys do not comply with them. As a result, Lake County does not know who the subcontractor attorneys are or how many subcontractor attorneys are providing the right to counsel on any given day. Lake County does not know how much of the money it pays to the LID partner attorneys is spent on overhead costs, how much is paid in administrator’s fees and what services are provided in exchange, how much is paid to subcontractor attorneys and what services they provide in exchange, or how much is retained by the LID partner attorneys as profit. Lake County does not know how many people, in how many cases of what types, receive appointed counsel through the county’s contract with the LID partner attorneys.

³¹⁹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.A., 2.B., 2.C., 8. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently* by “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

³²⁰ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 1.B., 2.A., 2.F. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently* by “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

³²¹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, ¶¶ 2. through 7. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently* by “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

Lake County does not exercise the means available to it to know whether the LID partner attorneys are capable of fulfilling the state’s constitutional right to counsel obligations and whether they are in fact doing so. The absence of systemic accountability has allowed deficiencies in the provision of direct services to indigent clients to become institutionalized, which the U.S. Supreme Court describes as the constructive denial of the right to counsel. And without oversight, Lake County lacks any mechanism to identify and rectify these systemic deficiencies.

FINDING 3. As required by Lake County’s contract with the LID partner attorneys, the LID partner attorneys subcontract with private attorneys, including themselves, to represent indigent defendants in the types of trial-level cases for which the State of California is responsible for providing the right to counsel under the U.S. Constitution. Although the subcontracts provide means by which the LID partner attorneys can oversee the provision of the right to counsel by all of the subcontractor attorneys, the LID partner attorneys purposefully do not do so. The LID partner attorneys do not know, on an on-going basis, whether the right to counsel is being provided effectively, to how many people and in how many cases of what types, by whom, and how much the provision of the effective right to counsel should cost.

Lake County’s contract with the LID partner attorneys requires the LID partner attorneys to provide at least 14 attorneys to be available for appointment under the contract,³²² and the LID partner attorneys are required to execute a written subcontract with each of these attorneys.³²³ As of October 2021, the LID partner attorneys identified 15 individual private attorneys with whom they subcontract (including themselves) to represent indigent people. Each LID subcontract requires the subcontractor attorney to provide representation in an unlimited number of specified types of cases and proceedings, whenever appointed by the Lake County Superior Court on or after the date the subcontract commences, in exchange for which the LID partner attorneys pay a flat fee, in monthly installments, to the subcontractor attorney.

Lake County’s contract with the LID partner attorneys holds them “legally responsible” for all work performed pursuant to the contract by the subcontractor attorneys.³²⁴ Even though required

³²² “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶ 2.F. (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

³²³ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.E., 2.F., 2.I., 2.N., 2.O., 4, 6, 10.B., 12., 14., 16., 30 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

³²⁴ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.F., 5 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

by the county's contract to do so,³²⁵ the LID partner attorneys have not created written practices and procedures for the subcontractor attorneys, have not established minimum qualifications for them, do not require them to receive ongoing training in the types of cases to which they are appointed, and have not established maximum caseloads or workloads allowed for the subcontractor attorneys.

The subcontracts between the LID partner attorneys and each of the subcontractor attorneys do contain numerous requirements for the subcontractor attorney in representing indigent defendants.³²⁶ Yet the LID partner attorneys take no steps to ensure compliance by the subcontractor attorneys.

The LID partner attorneys purposefully avoid supervising the LID subcontract attorneys in any way. The LID partner attorneys do not conduct performance evaluations of the subcontractor attorneys in any form. Justice system stakeholders express deep frustration that, when they report poor subcontractor attorney performance to the LID partner attorneys, the partners often respond that the subcontractor attorneys “are not our employees” and “we cannot control their work.” The LID partner attorneys assert that engaging in oversight of the subcontractor attorneys is untenable because the LID partner attorneys cannot “simultaneously have truly conflict free counsel and also engage in any significant effort to compel any performance which requires or hints at supervision.” As a result, the LID partner attorneys do not accurately know, for each subcontractor attorney: the number of their open appointed Lake County cases; the extent of their private caseload; whether they accept appointed cases in other counties, states, or federal courts; what other professional obligations they have; whether they visit their clients in jail or communicate with their out-of-custody clients in a timely manner; the extent of client complaints against them; whether they appropriately use investigators, experts, and interpreters; whether they use sound legal strategy and file meritorious motions in their cases; or whether they have and use any support staff or resources in representing their appointed Lake County clients.

In fact, from the outset of the contract with the county, the LID partner attorneys have chosen to not fulfill any of their contractual responsibilities that, in their view, might bear a resemblance to an employer-employee relationship between the LID partner attorneys and any LID subcontractor attorney.³²⁷ In their 2017 response to Lake County's request for proposals, the

³²⁵ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan ¶¶ 2.L., 4, 5, 7 (for the period of February 1, 2018 through June 30, 2019), *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

³²⁶ See “Contract for Indigent Defense Services” between [two individual named LID contractor attorneys] and [one named subcontractor attorney] (for the period of [beginning date] through no end date).

³²⁷ While this evaluation was under way in 2021, the California Employment Development Department (EDD) initiated an audit of the LID partner attorneys, examining whether LID properly classifies its subcontractor attorneys as “independent contractors” under California law or whether the subcontractor attorneys should instead be classified as LID “employees” who could be entitled to unemployment, disability, or paid family leave benefits. The LID partner attorneys have retained private legal counsel to represent them in the EDD audit, paying for their counsel out of the compensation they receive from Lake County.

The Sixth Amendment Center takes no position regarding the EDD audit.

LID partner attorneys alerted Lake County to what they see as “the tension between allowing contract defenders the latitude to remain independent contractors while at the same time ensuring competent representation that is responsive to the needs of the community.”³²⁸ Despite their concerns, the LID partner attorneys nevertheless chose to enter into the indigent representation contract with Lake County and obliged themselves to ensure that all of the subcontractor attorneys (including themselves) fulfill the responsibilities to provide effective assistance of counsel to every client whom they are appointed to represent.³²⁹

The LID partner attorneys do not exercise the means available to them to know whether the LID subcontractor attorneys are capable of fulfilling the state’s constitutional right to counsel obligations and whether they are in fact doing so.

FINDING 4. Lake County’s contract with the LID partner attorneys pays them a flat annual fee to administer the trial-level indigent defense system and to provide all right to counsel services for which the State of California is responsible under the U.S. Constitution, without regard to how much or how little time is necessary to provide effective assistance of counsel in all appointed cases. The LID partner attorneys’ subcontracts with individual attorneys (including themselves) pay each of them a flat monthly fee to represent all people to whom they are appointed by the superior court, without regard to how much or how little time is necessary to provide effective assistance of counsel in all appointed cases. These flat-fee compensation methods result in a system-wide conflict of interest between each and every indigent person’s interest in their constitutionally guaranteed right to effective representation and the personal financial interest of the attorney appointed to represent them, leading to the constructive denial of the right to counsel to some indigent people in Lake County.

Lake County pays the LID partner attorneys a flat fee to administer the county’s indigent defense function, and the LID partners pay each subcontractor attorney (including themselves) a flat fee to represent the individual clients. The flat fee compensation results in a system-wide conflict of interest between every indigent person’s interest in their constitutionally guaranteed right to effective representation and the financial interests of the subcontractor attorneys who are appointed to represent them.

The flat fee compensation that the county pays to the LID partner attorneys creates a financial incentive for the LID partner attorneys to limit as much as possible their costs to perform the contract, so as to retain more profits. The primary way in which the LID partner attorneys can limit their costs is by subcontracting with as few other attorneys as possible, without regard

³²⁸ Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, Exh. A (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

³²⁹ “Agreement for Indigent Defense Services” between the County of Lake and Mitchell Hauptman and Anakalia K. Sullivan, ¶ 6. (for the period of February 1, 2018 through June 30, 2019); *as amended most recently by* “Amendment No. 6 to the Agreement for Indigent Defense Services between the County of Lake and Lake Indigent Defense, LLP” (extending the term of the contract to end on December 31, 2022, modifying the payment terms, and defining “contractor” to be Mitchell Hauptman, Anakalia K. Sullivan, and Thomas Feimer).

to how many cases are then appointed to each subcontractor attorney. The LID subcontractor attorneys in fact have excessive caseloads as measured against national caseload standards, showing that there is an insufficient number of subcontractor attorneys. Excessive caseloads can result in a constructive denial of the right to counsel.

The flat fee compensation that the LID partner attorneys pay to each subcontractor attorney creates a financial incentive for the LID subcontractor attorney to devote as little time as possible to each appointed case, without regard to the amount of time necessary to provide effective representation. This places the personal financial interests of the LID subcontract attorney in conflict with the legal interests of the clients whom they are appointed to represent.

The LID subcontractor attorneys' financial conflicts and excessive caseloads work to the detriment of their appointed clients, leading the subcontractor attorney to: not timely visit clients in jail; not attend scheduled court appearances and substantive hearings; not communicate with clients prior to scheduled court dates and substantive hearings; not spend adequate time with clients to discuss charges, maximum penalties, collateral consequences, and constitutional and statutory legal rights and options; not properly screen for conflicts of interest in every case; not conduct thorough investigation and hiring experts; and/or not litigate motions.

Nearly 80 years ago, the United States Supreme Court stated in *Glasser v. United States*, “‘assistance of counsel’ guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests.”³³⁰ Effective assistance of counsel cannot be ensured in an indigent defense system that places appointed attorneys in a position where their own financial interests conflict with those of the indigent people whom they are appointed to represent.³³¹

B. Recommendations

The U.S. Supreme Court held in *Gideon v. Wainwright* that providing and protecting the Sixth Amendment right to effective assistance of counsel for the indigent accused in state courts is a constitutional obligation of the states – not local governments – under the due process clause of the Fourteenth Amendment.³³² When a state chooses to delegate its right to counsel responsibilities to its counties, the state must guarantee not only that those local governments

³³⁰ *Glasser v. United States*, 315 U.S. 60, 70 (1942). *See also* *Wood v. Georgia*, 450 U.S. 261, 271 (1981) (“Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest.”); *Cuyler v. Sullivan*, 446 U.S. 335, 346 (1980) (“Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial.”).

³³¹ CAL. R. PROF’L CONDUCT r. 1.7(b) (“A lawyer shall not . . . represent a client if there is a significant risk the lawyer’s representation of the client will be materially limited . . . by the lawyer’s own interests.”), r. 1.7 cmt 1 (“Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.”).

³³² *Gideon v. Wainwright*, 372 U.S. 335, 341-45 (1963) (“[T]hose guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. . . . [A] provision of the Bill of Rights which is ‘fundamental and essential to a fair trial’ is made obligatory upon the States by the Fourteenth Amendment. . . . [R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”).

and local officials are capable of providing effective representation but also that they are in fact doing so.³³³ Because the “responsibility to provide defense services rests with the state,” national standards unequivocally declare “there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.”³³⁴ California has no statewide structure to ensure that its Fourteenth Amendment obligation to provide effective Sixth Amendment public defense services is met at the trial level. Therefore, the State of California is responsible for the failure of Lake County to ensure that each and every indigent defendant in Lake County has an attorney with sufficient time, training, and resources to provide effective representation at every critical stage of a case.

These recommendations, however, are about what Lake County policymakers must do to provide effective representation until such time as California meets its Fourteenth Amendment obligations.

RECOMMENDATION 1. Lake County policymakers should advocate for the State of California to form a legislative and/or gubernatorial committee to study and make recommendations about how best to fulfill the state’s Sixth and Fourteenth Amendment responsibilities to ensure that each indigent defendant who faces the possible loss of liberty in a criminal or juvenile delinquency case receives effective assistance of counsel.

The State of California’s dereliction of its constitutional obligations to provide effective representation to indigent people was recently the subject of a class action lawsuit. In July 2015, the American Civil Liberties Union (ACLU) filed suit against the State of California and Fresno County, alleging that California “has delegated its constitutional duty to run indigent defense systems to individual counties” and does not provide any oversight to ensure those county systems actually provide constitutionally required representation.³³⁵ In April 2016, the trial court denied the state and Fresno County’s requests to dismiss the lawsuit.³³⁶ In its ruling, the court found that the state “cannot disclaim its constitutional responsibilities merely because it has delegated such responsibilities to its [counties]. . . . If the State created an indigent defense system that is systematically flawed and underfunded, . . . the State remains responsible, even if it delegated this responsibility to political subdivisions.”³³⁷

³³³ Cf. *Robertson v. Jackson*, 972 F.2d 529, 533 (4th Cir. 1992) (although administration of a food stamp program was turned over to local authorities, “‘ultimate responsibility’ . . . remains at the state level.”); *Osmunson v. Idaho*, 17 P.3d 236, 241 (Idaho 2000) (where a duty has been delegated to a local agency, the state maintains “ultimate responsibility” and must step in if the local agency cannot provide the necessary services); *Claremont School Dist. v. Governor*, 794 A.2d 744 (N.H. 2002) (“While the State may delegate [to local school districts] its duty to provide a constitutionally adequate education, the State may not abdicate its duty in the process.”); Letter and white paper from American Civil Liberties Union Foundation *et al* to the Nevada Supreme Court, regarding Obligation of States in Providing Constitutionally-Mandated Right to Counsel Services (Sept. 2, 2008) (“While a state may delegate obligations imposed by the constitution, ‘it must do so in a manner that does not abdicate the constitutional duty it owes to the people.’”), http://www.nlada.net/sites/default/files/nv_delegationwhitepaper09022008.pdf.

³³⁴ AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 2 cmt. (2002).

³³⁵ See Complaint in *Phillips v. California*, No. 15CECG02201 (Cal. Super. Ct. Fresno County filed Jul. 14, 2015) (naming as defendants the State of California, the governor of California in his official capacity, and the County of Fresno, and alleging the state failed to ensure constitutionally adequate trial-level indigent criminal defense services).

³³⁶ Order, *Phillips v. California*, No. 15CECG02201 (Ca. Super. Ct. Fresno County Apr. 12, 2016).

³³⁷ Settlement Agreement in *Phillips v. California* (Cal. Super. Ct. Fresno County filed Jan. 7, 2020) (quoting trial court’s Apr. 2016 ruling on demurrers).

The litigation pertaining to Fresno County was settled in 2020.³³⁸ Subsequently, the Sixth Amendment Center conducted a study of indigent defense services in Santa Cruz County³³⁹ and has now concluded this evaluation in Lake County. Fresno, Santa Cruz, and Lake counties – a larger urban county, a midsize county, and a smaller rural county, respectively – each have serious deficiencies in providing the right to counsel for which the “State remains responsible.” The Sixth Amendment Center’s Santa Cruz County report recommended that the state’s Office of the State Public Defender begin to document how the right to counsel is provided in each of California’s 58 counties and collect uniform data on caseloads and other effective representation indicators, to determine which counties comply with national standards like those summarized in the *ABA Ten Principles* and which counties do not.³⁴⁰ In light of the issues found in Lake County and documented in this report, that recommendation does not go far enough. The Sixth Amendment Center recommends that the California legislature and/or governor form a study commission to identify and recommend to the legislature the steps necessary to rectify counties’ deficient indigent representation systems. Lake County representatives, and concerned policymakers from other California counties, should advocate for the formation of such a state government study commission.

Unfortunately, until such time as California meets its constitutional obligations regarding indigent defense representation, it falls to Lake County to fulfill the constitutional right to counsel with county resources. The Sixth Amendment Center recognizes that the recommendations set forth below represent a significant increase in indigent defense expenditures for Lake County.

RECOMMENDATION 2: The Lake County Board of Supervisors should establish a non-partisan independent commission to oversee all aspects of indigent representation services and should fund the operations of the commission and the implementation of the methods and standards it adopts.

National standards, as compiled in the first of the *ABA Ten Principles*, require that the public defense function, including the selection, funding, and payment of defense counsel, be “independent.”³⁴¹ Commentary to *Principle 1* states that the defense function must be insulated from outside political or judicial interference by a board or commission appointed by diverse authorities, so that no one branch of government can exert more control over the system than any others.³⁴² It is just such a commission that should be vested with the authority to oversee indigent representation services in Lake County.

³³⁸ See Settlement Agreement in *Phillips v. California* (Cal. Super. Ct. Fresno County filed Jan. 7, 2020) (between plaintiffs and the State of California); Settlement Agreement in *Phillips v. California* (Cal. Super. Ct. Fresno County filed Jan. 8, 2020) (between plaintiffs and the County of Fresno).

³³⁹ SIXTH AMENDMENT CENTER, *The Right to Counsel in Santa Cruz County, California: Evaluation of Trial Level Indigent Representation Services* (2020), https://sixthamendment.org/6AC/6AC_ca_santacruzcountyreport_2020.pdf.

³⁴⁰ See SIXTH AMENDMENT CENTER, *The Right to Counsel in Santa Cruz County, California: Evaluation of Trial Level Indigent Representation Services* 130-33 (2020).

³⁴¹ AMERICAN BAR ASS’N, *ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM*, Principle 1 (2002).

³⁴² AMERICAN BAR ASS’N, *ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM*, Principle 1 cmt. (2002).

The idea of an independent commission to oversee indigent representation services is not new to Lake County. Almost 17 years ago, the county established its Public Defender Oversight Committee for the very purpose of monitoring and overseeing its indigent representation system. Although that committee has become inactive, it provides an existing foundation on which the county can build.

Establishing an independent commission. The National Study Commission on Defense Services' (NSC) *Guidelines for Legal Defense Systems in the United States*, guideline 2.10 states in part: "A special Defender Commission should be established for every defender system, whether public or private. The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented."³⁴³

In practice, jurisdictions with indigent defense commissions generally give an equal number of appointments to the executive, legislative, and judicial branches of government. Many jurisdictions include one or more voices on their commission from communities affected by the indigent defense function, such as a layperson former client, or, to ensure that the commission reflects the demographic makeup of the community, often by including members appointed by minority bar associations or community organizations. Many jurisdictions have found that giving appointments to the deans of nearby accredited law schools can create nexuses that help the indigent defense commission (for example, law schools can help with drafting standards, providing training facilities, etc.). Some jurisdictions select members from the varied geographical areas that make up their community, while some jurisdictions focus on appointing members with backgrounds and expertise in relevant fields, such as finance or forensics or adolescent development.

In constructing its independent public defense commission, Lake County should follow the lead of the increasing number of jurisdictions that prohibit voting members of the commission from being a sitting judge, a current prosecuting attorney, a current law enforcement employee, or a person currently paid to provide public defense services (or any employee of any person in those roles).³⁴⁴ Many jurisdictions find *former* judges, *former* prosecutors, *former* law enforcement officials, and *retired* defense attorneys to make very good commission members.

Determining the methods of providing the right to counsel. California allows its counties to provide counsel to represent indigent defendants through a public defender office, contracts with private attorneys, case-by-case appointments of private attorneys, or a combination of these methods. Lake County should authorize and empower its independent public defense commission to implement whatever method or combination of methods the commission determines is most likely to ensure the provision of effective representation of each indigent defendant in the Lake County Superior Court and that complies with U.S. Supreme Court caselaw, national standards, and California law.

³⁴³ NATIONAL STUDY COMM'N ON DEFENSE SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.10 (1976).

³⁴⁴ See NATIONAL STUDY COMM'N ON DEFENSE SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.10 (1976).

The commission must consider whether establishing a governmental public defender office could more effectively and efficiently ensure the provision of the right to counsel to indigent defendants than the existing system of the county compensating only private attorneys to represent indigent defendants. Decisions about the most efficient and effective manner of providing counsel will necessarily require the local commission to gather and analyze information about the number of indigent defendants entitled to request appointed counsel and the number of attorneys necessary to provide effective representation to each indigent defendant. Generally speaking, a public defender office staffed by salaried government employees becomes more economical as the scale of representation increases. Indeed, national standards as summarized in ABA *Principle 2* require a public defender office in any jurisdiction where caseload is “sufficiently high.”³⁴⁵

Establishing, implementing, and enforcing standards. No matter what methods are chosen to secure the attorneys who are appointed to represent indigent defendants, the county’s independent public defense commission must be required to promulgate and enforce binding standards applicable to all indigent representation system attorneys. Lake County should authorize and empower its independent public defense commission to establish, implement, and enforce mandatory standards for, at least:

- The criteria for and method of determining whether a defendant is indigent, such that all defendants are treated equally;
- The qualifications, training, and supervision required for appointed attorneys, sufficient to ensure the provision of effective assistance of counsel to indigent defendants, and training and supervision should be mandatory and provided through and funded by the commission;
- The procedures for appointing a specific attorney to represent each indigent defendant in each case, and if the commission establishes more than one method of providing indigent defense services, then the percentage and types of cases to be handled by the attorneys secured through each of those methods;
- The compensation paid to and the procedures for paying appointed attorneys, ensuring that flat-fee compensation is eliminated, that any private attorneys who are appointed are paid an hourly rate sufficient to provide a reasonable fee in addition to overhead and case-related expenses and that the hourly rate is re-evaluated annually and adjusted as needed to produce a sufficient number of attorneys to represent all indigent defendants who request appointed counsel;
- Mandatory workload limits for all appointed attorneys, which should not exceed those allowed under either the NAC guidelines or the State Bar of California’s *Guidelines on Indigent Defense Services Delivery Systems*,³⁴⁶ and
- Performance duties of all appointed attorneys and oversight to ensure compliance.

The Lake County Board of Supervisors, who are responsible under California law for funding the Sixth Amendment right to counsel of indigent defendants in the Lake County Superior Court, must provide funding adequate for the operations of the commission and to implement and enforce commission standards and methods, to ensure effective assistance of counsel to each indigent defendant.

³⁴⁵ AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 2 (2002).

³⁴⁶ See STATE BAR OF CALIFORNIA, GUIDELINES ON INDIGENT DEFENSE SERVICES DELIVERY SYSTEMS § VII (workload) (2006), https://www.calbar.ca.gov/Portals/0/documents/ethics/Indigent_Defense_Guidelines_2006.pdf.

RECOMMENDATION 3. The Lake County Board of Supervisors should immediately establish an office of indigent representation services to carry out the day-to-day duties of the commission, headed by an executive director attorney selected by the commission. As quickly as possible, Lake County should provide adequate permanent staff to fulfill the commission’s duties to ensure effective assistance of counsel to each indigent defendant.

The amount of work needed to be accomplished to restructure indigent representation services in Lake County before the current contract expires on December 31, 2022 dictates that the county must immediately hire an executive director attorney to staff the commission’s duties. As directed by national standards, the Lake County public defense commission should be authorized and empowered to select a senior attorney to serve as executive director of the office of indigent representation services, chosen “on the basis of a non-partisan, merit procedure which ensures the selection of a person with the best available administrative and legal talent, regardless of political party affiliation, contributions, or other irrelevant criteria.”³⁴⁷ The executive director should be hired by the commission for a fixed term that is subject to renewal and should not be removed from office absent good cause shown through due process.³⁴⁸ To ensure that the indigent defense system has a voice equal to that of other justice system participants,³⁴⁹ the executive director of the commission’s office of indigent representation services should be made a permanent member of any counties bodies that are convened to consider and improve justice system policies.

Lake County must ensure that its indigent representation system has sufficient people and resources to provide constitutionally effective representation to each indigent person in each case. The executive director of the commission’s office of indigent representation services should be the county’s point person to establish a new indigent representation system. Rather than providing direct services to any indigent person, the executive director’s primary role is to be the outward face of the indigent representation system in Lake County, advocating with other criminal justice stakeholders, the county administration and Board of Supervisors, and the communities most in need of indigent representation services. Because of this, it is possible for the executive director of the indigent representation system to oversee both a public defender office division and a conflicts counsel division without conflicts of interest,³⁵⁰ should the commission determine that to be the most effective and efficient means of providing effective assistance of counsel to all indigent defendants.

³⁴⁷ NATIONAL STUDY COMM’N ON DEF. SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.12 (1976).

³⁴⁸ NATIONAL STUDY COMM’N ON DEF. SERVS., GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES, guideline 2.12 (1976).

³⁴⁹ *See, e.g.*, AMERICAN BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 8 (2002) (“No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.”).

³⁵⁰ *See* STATE BAR OF CALIFORNIA, STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT, Formal Opinion No. 2002-158 (“The creation of a physically separate firm within a public office charged with indigent criminal defense, so that different firms represent different defendants, can avoid conflicts arising from the representation of multiple defendants, but only with adequate safeguards including maintaining the separateness of the two firms.”).

Lake County does not have sufficient oversight of right to counsel services, and Lake County does not have sufficient data today to enable a commission to determine the most effective and efficient methods for providing the right to counsel, so the commission and the office of indigent representation services need a sufficient number of professional staff positions devoted full-time to training, compliance, finance, information technology, and research and data analysis. The need for the county to act quickly to provide basis infrastructure is particularly important because the long-term impact of the ongoing coronavirus pandemic on the indigent representation system's workload remains unknown.

As part of this evaluation, Lake County requested the Sixth Amendment Center to assess the feasibility of establishing a county public defender office. To attract attorneys to serve Lake County, the county needs to offer a reasonable salary and benefits on par with those provided to the district attorney's office through the creation of a public defender office. Moreover, a public defender office provides for greater day-to-day supervision and training of staff government employee attorneys than exists within Lake County's current contract structure.³⁵¹

In addition to the new executive director position, caseload estimates (*see* chapter VI) show that new adult criminal assignments alone (before considering other types of cases and before considering the existing open caseloads) require that Lake County have a total indigent defense system of at least:

- 14.72 FTE trial attorneys (10.5 FTE felony attorneys; 4.22 FTE misdemeanor);
- 1.47 FTE supervising attorneys;
- 4.9 FTE investigators;
- 4.9 FTE social workers; and
- 3.68 FTE paralegals or legal assistants.³⁵²

³⁵¹ Private attorneys appointed to represent indigent people in a conflicts counsel division also require training and supervision. All indigent defendants – whether represented by a private court-appointed attorney or a government employee – are entitled to the same constitutional right to an appointed attorney who is minimally qualified to handle the case effectively. An indigent defendant's rights entitled under the Sixth Amendment to the U.S. Constitution takes precedence over any conflicting state law. *McCulloch v. Maryland*, 17 U.S. 316 (1819) (interpreting the supremacy clause of the U.S. Constitution). The California legislature should resolve any tension between state employment laws and government's obligation to supervise private court-appointed attorneys to ensure the constitutional guarantee of minimally effective representation.

³⁵² For the fiscal year ending June 30, 2021, Lake County authorized its district attorney's office to have 36.75 full-time equivalent positions: 14 attorneys and 26.75 non-attorneys. COUNTY OF LAKE, ADOPTED BUDGET FISCAL YEAR 2020-2021, p. F-3.

The employees in the district attorney's office are all county employees whose compensation is determined and paid by the county, (CAL. CONST. art. XI, §§ 1, 4.) although much of the funding for the six non-attorney employees in the victim-witness division comes to the county from state and federal government grants. (COUNTY OF LAKE, ADOPTED BUDGET FISCAL YEAR 2020-2021, p. F-3.) As county employees, in addition to their compensation district attorney's office employees have health insurance, are eligible for retirement, and accrue sick leave and paid vacation time. (COUNTY OF LAKE, ADOPTED BUDGET FISCAL YEAR 2020-2021, p. B-35; *Human Resources Employee Benefits*, COUNTY OF LAKE CALIFORNIA, http://www.lakecountyca.gov/Government/Directory/Human_Resources/Benefits.htm.)

In addition to the one elected district attorney, the district attorney's office was authorized one chief deputy and 12 full-time deputy district attorney positions. (COUNTY OF LAKE, ADOPTED BUDGET FISCAL YEAR 2020-2021, p. F-3.) The elected district attorney prosecutes all juvenile delinquency and asset forfeiture cases, while the 13 deputy

Additional full-time equivalent attorneys and non-attorneys are required for all of the other types of cases to which counsel is appointed. For the reasons explained in chapter VI, data is unavailable to project staffing requirements for these other case types.

Because of ethical rules requiring appointment of separate counsel in cases where the public defender office division has a conflict, Lake County requires active participation of the private attorneys through its conflicts counsel division. Private attorneys appointed to represent indigent persons should be paid an hourly rate that covers the attorney’s overhead and case-related expenses in addition to a reasonable fee.

In fact, the flat fee compensation used in Lake County causes conflicts of interest between the indigent defense attorney’s financial self-interest and the legal interests of the indigent defendant. The contracts also can cause concurrent conflicts of interest between indigent defendants, and between the indigent defendants and the attorney’s retained clients. Therefore, California should follow the lead of other states that have recently banned these practices statewide, including:

- Idaho. County commissioners may provide representation by contracting with a defense attorney “provided that the terms of the contract shall not include any pricing structure that charges or pays a single fixed fee for the services and expenses of the attorney.”³⁵³
- Michigan. The Michigan Indigent Defense Commission is statutorily barred from approving local indigent defense plans that provide “[e]conomic disincentives or incentives that impair defense counsel’s ability to provide effective representation.”³⁵⁴
- Washington. The Washington *Rules of Professional Conduct* decree that “A lawyer shall not: (1) make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm: (i) to bear the cost of providing conflict counsel;

district attorneys are divided into those who prosecute misdemeanor-only complaints and those who prosecute complaints where at least one felony is charged.

The district attorney’s office was authorized to have seven investigators, including one investigator technician and one chief investigator. (COUNTY OF LAKE, ADOPTED BUDGET FISCAL YEAR 2020-2021, p. F-3.). The criminal division of the district attorney’s office was authorized a total of 9.75 administrative and support staff: 3.75 legal secretaries, four office assistants, one office coordinator, and one administrative coordinator. (COUNTY OF LAKE, ADOPTED BUDGET FISCAL YEAR 2020-2021, p. F-3.) The victim-witness division was authorized six non-attorney positions: one program administrator, one senior victim advocate, three victim advocates (though ½ of one position was unfunded), and one forensic interviewer.

From fiscal year 2018-19 through fiscal year 2020-21, the district attorney’s office had the following actual annual expenditures (COUNTY OF LAKE, ADOPTED BUDGET FISCAL YEAR 2021-2022, p. A-70; COUNTY OF LAKE, ADOPTED BUDGET FISCAL YEAR 2020-2021, p. A-71.):

BUDGET UNIT	FY 2018-19 ACTUAL	FY 2019-20 ACTUAL	FY 2020-21 ACTUAL
2110 - District Attorney	\$2,977,612	\$2,841,351	\$2,936,528
2113 - DA/Victim-Witness Program	\$360,222	\$435,401	\$418,777

³⁵³ IDAHO CODE § 19-859 (2018).

³⁵⁴ MICH. COMP. LAWS § 780-991(2)(b) (2017).

or (ii) to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel.”³⁵⁵

- Nevada. Announcing that the “competent representation of indigents is vital to our system of justice,” the Nevada Supreme Court banned the use of flat fee contracts that fail to provide for the costs of investigation and expert witnesses and required that contracts must allow for extra fees in extraordinary cases.³⁵⁶

Furthermore, all national standards require that “counsel should be paid a reasonable fee in addition to actual overhead and expenses.”³⁵⁷ For example, in 2000, the South Dakota Supreme Court abolished flat fee compensation for court-appointed attorneys and set public counsel compensation hourly rates at \$67 per hour, and to ensure that attorneys are perpetually paid both a reasonable fee and overhead, the court also mandated that court-appointed attorney fees “increase annually in an amount equal to the cost of living increase that state employees receive each year from the legislature.”³⁵⁸ Effective January 1, 2022, South Dakota court-appointed attorney fees are \$101 per hour.³⁵⁹ For comparison purposes, Lakeport is 19.9% more expensive than South Dakota’s largest city, Sioux Falls.³⁶⁰ Therefore, a \$101 hourly fee for appointed counsel in South Dakota in 2022 is the equivalent of a \$121.09 hourly fee in Lake County.

Again, there is not enough data presently available to determine what percentage of cases involve conflicts requiring appointment of private counsel. However, for budget planning purposes, Appendix A provides one example of what the indigent representation system could look like assuming 60% of total caseload is handled by government employee public defenders. Even so, the private attorney component handling 40% of cases still requires adequate funding – that is, the appointed attorneys require resources to hire investigators, social workers, experts, etc. The conflicts counsel division’s costs are calculated at \$120 per hour multiplied by 5.5 hours per misdemeanor case and 11 hours per felony case.³⁶¹

³⁵⁵ WASH. R. PROF. CONDUCT 1.8(m)(1).

³⁵⁶ Order, *In re Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT No. 411 (Nev. filed July 23, 2015).

³⁵⁷ AM. BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 8 cmt. (2002).

³⁵⁸ South Dakota Unified Judicial System Policy 1-PJ-10.

³⁵⁹ See Letter from Greg Sattizahn, South Dakota State Court Administrator, to Andrew Fergel, State Bar of South Dakota (Nov. 15, 2021) (re: 2022 Court-Appointed Attorney Fees and Mileage), <https://ujs.sd.gov/uploads/docs/2022CourtAppointedAttorneyFees.pdf>.

³⁶⁰ See *2022 Cost of Living Calculator: Sioux Falls, South Dakota vs Lakeport, California*, BESTPLACES, <https://www.bestplaces.net/cost-of-living/sioux-falls-sd/lakeport-ca/50000>.

³⁶¹ As explained, California has not established workload maximums for attorneys appointed to represent indigent clients. See STATE BAR OF CALIFORNIA, GUIDELINES ON INDIGENT DEFENSE SERVICES DELIVERY SYSTEMS § VII (Workload) (2006) (noting the need for more localized caseload standards in place of national maximums). Instead, we apply California’s closest neighboring state with binding caseload maximums, which is Oregon. The State of Oregon has set per-attorney maximums of 150 felonies per year or 300 misdemeanors per year. See STATE OF OREGON, OFFICE OF PUBLIC DEFENSE SERVICES, OPDS CASE COUNTING GUIDELINES FOR JANUARY 2020 RFP § 4.1 (2019), <https://www.oregon.gov/opds/provider/RFP/OPDSCaseCountingGuidelines.pdf>. The Oregon caseload standards also “presume[] that a full time public defense attorney spends approximately 1,650 hours annually on client representation,” meaning the average felony case requires 11 work hours (1,650 / 150) and the average misdemeanor requires 5.5 work

The total cost for the modeled Lake County indigent representation system is \$4,658,186.15.³⁶²

Because the State of California has the Fourteenth Amendment obligation to ensure counties are capable of fulfilling the state's Sixth Amendment right to counsel responsibilities delegated to county government, the California legislature should appropriate state funds to defray all or a portion of Lake County's increased costs necessary to ensure effective assistant of counsel pursuant to the Sixth and Fourteenth amendments.

hours. *Id.* at § 2.5.

A recent case-weighting assessment by the American Bar Association found that even these Oregon standards are significantly outdated and recommended that an attorney spend between 22.26 and 36.98 hours per misdemeanor case (depending on severity) and between 39.78 and 148.95 hours per non-homicide felony case. *See* AMERICAN BAR ASS'N STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENSE, MOSS ADAMS LLP, *The Oregon Project: An Analysis of the Oregon Indigent Defense System and attorney Workload Standards* 69 (January 2022).

³⁶² *See* Appendix A for detail. Total indigent representation system costs necessarily will increase in proportion to the true volume of non-criminal cases that require appointed counsel. As that data is currently unavailable, those costs cannot be calculated and incorporated into this model.

APPENDIX A

The following tables provide a demonstration of the staffing and budget necessary to provide counsel only in adult criminal cases in Lake County. The demonstration includes both a public defender division and a conflict counsel division, and it assumes that the public defender division handles 60% of the adult criminal caseload.

The staffing and budget are based on the limited data currently available. Total indigent representation system staffing and costs will necessarily increase in proportion to the true volume of all cases that required appointed counsel, including juvenile delinquency and civil cases for which no data is currently available.

PERSONNEL EXPENSES

CATEGORY	POSITION	SALARY	INSURANCE	FICA / UNEMP.	RETIREMENT	#	TOTAL
ATTORNEYS	Chief Public Defender	\$134,702	\$12,000	\$12,797	\$32,827	1	\$192,326
	Deputy Defender	\$105,602	\$12,000	\$10,032	\$25,735	1	\$153,369
	Dep. Defender, Senior	\$95,618	\$12,000	\$9,084	\$23,302	2	\$280,006
	Dep. Defender, III	\$91,011	\$12,000	\$8,646	\$22,179	2	\$267,672
	Dep. Defender, II	\$78,479	\$12,000	\$7,455	\$19,125	2	\$234,118
	Dep. Defender, II	\$78,479	\$12,000	\$7,455	\$19,125	2	\$234,118
	Dep. Defender, I	\$64,324	\$12,000	\$6,111	\$15,676	2	\$196,221
	Dep. Defender, I	\$64,324	\$12,000	\$6,111	\$15,676	2	\$196,221
INVESTIGATORS	Chief Investigator	\$82,441	\$12,000	\$7,832	\$20,091	1	\$122,363
	Investigator, II	\$75,483	\$12,000	\$7,171	\$18,395	2	\$226,098
	Investigator, II	\$75,483	\$12,000	\$7,171	\$18,395	2	\$226,098
SOCIAL WORKERS	Chief Social Worker	\$82,441	\$12,000	\$7,832	\$20,091	1	\$122,363
	Social Worker, III	\$61,308	\$12,000	\$5,824	\$14,941	2	\$188,146
	Social Worker, III	\$61,308	\$12,000	\$5,824	\$14,941	2	\$188,146
ADMIN.	Lead Paralegal	\$45,583	\$12,000	\$4,330	\$11,109	1	\$73,022
	Paralegal	\$40,290	\$12,000	\$3,828	\$9,819	1	\$65,936
	Office Assistant, III	\$33,894	\$12,000	\$3,220	\$8,260	1	\$57,373
	Office Manager	\$45,583	\$12,000	\$4,330	\$11,109	1	\$73,022
SUB-TOTAL		\$1,316,349	\$216,000	\$125,053	\$320,794	20	\$3,096,618

NON-PERSONAL EXPENSES

CATEGORY	DESCRIPTION	RATE	# UNITS	TOTAL
OVERHEAD	Bar Dues	\$515	8	\$4,120
	Case Management	\$20,000.00	1	\$20,000
	Computer/Software Licenses	\$500/person	18	\$10,000
	Conferences/Training	\$3,500.00	1	\$3,500
	Mileage	\$2000/lawyer	8	\$20,000
	Office Supplies	\$600/person	18	\$12,000
	Postage/Printing	1500/year	18	\$30,000
	Professional Liability	\$60/month	8	\$7,200
	Professional Membership	\$3,000	1	\$3,000
	Rent	\$18/sq. ft x 200 sq.ft	18	\$72,000
	Telephone	\$500/person	18	\$10,000
	Westlaw	\$325/month	8	\$39,000
OVERHEAD SUB-TOTAL				\$230,820
CAPITAL EXPENDITURES	Laptops	\$884.81	18	\$15,927
	Individual Printer	\$707.85	5	\$3,539
	High Volume Printer/Copier	\$2,145.00	1	\$2,145
	Cell Phones	\$45/month	18	\$10,800
	Furniture	\$1,072.50	18	\$19,305
	Incidentals	\$100	18	\$1,800
CAPITAL SUB-TOTAL				\$53,516

INDIGENT DEFENSE PROJECTED BUDGET (PD 60%, CONFLICT 40%)	
PUBLIC DEFENDER DIVISION	\$3,380,954.15
CONFLICT COUNSEL DIVISION	\$1,277,232.00
GRAND TOTAL	\$4,658,186.15

