Contracted to Fail:

How Flat-Fee Contracts Undermine the Right to Counsel in California

Part 2

THE WREN COLLECTIVE
UC BERKELEY LAW CRIMINAL LAW & JUSTICE CENTER
JULY 2026

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Introduction

There are only 365 days in a year, but in Kings County, California, two attorneys are handling almost 400 felony and 150 misdemeanor cases each. In Madera, criminal attorney caseloads average close to 500, even with significant undercounting. There are not enough hours in the day and in the year, even if these lawyers never went to sleep and worked every hour of the day, to provide effective representation.

These high caseloads are not isolated occurrences, nor are they limited to these two counties. To the contrary, caseloads across the state are unfathomable, rivaling some of the worst we have seen in the country. **California has a public defense crisis.**

7 of top 8 counties

in per capita jail and prison incarceration exclusively use flat fees for public defense.

There are two central reasons for this crisis. **One of them is that California allows counties to privatize their public defense systems via lump-sum, flat-fee contracts with for-profit lawyers or firms.** The more work done on each case, the less valuable the lawyers' time, and the less profitable the fee. As we demonstrated in Part 1 of this series, ***Contracted to Fail***,[i] these systems incentivize cutting corners and have been shown for decades to drive incarceration higher. In California, 7 of the top 8 counties in per capita jail and prison incarceration exclusively use flat fees for public defense.[ii]

The other reason, of course, is that California also provides no consistent statewide funding for public defense.[1] Meanwhile, it spends double the amount on prosecution in the state and about 18 times as much on incarceration.[2] The results are catastrophic.

In our Part 1 report, we looked under the hood at flat-fee contract systems and found that they provided shockingly few safeguards in the contracts themselves. In this Part 2 follow-up, we further dig into the realities on the ground after analyzing data from several flat-fee counties. In Section I, we examine caseloads, uncovering a reality **far more abhorrent than has been previously publicly known** (I). In Section II, we discuss other signs of poor attorney performance we uncovered in those same jurisdictions (II). We then discuss the fight to finally ban flat-fee contracts and how doing so will reduce costs and improve public defense systems in individual counties (IV). And lastly, we outline how reform is particularly urgent in light of the federal government's use of state criminal courts to fuel the mass deportation of Californians (V).

It is absolutely urgent that California start making massive change and it is becoming increasingly unconscionable to ignore the crisis created by flat fees. Recently, the California Supreme Court unequivocally ruled that

[i] Authored with our friends at the American Civil Liberties Union.

[ii] Vera Institute of Justice, Vera incarceration trends, California, updated June 3, 2026. *See* Appendix D for a full description of how we used this data.

judges must consider whether a person charged with a crime can afford bail, closing a long-standing loophole that left poor people in life-altering pretrial detention for nonviolent offenses simply because they did not have money.[3] But without public defenders to advocate for their clients, that landmark ruling will ring hollow.[4]

A Recap of Public Defense Systems

Under the Supreme Court's decision in *Gideon v. Wainwright*[5], when someone is arrested and charged with a crime, the state is required to provide a lawyer at no cost if that person cannot afford an attorney. Nationwide, about 80% of people charged with a crime meet that criteria and are appointed what is commonly known as a "public defender."[6] The manner in which governments provide these lawyers in criminal cases, from the amount of money they are paid, to how these lawyers are appointed, varies extensively.

On one end of the spectrum, institutional public defense offices have full-time lawyers who work exclusively as public defenders and may include investigators, social workers, or immigration specialists. At the other end, the court appoints a private, for-profit attorney to take on the case for a fee that the government pays.

Methodology

To further explore the problems that exist in flat-fee counties, we requested data from individual counties via public records requests. We received data in various forms, from narrative reports to numerical statistics to work logs. What we have pieced together are estimates, because the flat-fee counties we surveyed did not supply the *actual* caseloads of *specific* lawyers.

We attempted to be conservative and transparent in our calculations. For example, if a private firm reported X lawyers at full staffing capacity during a time of Y new cases, we calculated an average case count per lawyer without factoring in that staffing fell below full levels at certain points. If attorneys in a county were assigned to overlapping cases, we were careful to take that into account when calculating case totals. For a full accounting of our methods, see Appendix A: Caseloads.

We also analyzed public court dockets via Unicourt, a litigation data platform whose coverage includes complete criminal case docket information for several flat-fee counties. We coded that data according to whether the defendant was represented by a court-appointed or privately retained attorney, then analyzed differences in attorney performance and case outcomes between the two groups.

I. Caseloads

Perhaps the most important metric for determining whether a public defense system is functioning well is caseload data for both lawyers and investigators. The individual skills, experience, or talent of any lawyer cannot overcome a crushing caseload. Many of us at Wren and The Criminal Law & Justice Center have been front-line public defenders, some of us in systems with high caseloads. What we have seen in this new data, particularly in flat-fee counties, is nothing short of shocking.

Public defense systems vary between jurisdictions and reasonable minds may disagree on the exact number of cases that are appropriate for each public defender to handle. The numbers in this report are far beyond what any modern caseload study or metric would deem appropriate. In 1973, standards that are now widely understood to be out-of-date and wildly overly permissive proposed a per-attorney caseload cap of 150 felonies or 400 misdemeanors. Most caseload totals in this report exceeds even those outdated standards, with the worst *more than triple* the 1973 benchmarks.

A. Madera[iii]

Madera County is in the Central Valley, outside of Fresno, and has over 160,000 residents, making it the 4th largest California county to rely exclusively on flat-fee contracts for public defense.[7] Its incarceration rate is twice the statewide average and higher than that of any bordering county.[8] The private, for-profit firm that runs Madera's public defense system is also the provider in Amador and Calaveras counties, and is a significant secondary provider in Merced and Fresno counties.[9] **The firm has long been known as the "Wal-Mart of public defense" because its attorneys have astronomical caseloads and the firm cuts corners on resources like investigators.**[10]

Data obtained from public records and the firm's own Annual Reports to Madera County show **attorneys with an average of about 500 new cases per year since 2019. Two staff investigators must account for an entire office caseload of about 5,000-6,000 yearly cases, about 1,500 to 2,000 of which are felonies.**

491
new cases
averaged by Madera lawyers at the firm in 2024, 160 felonies and 331 misdemeanors.

In 2024, lawyers at the firm averaged 491 new cases that calendar year, 160 felonies and 331 misdemeanors. In 2023, attorneys averaged closing 531 cases. Both of these numbers significantly undercount the true number of cases handled by attorneys, because not all cases a lawyer works on were opened or closed in a given year.

[iii] See Appendix A for all caseload calculations.

Undercounting, Explained

Both opened and closed case numbers likely miss a significant portion of attorneys' actual caseloads because they do not account for cases that originated in prior years and did not resolve. Those cases nonetheless require attorney time and attention.

If the government charged a homicide in December of 2023, for example, but it did not go to trial until January of 2025, the 2024 numbers would not reflect that case even though it required significant time and preparation.

Accounting for those additional "carried cases" can have a dramatic impact. Where we have access to them, we incorporate carried cases into our estimates. From the same firm in both Fresno and Madera, for example, accounting for those carried cases increases the average by about 55%. In Madera, the same firm that provides public defense services also handles conflict cases, which are cases where the main provider cannot provide representation due to a conflict of interest. When accounting for carried cases, the Madera conflict division's average caseloads increase by about 80% for 2024 and 2025.

It is unconscionable for any attorney to handle 491 cases at a time. And according to the firm's own reporting, about 30% of the cases in Madera are felonies, which take considerable time to defend. While we do not know the exact number of carried cases for Madera, **any multiplier to calculate the actual caseload, whether it is 80% (884) or 55% (761) or even, for argument's sake, 10% (540), would be beyond the pale.**

Madera's problems are entirely avoidable. The Madera flat-fee firm's office employs only 11 attorneys for criminal cases and 2 investigators.[11] By way of contrast, Lake County, which began to transition from a flat-fee system to an institutional defender's office a little over two years ago, already has 11 full-time public defenders and five staff investigators.[12] Lake's criminal system has 35% of the new filings as Madera, which is more than twice the population.[13]

The data we received from the private firm in Madera is consistent with that documented in a Cal Matters 2025 exposé that chronicled "caseloads that were more than double even the most permissive standards for how many cases one attorney should be allowed to handle."[14] **But the firm's crushing caseload issues are not confined to Madera.**

B. Fresno County

The firm providing public defense services in Madera county also operates in four other counties. Its largest office is in Fresno, where it works as a conflict provider. As in Madera County, the firm's work in Fresno County operates under a flat-fee contract. Fresno is California's 10th biggest county, the largest in the Central Valley. Over a million residents live there.[15]

432 *cases*

on average in fiscal year 2024–2025 handled by Fresno lawyers from the same firm.

We estimate Fresno lawyers from the same firm handled about 432 total cases on average in fiscal year 2024–2025, 161 of them felonies. And despite receiving 4,000 to 5,000 new cases each year, **the firm only employs 3 investigators**.

As high as those caseloads are in the firm's Fresno office, it is notable that they employed 55% more attorneys in Fresno in 2024–2025 than Madera in 2024, even though the Fresno office received 18% fewer new cases than the Madera office.

Political Donations From The Firm[iv]

The law firm has a track record of making political donations in the firm's name, from the firm's own funds. As of the writing of this report, we have identified $51,073 in contributions over the last several years, in Fresno, Madera, and statewide campaigns. This is not illegal and the total amounts may seem small in comparison to the total contract fees, but these donations are *de facto* taxpayer-funded because the firm's only source of revenue is county contracts. Many of these donations, moreover, are to politicians who advocate for a more punitive justice system, support the death penalty, or openly support funneling California immigrants from the criminal system into ICE detention.[16]

This spending is concerning when, in public defense and county budgets, every dollar counts. Public defenders around the state are scraping by, facing layoffs or woefully inadequate resources. Counties are making tough calls on their yearly budgets. The firm is choosing to spend money on political donations that could instead go to their contractually provided public service of defending the county's poor people. That choice is deeply troubling, especially given their lack of attorneys and investigators.

[iv] Appendix B: Political Donations.

C. Merced

Merced borders Madera, with almost double the population.[17] While it has an institutional defender's office, it began contracting with the same law firm for conflict cases in 2017, and that contract likewise provides a flat fee. We estimate that lawyers in that firm's Merced office averaged as many as 284 and 273 total cases in two recent years and are on pace for similar numbers in 2026 if staffing numbers remain the same.

D. Amador and Calaveras

The same firm is also the exclusive provider in adjacent Sierra Nevada counties Amador and Calaveras. The firm has recently employed three lawyers with full caseloads in each county, with at least two of them providing the main conflict counsel to the other county.

372
newly assigned cases
per Amador lawyer on average in 2024, with 111 estimated felonies.

In Amador, data indicates that lawyers averaged an estimated 372 newly assigned cases per lawyer in 2024, with 111 estimated felonies. At least two of those handled conflict matters in Calaveras. **In Calaveras, three lawyers averaged an estimated 241 newly assigned cases between fiscal years 2023–24 and 2024–25, including 84 estimated felonies.** This average does not factor in any conflict cases in Amador, any cases carried into the year, or any months where staffing fell below three criminal attorneys.

The number of conflict cases is potentially significant. One lawyer in Calaveras estimated her conflict caseload from Amador added 40–50 cases.

In Amador, the firm averaged 248 new conflict cases a year (although not all of those were handled by the main two conflict lawyers) from 2024 to 2025. Without accurate and transparent reporting of specific attorney caseloads, it is impossible to determine the true attorney workloads in either county.

These Numbers Are Likely Undercounts for Other Reasons

Many flat-fee attorneys handle cases in other counties, as well as privately retained cases, making these caseload numbers even worse. The firm's practice of allocating lawyers to multiple counties is part of a pattern we see in private contractors around the state. Fresno lawyers from the firm, with their caseload average of 432, are also now handling Amador cases that originate at the state prison. One attorney in Madera County—where attorneys are assigned, on average, about 500 new cases per year—was also providing representation in 71 conflict cases in Merced County during a recent 11-month period.

Additionally, attorneys often operate private practices, handling both civil and criminal cases in multiple counties on top of their public defense caseloads. Those numbers are impossible to capture without counties requiring lawyers with public defense contracts to report them.

E. Kings County

2.7*x*

Kings County is the incarceration leader in California, with a combined jail and prison incarceration rate almost triple (2.7 times) the rest of the state.

The problem of sky-high caseloads is not limited to one private firm—it is endemic to the flat-fee system. Kings County is the incarceration leader in California, with a combined jail and prison incarceration rate almost triple (2.7 times) the rest of the state. Its jail incarceration rate has increased 44% in the last decade. Unlike in Madera, it contracts with individual private lawyers, not a single firm, for its public defense system, but it still uses a flat-fee system.

In 2022, the Office of the State Public Defender wrote a scathing report about the county's flat-fee private contract defense system.[18] It found that attorneys rarely visited their incarcerated clients. It also discovered that attorneys filed motions to challenge the legality of the police investigation, a standard practice in criminal cases, in just .6% of felonies. In contrast, in neighboring Tulare County, lawyers filed these motions 7 times more often. Tulare has a public defender's office.

As in the above counties, caseloads in Kings County are astronomical.

One contractor worked on about 406 felonies and 187 misdemeanors in 2025. Another handled about 365 felonies, 156 misdemeanors, and 21 post-conviction cases. Two others handled over 250 felonies while handling significant misdemeanor caseloads (59 and 84), and a fifth handled—over just a 7-month period—183 felonies, 79 misdemeanors, 43 post-conviction cases, and 15 "prison cases." **This, if annualized, would be about 548 total cases, the second-highest total, including 313 felonies.**

	Felonies	Total Cases
Attorney 1	406	593
Attorney 2	365	542
Attorneys 3 & 4	250+	344/333
Attorney 5	184	361
Attorney 6	183 (in just 7 mos.)	320 (in just 7 mos.)

"Prison cases" are especially serious and require an inordinate amount of time to prepare. In those cases, the clients always have a prior record and often face significant, consecutive sentences.[19] Post-conviction matters, likewise, are often extremely time-consuming, as they require obtaining and reviewing old voluminous records, and reinvestigating cases.[20]

Data we obtained from Kings County shows one contract lawyer handled about 160 "prison cases" in 2025, with an additional 20 post-conviction matters, and six other cases. Another handled about 135 "prison cases" with 40 felonies and 14 others. Finally, ***in just six months,*** **one Kings contractor handled about 143 felonies, 64 misdemeanors, and 50 post-conviction cases.**

	"Prison cases"	Total Cases
Attorney 1	160	186
Attorney 2	135	189

Because they are all individual private contractors, there are no staff defense investigators in Kings County.[21] A review by CalMatters found that over a five-year period, contract lawyers only asked the court to grant permission for the defense to hire an investigator in 7% of cases.[22]

27.4 *hours/ week*

The attorney with 406 felonies and 187 misdemeanors logged only 27.4 hours a week on average.

As in other counties, contractors in Kings County may have additional, unreported cases. Many advertise a private practice serving multiple counties, claiming the ability to take civil and criminal work, including the two lawyers with the heaviest caseloads.[23]

Additionally, data shows that attorneys are not giving each case anywhere near enough time. Contractors log their hours, even though they operate under a flat-fee system. The attorney with 406 felonies and 187 misdemeanors logged only 27.4 hours a week on average (we assumed he took four weeks

of leave and two weeks of court holidays). **One lawyer handled about 801 misdemeanor cases** in 2025, but, assuming the same six weeks off, **averaged only 15 hours a week.**

F. Other Alarming Caseloads In Flat-Fee Counties

In Trinity County, data from the county lists one lawyer handling 597 cases, including 224 felonies, in fiscal year 2019–20, and another handling including 145 felonies. They collectively averaged 267 cases from that year through fiscal year 2022–23.

In Trinity County, in fiscal year 2019–20, two lawyers handled...

597
cases
including 224 felonies

348
cases
including 145 felonies

In Lassen County, county data lists one lawyer appearing on 218 cases in 2023 and another on 148. Other data on the latter lawyer lists a total of 337 new cases over 2022 and 2023. **Both Lassen attorneys have robust private criminal and civil law practices in multiple other counties.**[24]

These numbers should be a wake-up call for policymakers.

All of this new caseload data shows a crisis in flat-fee jurisdictions that far exceeds what we previously suspected. Earlier reports highlighted examples from Del Norte County, where lawyers had an estimated 245–305 felony cases assigned in a year,[25] and an example from Lake County, where a private contractor had about 300 cases. Those caseloads should be shocking enough, but any amount approaching 400 or 500 or 600 is unthinkable.

II. Other Troubling Signs Of Attorney Performance

Although we primarily looked at caseloads, we also encountered other disturbing signs of poor attorney performance.[v] Court data from **Butte County**, one of the largest counties to exclusively use a flat-fee model, shows a large disparity in motions filings between contract defenders and private attorneys—in other words, lawyers with paying clients.

2.6x

Private counsel in Butte filed motions in cases at 2.6 times the rate of appointed counsel.

In a sample of 1,999 closed cases from 2022 and 2023, private counsel filed motions in 5.9% of all cases, while appointed counsel filed motions in only 2.3% of all cases. Private counsel in Butte, therefore, filed motions in cases at 2.6 times the rate of appointed counsel.

In **Lassen County**, flat-fee contractors had a 25% higher conviction rate and a 40% lower rate of dismissal than private, paid attorneys, over a sample of 940 closed cases from 2022–2023. The rate of felony cases in this sample was significantly higher for private counsel (82.2% to 61.8%).

25% ↑ *conviction rate*

40% ↓ *dismissal rate*

85%

Private counsel in Madera County filed motions 85% more than flat-fee contract lawyers.

In **Madera County**, over a sample of 1,432 cases from 2023, private counsel filed motions 85% more than flat-fee contract lawyers. As CalMatters recently outlined, the same flat-fee attorneys in Madera had a jury trial rate of half the statewide average between 2019 and 2024.[26]

In fact, in Amador County, clients attempted to fire their own flat-fee contract lawyers more than those lawyers sought the use of an investigator.[27]

As we said in our last report and will reaffirm here, there are good and bad lawyers in all types of systems and jurisdictions. But the problem with flat fees is that the financial conflict of interest that incentivizes high caseloads and cutting corners is inherent to the model. Given this, it is no surprise that we see disturbing example after disturbing example play out in California counties relying on flat-fee contracts.

[v] Appendix C: Attorney Performance.

III. Institutional Defenders Have High Caseloads Too And Need State Funding

8
offices
have recently had to decline taking new cases due to excessive workloads.

The shocking numbers from flat-fee counties do not mean that caseloads in institutional public defenders' offices are acceptable. To the contrary, institutional defenders around the state are also struggling with budget cuts and high caseloads. At least eight have recently had to decline taking new cases due to workloads in their offices. Budgets have not kept pace with the increasing demand criminal defense lawyers have experienced, with the rise of body camera footage, digital evidence, and ever-evolving modern forensics. All of these obligations make preparing an adequate defense more time-consuming. **The eye-popping caseload numbers from flat-fee jurisdictions, therefore, should not desensitize us to the need for more resources for institutional public defenders.**

California is only one of two states that provides no state funding for trial-level public defense—that must change in order to tackle the caseload crisis.

Where flat-fee contractors have an incentive to keep costs down to maintain their contracts with counties, institutional defenders, both historically and recently,[vi] fight for more resources and criticize problems in the system. Without the financial conflict of interest embedded in every flat-fee agreement, California public defenders have a track record of fighting for their clients, rather than maintaining the status quo.

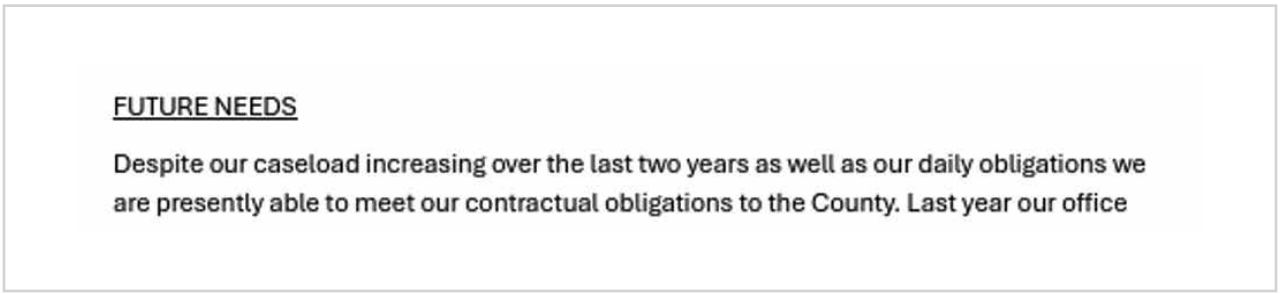
Stanislaus' Public Defender, for example, raised the alarm with the county when attorneys were found to have an average of 136 felonies, 15% fewer than the most recent felony caseload in Madera, where the contracting firm insisted in its reports that current resources were adequate.[28]

In Fresno, the felony case average per lawyer is still high at the Public Defender's Office (77), but that is only 48% of the average felony caseload at the private firm in the same county handling conflict cases on a flat fee.[29]

[vi] Tracy Macuga, California neglects constitutional duty to defend poor people, The Sacramento Bee (Dec. 11, 2025); Malcolm Maclachlan, California lawmakers push funding boost as public defense system nears 'breaking point', Daily Journal (May 5, 2026); Ashley Chan, Public Defenders Rally tor Increased Funding and Staffing, The Davis Vanguard (Apr. 27, 2026); Hillary Ojeda, Santa Cruz County public defenders join statewide protest demanding more funding, lighter workloads, Lookout Santa Cruz (Apr. 23, 2026).

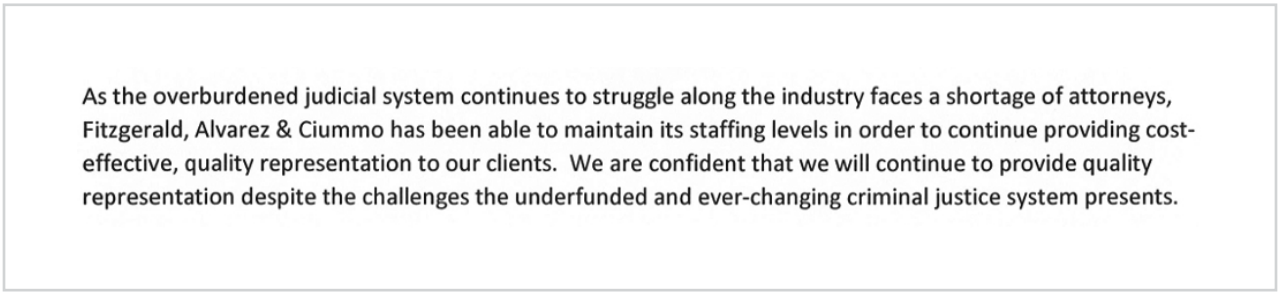
And the Chief Defender in Fresno recently publicly pushed to address high rates of attorney vacancy that were pushing caseloads higher.[30]

That private firm's Fresno and Madera Offices, by contrast, have repeatedly minimized far worse caseloads in Annual Reports to their respective counties:



FUTURE NEEDS

Despite our caseload increasing over the last two years as well as our daily obligations we are presently able to meet our contractual obligations to the County. Last year our office



As the overburdened judicial system continues to struggle along the industry faces a shortage of attorneys, Fitzgerald, Alvarez & Ciummo has been able to maintain its staffing levels in order to continue providing cost-effective, quality representation to our clients. We are confident that we will continue to provide quality representation despite the challenges the underfunded and ever-changing criminal justice system presents.

FUTURE NEEDS

At the present time we are able to meet our contractual obligations to the County. The caseload has increased from last year and we expect that trend to continue into 2022. New legislation (AB

IV. It Is Time To Ban Flat Fee Contracts

The American Bar Association, the State Bar of California, and the National Legal Aid & Defender Association, have all called for a ban on flat fees.

In our first report, we outlined the decades of warnings from experts and leaders like those at the American Bar Association, the State Bar of California, and the National Legal Aid & Defender Association, calling for a ban on flat fees, the myriad of states who have already done so, and the extensive empirical data that these systems drive incarceration higher.[vii] Not including this report, there have been six separate blistering audits or in-depth reports on various California flat-fee counties since 2020. The Office of the State Public Defender and an exhaustive legislative study (AB 625) both recently called for a statewide ban.[31]

Right now, there is considerable momentum toward this effort. In March of 2025, Assemblymember Nick Schultz introduced AB 690, The Fair Representation Act, which, if passed, would ban the practice and bring California in line with other states like Washington, South Dakota, Michigan, and Nevada.[32] Last year, that bill passed the State Assembly, and as of the release of this report, the bill is currently pending in the Senate Appropriations Committee.

In our prior report, we pointed to the extreme and growing costs of incarceration in California, almost $23 billion per year, as well as the empirical evidence that shows flat-fee systems lead to more incarceration, to cast doubt on the idea that these contracts actually save money.[33]

New data underscores how flat-fee contracts actually inflate county costs by driving needless incarceration in local jails

New data gathered by the Vera Institute for Justice shows that 70% of exclusively flat-fee counties saw a costly increase in their jail or prison incarceration rates over the last decade. This increase is in stark contrast to the rest of the state—California's total incarceration rate dropped 29% during the same time period, while, nationally, rates fell as well.[34] **Seven out of the top eight counties in combined jail and prison incarceration rates use flat fees exclusively.**

These high incarceration rates come at a time when the cost of jailing people is rapidly increasing. Statewide, county detention costs have risen over 6% in just one year to $8.41 billion.[35] **Counties across California spend about six times more on incarceration than public defense, so that 6% increase alone amounts to approximately 37% of total county public defense spending.** Modest increases in public defense spending can help curb the far greater costs of overincarceration.

[vii] *Contracted to Fail, Part 1*, at 12–14.

$40

more per capita

Flat-fee counties spend almost $40 more per capita on incarceration than counties with an institutional defender, a 17.2% difference.

Flat-fee counties spend almost $40 more per capita on incarceration than counties with an institutional defender, a 17.2% difference.[36] They also spend about 160% more on prosecution than they do on public defense—more than double the already shameful statewide disparity of 80%.[37]

In short, California's incarceration budget dwarfs the amount spent on indigent defense and that disparity is far worse in flat-fee counties. Doubling down on failed systems that drive incarceration higher in the name of theoretical up-front cost savings is a fool's errand.

Recognizing the need for reform, Lake and Santa Cruz county both started institutional public defender's offices, abandoning their exclusive flat-fee systems. A recent op-ed from a longtime Butte contract defender made a pointed case for reform, stating unequivocally that "Butte County Needs a Public Defender Office."[38] In recent weeks, Mariposa, San Benito, Mono, and Del Norte counties worked collaboratively to obtain $5 million in seed money from the state budget for a pilot program to support transitioning their public defense systems, showing a viable path forward towards reform, even in small, rural counties.[39]

Perhaps there is no better illustration of the potential monetary and social cost savings than Santa Cruz

Santa Cruz launched a holistic public defender's office to replace its flat-fee contractor on July 1, 2022.[40] The holistic defense model addresses clients' needs beyond a criminal case, including by helping with housing support, mental health, and substance use treatment. Research has shown the model leads to safer communities by helping break the cycle of arrest and incarceration.[41] **In Santa Cruz, the office estimates it has saved the county almost $2.1 million in incarceration costs alone through fiscal year 2024–25.**[42] It has also invested in a robust Clean Slate expungement program, which has removed "barriers to jobs, housing, and education" for well over 1,300 clients, and aggressively pursued outside grant funding to supplement its client services.

At the same time, the office has reduced caseloads significantly, despite an increase in newly assigned cases.[43] The Sixth Amendment Center estimated a system-wide average caseload of about 344 cases per lawyer under the old flat-fee model. Similar system-wide estimates put the current number at approximately 243, a 29% reduction.[44] Santa Cruz is an example of how modest investments in public defense can reduce the downstream monetary and social costs of incarceration and change the lives of county residents for the better.

V. The Need To Ban Flat Fees Is Urgent: California Immigrants' Rights Depend On A Functional Public Defense System

The current administration's mass deportation campaign makes banning flat fees that much more pressing. Our prior report, released less than two months into the new administration, urged the state and counties to act quickly to shore up public defense, precisely because criminal courts have long been used as a dragnet for mass deportation. Public defenders are often the first line of defense against specious criminal charges that, even when minor, can lead immigrant Californians to ICE detention and deportation.

Since that first report, the deportation of Californians has increased 78% and over 1,520 immigrants are deported from Californians every month.[45] Bringing our public defense system up to code is not just a criminal justice issue but an immigrant rights issue.

78% ↑

Increase in deportations of Californians over a matter of months in 2025[46]

2*x*

ICE detention in California more than doubled in just a year[47]

$170B+

ICE's budget gives ICE virtually unlimited resources[48]

ICE has long used criminal courts as a pipeline for deportation, but their disturbingly aggressive recent tactics mean that they are targeting even more people for low-level convictions like marijuana possession or even traffic convictions.

77% ↑

Increase in deportations for those with only marijuana convictions[49]

43% ↑

Increase in deportations for those with only traffic infractions[50]

California, just a few weeks ago, approved a one-time budget increase for immigrant legal services, which includes both deportation defense and resources to help public defenders provide constitutionally required advice on the potential impact of a criminal case on a client's immigration status.[51] These resources are an absolutely essential step forward. **But if defenders themselves are overrun with 300–600 cases in a year, the results for their clients are going to suffer across the board, making it more likely that criminal cases for immigrant Californians will lead to deportation.**

Conclusion

California has allowed a Jim Crow system of guilty-plea mills to flourish, where the right to counsel exists only in theory. It has been over 40 years since the State Bar, the American Bar Association, and the National Legal Aid & Defender Association all called for the abolition of flat-fee contracts for public defense. The state is simply out of excuses.

In our prior report, our look under the hood at flat-fee systems showed a significant lack of safeguards in the contracts themselves. In this report, we have seen the results. Attorneys have caseloads in the hundreds, despite systemic undercounting. Data on motion filings, investigator staffing, and disposition rates are also deeply concerning. Banning flat fees won't solve all our problems—robust state funding for public defense is urgently needed. But getting rid of these problematic contracts is a vital first step.

California was the birthplace of public defense, 50 years before *Gideon v. Wainwright*. It is home to some of the most dedicated and talented public defenders and well-run offices in the country. It can be a national leader again, but not without addressing the malignant effects of privatized flat-fee systems.

Acknowledgments

The authors wish to acknowledge Silicon Valley De-Bug and Smart Justice California for their commitment to public defense reform. We also wish to acknowledge the Madera Coalition for Community Justice and the Madera chapter of the NAACP for their fight for justice in their community. Lastly, we wish to acknowledge Pratik Sachdeva from the D-Lab at UC Berkeley and Jordan Taqi-Eddin from UC Berkeley's Master of Information and Data Science program for their contributions to the Unicourt data analysis contained in this report.

Appendices

Appendix A: Caseloads

Appendix B: Political Contributions

Appendix C: Attorney Performance

Appendix D: Flat-Fee Costs and Incarceration Statistics

Appendix A:

Caseloads

Madera

Annual Reports provide the total number of lawyers staffed to criminal courts, the total new cases assigned each year, the amount of cases that were referred to another provider because of a conflict, and the percentages of new cases that are felonies and misdemeanors, prior to conflicts being removed. The most recent report covers calendar year 2024 and shows 5,769 total new cases (after subtracting 461 conflict cases that were referred to a conflict provider) with 11 lawyers assigned to criminal cases. The base average would be 525 cases, but not all new cases are criminal cases. Applying the provided felony and misdemeanor percentages (30.353% and 63%) yields an average case total estimate, per lawyer, rounded up to the nearest whole case, of 160 felonies and 331 misdemeanors.

The same report references that lawyers closed a slightly higher number of 5,822 total cases in 2024 and that total includes a small percentage of non-criminal cases. In some prior reports, lawyers assigned to criminal work are also assigned to non-criminal cases. However, those are not included in our estimates. For the reasons explained in the body of this report, both the new cases assigned and cases closed metrics undercount workloads, possibly severely.

In 2023, 11 lawyers closed 5,840 total cases, while being assigned 5,083 new cases (5,458 cases minus 375 conflicts). This annual report explicitly discusses the office not being fully staffed in prior years. In 2022, a reported staff of 10 criminal lawyers handled 6,051 new cases (6,386 total minus 335 conflicts). In 2020,[i] a reported staff of 10 criminal lawyers handled 4,147 cases, with the conflict number not being reported (this year was clearly affected by the COVID-19 pandemic). In 2019, a reported staff of 9 criminal lawyers handled 6,008 cases (6,312 cases minus 304 conflicts).[ii] Felony and misdemeanor percentages are contained in each report, and differ only slightly. Applying those percentages to newly assigned case totals yields the following:

- 2019: caseload average of **181 felonies, 434 misdemeanors, 615 total cases**
- 2020: caseload average of **133 felonies, 249 misdemeanors, 382 total cases**

[i] No 2021 report was provided by the county.

[ii] For both 2019 and 2020, the report narratives list both 9 and 10 criminal lawyers, in what appears to be a typographical error. Both reports list the lawyers and their assignments by name and those are the totals used for the calculations (10 in 2020 and 9 in 2019).

- 2022: caseload average of **176 felonies, 395 misdemeanors, 571 total cases**
- 2023: caseload average of **136 felonies, 301 misdemeanors, 437 total cases**
- 2024: caseload average of **160 felonies, 331 misdemeanors, 491 total cases**

Average caseload: 500 cases, rounding up to the nearest whole number.

We aimed to be conservative in our estimates. Staffing is assumed to be at a full reported level for the entire year, despite the reports explicitly mentioning the firm being short-staffed at times. Some reports minimize the caseloads by pointing out that traffic attorneys handle a large portion of misdemeanors (700–800 each)—but that only increases the burden on attorneys handling more serious felonies. If we were to exclude two misdemeanor lawyers and assign them 800 cases each in 2024, for example, the remaining lawyers would average 195 felonies and 226 misdemeanors, arguably a more burdensome caseload. Moreover, the 2019 and 2020 reports list both or one of the traffic attorneys as taking on a main criminal court assignment. Later reports do not delineate specific attorney assignments. And other reports list attorneys assigned to criminal courts as well as non-criminal cases, such as conservatorship cases. Those non-criminal cases are not factored into our calculations.

We also obtained monthly reports of case activity from the firm's Madera conflict provider, Madera Alternate Defense. Those monthly reports include the number of cases carried into the year, the beginning case totals, and number of new cases assigned each month. When aggregated, the carried case total was 78.5% of the total newly assigned cases in 2025, and 79.9% in 2024. Two months from 2025 were omitted and we used an average number of opened cases. These data points inform our concern about how only counting new cases in Madera is undercounting actual workloads.

Fresno

The firm provides similar annual reports to the County of Fresno, with a slightly different presentation of data. For the most recent report, covering fiscal year 2024–25, the firm reported an average of 279 criminal cases for a staff of 17 full-time equivalent lawyers (16 full-time and two part-time). Unlike with Madera, we received monthly statistical reports that allowed us to see how many cases were pending at the beginning of the fiscal year, i.e. how many cases the firm carried over into the new year. That total number, 2,591 (1,136 felonies and 891 misdemeanors) represents almost 55% of all new cases, demonstrating the potentially serious undercounting produced by restricting a caseload analysis to only new cases. Each lawyer carried into the new year 67 felonies and about 53 misdemeanors on average. That is on top of 279 new cases, which include an average of 94 felonies. **The total estimate is about 432 new cases per lawyer, including about 161 felonies, rounded up to the nearest whole number.**

Merced

In Merced, the firm provides monthly statistical reports to the County that list newly opened cases broken down by case type, cases that were pending entering the month, and other similar metrics. Aggregating monthly reports allowed us to calculate yearly case totals. The monthly January reports allowed us to factor in cases carried into the year as well as calculate an overall percentage of carried cases to new cases, which, as described in the report, informs our opinion that the Madera case numbers are likely a significant undercount. From 2023 through 2025, the firm opened 3,426 new cases. The firm began each year with totals of 596, 537, and 771 cases. Once again, factoring carried cases increases the caseload dramatically, 55.6% over those three years.[iii]

Staffing information from the firm, via the Merced County Counsel's Office, indicates 9 lawyers in 2021, 7 in 2023, 7 in 2024, 9 in 2025, and 7 in 2026. **The highest two average years were 2021, where we estimate lawyers handled 284 cases and 2023, where we estimate lawyers handled 273 cases.** In 2026, the firm carried 727 cases into the new year and opened 381 new cases in the first four months. If that trend continues, with current staffing levels, the average caseload would be 268 cases.

Reports from the firm's third-tier conflict "wheel"—lawyers who handle conflict cases in Merced when the firm cannot—list individual lawyers, which is how we can calculate that one lawyer who has worked in the Madera office was assigned 71 new cases between October of 2024 and August of 2025. There are other potential examples of overlap and we encourage counties to require that contractors to report out-of-county and private cases for each lawyer, in addition to reporting county caseloads.

Amador

In Amador, we analyzed a combination of reports for closed and opened cases. The County Counsel's office verified current staffing at three lawyers (and one post-bar legal fellow), with conflict cases being handled by two Calaveras lawyers from the same firm, and certain "prison cases" being handled by two of the firm's Fresno attorneys. In 2024, an analysis of closed cases showed three lawyers handling 98.7% of all cases. The firm also was newly assigned 1,130 cases that year. Thus, we estimate 372 *new* cases were opened per lawyer in 2024, however those figures do not account for cases carried into the year.

[iii] Three monthly reports over the four years we analyzed were omitted and we estimated an average of the other 11 months that year. If one were to instead estimate that the missing month matched the lowest reported month in the given year, the estimates would only decrease by 2-5 cases per lawyer. However, data was not included for 2022, because only nine months of reports were available. That year, there is no report from January that would indicate how many cases were carried into the year.

Looking at the rate of new felony assignments, 29.7%, we estimate attorneys average 111 new felony cases, not accounting for carried cases.

The firm opened 1,290 cases in 2025, however we were unable to verify with the County whether staffing in 2025 was the same as 2024 or 2026. If four lawyers handled the 1,290 cases, that would amount to 323 cases per lawyer. If three lawyers were responsible for the same percentage of cases as our 2024 analysis, the estimated caseload would be 425.

Calaveras

In Calaveras, we analyzed reports of opened and closed felony and misdemeanor cases, broken down by fiscal year. We cite to the last two complete full fiscal years, as the law firm has confirmed staffing levels during that time via email. Lawyers averaged an estimated 241 newly assigned cases between fiscal years 2023–24 and 2024–25, including 84 estimated felonies, rounding up to the nearest whole number. Assuming the same level of staffing in 2021–22, lawyers average 260 estimated cases, rounding up to the nearest whole number. These averages do not consider any conflict cases in Amador or any cases carried into the year.

In the firm's Request for Proposal packet submitted in 2022, one Calaveras lawyer estimates her Amador conflict caseload at 40-50 cases. Conflict cases from Amador were 279 in 2025 and 217 in 2024, however not all would be handled by Calaveras lawyers.

Lassen

In 2023, in Lassen County, a record of case activity obtained via a public records request to the court showed one attorney on 148 cases (149 with one duplicate entry). Another was listed as the attorney on 217 cases (219 with two duplicate entries). Data from Unicourt lists the first lawyer as the attorney-of-record on 337 cases filed in 2022 and 2023.

Trinity

In Trinity, data from the county lists one lawyer handling 597 cases, including 224 felonies, in fiscal year 2019–20 and another handling 348 cases, including 145 felonies. Between fiscal years 2019–20 and 2022–23, the former averaged 295 cases and the latter averaged 240 cases.

Kings

Kings County has contracts with individual providers. In response to our public records request, the County produced monthly and yearly reports that log the time spent on each case, with corresponding case numbers, and case types (felony, misdemeanor, post-conviction, delinquency, prison, etc.). We aggregated the monthly reports of time spent on individual cases, accounted for duplicate entries, i.e. one case reappearing over and over as work was continuously logged, and calculated the number of each case type each lawyer handled in the year.

Lawyers in public defense systems regularly "handle" cases for one another, sometimes by filling in at a brief appearance and sometimes by doing considerable work. When attorneys overlapped on a particular case, we assumed, for the busiest lawyers, that the case belonged to the other attorney and did not count it. If the case was shared between other attorneys in the top six for felony caseload, it was proportionally assigned to each lawyer. As an example, the highest attorney caseload consisted of 509 felonies and 227 misdemeanors, and the second-highest consisted of 474 felonies and 221 misdemeanors. However, we reduced their caseloads if other lawyers also handled cases with the same case number, no matter how frequently the highest caseload lawyers logged time on those cases. Therefore, these estimates are conservative and may even undercount caseloads. We followed the same method for other case categories.

The top caseloads for felony attorneys in 2025, rounding up to the nearest whole number, were:

- **406 felonies, 187 misdemeanors, 593 total cases**
- **365 felonies, 156 misdemeanors, 21 post-conviction cases, 542 total cases**
- **184 felonies, 88 misdemeanors, 89 post-conviction cases, 361 total cases**
- **258 felonies, 84 misdemeanors, 1 prison case, 1 delinquency, 344 total cases**
- **274 felonies, 59 misdemeanors, 333 total cases**
- **183 felonies, 79 misdemeanors, 43 post-conviction cases, 15 prison cases, 320 total cases**
    - This caseload comes from only seven months of entries. Annualized, the caseload would be **313 felonies, 135 misdemeanors, 74 post-conviction cases, 26 prison cases, for a total of 548** (the second-highest we analyzed)

One misdemeanor lawyer handled 801 misdemeanors. Another handled 587 misdemeanors. In just six months of reports, one lawyer handled 143 felonies, 64 misdemeanors and 50 post-conviction cases. One contract lawyer handled about 160 "prison cases" in 2025, with an additional 20 post-conviction matters and six other cases. Another handled about 135 "prison cases" with 40 felonies, 7 delinquency cases, and 7 misdemeanors.

Each attorney's yearly hours were compiled in reports that we analyzed.

Reports were made on the fiscal year, but both 2024 and 2025 allowed us to match these hours to lawyers' calendar year case totals to compute the time spent on each caseload. These yearly reports seem to indicate caseloads as well with monthly reports of "open" and "closed" cases, however those are an aggregate number of entries where time was logged in a given month. Thus the total numbers do not correspond to actual caseloads but rather the total logged attorney actions for each case per month. As such, they are not included in this report, because the totals would be misleadingly high.

Appendix B:

Political Contributions

We conducted searches of public campaign finance portals in Madera County, Fresno County, and for the State of California. We then aggregated donations listed as being on behalf of the firm itself, not donations made merely by employees or partners of the firm. In Madera, the contributions total was $15,675 since November 23, 2017. For contributions to state campaigns, the total was $9,000 since February 9, 2012. For Fresno County, the total was $26,398 since July 19, 2017. **59% of all contributions, $30,198, were made during or since 2020. The total amount is $51,073.**

Appendix C:

Attorney Performance

We analyzed public court dockets via Unicourt, a litigation data platform whose coverage includes complete criminal case docket information for several flat-fee counties. We coded that data according to whether the defendant was represented by a court-appointed or privately retained attorney, then analyzed differences in attorney performance and case outcomes between the two groups. For Madera, we were able to determine whether the appointed attorney was specifically from the private firm that handles indigent defense cases in the county.

Madera

Over a sample of 1,432 closed cases from 2023, privately retained lawyers filed motions in 7.6% of matters. Attorneys at the public defense contract firm filed motions in 4.1% of cases. Thus, private counsel filed motions in 85.4% more cases. In the sample, felonies made up 56.8% of privately retained attorneys' caseload versus 50.0% for court-appointed counsel.

Butte

In a sample of 1,999 closed cases from 2022 and 2023, private counsel filed motions in 5.9% of all cases, while appointed counsel filed motions in only 2.3% of all cases. Private counsel, therefore, filed motions in cases at 2.6 times the rate of appointed counsel.

Lassen

Over a sample of 940 closed cases from 2022 to 2023, appointed counsel had a 25.3% higher conviction rate and 40.1% lower rate of dismissals than privately retained counsel. The rate of felony cases in this sample was significantly higher for private counsel (82.2% to 61.8%).

Appendix D:

Flat-Fee Costs and Incarceration Statistics

We compiled incarceration data from the Vera Institute of Justice and combined per capita jail and prison incarceration rates, updated through early 2024, for each county.[iv] Modoc, Kings, Tehama, Shasta, Trinity, Lake, Yuba, and Del Norte are the top 8 counties. Shasta has an institutional public defender's office. Lake County was still in the process of transitioning to a full-time office during the period covered by the data. Vera also tracked the trend in jail and prison incarceration rates over the preceding ten years. 15 flat-fee counties saw an increase in their jail incarceration rates (2 of which also saw an increase in their prison incarceration rates). 1 (Del Norte) saw an increase in its prison incarceration rate. 16 of the 23 flat-fee counties (69.6%) saw an increase in either metric.

County detention and correction costs were taken from the State Controller's Office. They totaled $8.41 billion in 2024,[v] up from $7.93 billion in 2023. That 6% difference equals 37% of the entire 2023 indigent defense spending in the state, accounting for state and federal grant money, as compiled by the Office of the State Public Defender ($1,285,427,082). For some counties, budget data was not available from the Controller's Office. Two flat-fee counties (Sutter and Tehama) and two institutional-defender counties (Yolo and Solano) were omitted. San Francisco was also omitted but we compiled equivalent budget items for our calculations due to the county's relative size.[vi]

Per capita budgets were then calculated by grouping the flat-fee counties and the counties with an institutional defender. For counties with a public defender's office, detention and correction spending was, per capita, $227.68. For flat-fee counties, the total was $266.90. The difference is $39.22 or 17.2%. Without San Francisco, using only county budget data from the Controller's Office, the disparity is 18.8%. If we include San Mateo with the institutional defender counties, as it employs a non-flat fee managed assigned counsel program run by the local bar association, the per capita difference is $40.22, or 17.7%.

[iv] Alpine County, which has a population barely over 1,000 people and no county jail and Mendocino County, for which data was not available, were not included.

[v] Including San Francisco, the total is closer to $8.7 billion

[vi] We included fiscal year 2024-25 budget figures from jail and adult probation along with juvenile detention and probation, as well as medical services provided in the jail, for an approximately equivalent figure to the Controller's data. This does not include $74.7 million identified as the Sheriff's Office for "Administration" or $15.4 million identified by Juvenile Probation as "General."

Endnotes

All documents listed as "on file with the author" can be found here.

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