



A REPORT ON THE STATUS OF PUBLIC DEFENSE IN DEL NORTE COUNTY

September 2022

Indigent Defense Improvement Division

Office the State Public Defender

Prepared at the Request of Del Norte County



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Del Norte County Indigent Defense

Office of the State Public Defender, Indigent Defense Improvement Division
Prepared by: Laurel Arroyo, Director of Capacity Building

The author of this work would like to thank the many people in the County of Del Norte who took the time to speak with her and share their work. In addition, thank you to Jenny Andrews, Galit Lipa, Mary McComb, Jenelle Yu, Marcus Swan and Emily Estrada for their valuable contributions. Minor corrections were made to this report on September 30th, 2022.

Overview

Project Background and Description

This report was completed at the request of, and with the permission of Del Norte County county counsel and members of the County Administrative Office. It is based on publicly available criminal justice data and interviews with stakeholders in Del Norte County. Interviews were conducted in person on July 26 and July 27, 2022, and virtually in July and August 2022. Del Norte County stakeholders interviewed for this report include: Karen Olson, Keith Morris, Joseph Futrell and Elly Hoopes, the four current contract attorneys providing indigent defense for the County; Jim Fallman, Pelican Bay contract defender; Presiding Judge Darren McElfresh; Yurok Tribal Judge Abby Abinanti; Court Executive Officer Esperanza Esparza; District Attorney Katherine Micks; Sheriff Garrett Scott; Chief Probation Officer Lonnie Reyman; Director of Health and Human Services Ranell Brown; County Administrative Officer Neal Lopez; Assistant County Administrative Officer Randy Hooper; Administrative County Supervisor Antoinette Self; County Counsel Joel Campbell-Blair; Board of Supervisors Chair Gerry Hemmingsen and Board of Supervisors Member Valerie Starkey.

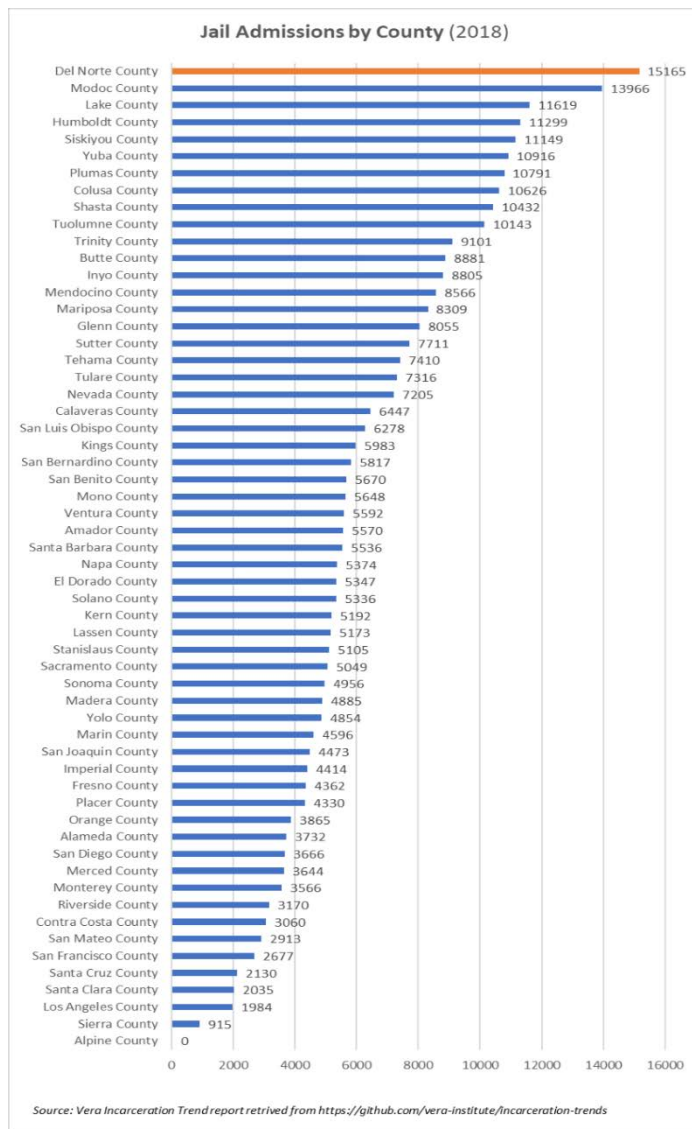
We sincerely thank each of these individuals for taking the time to contribute to this work. The goal of this report is to provide the County with information about its current indigent defense system, identify strengths and challenges for the current indigent defense system, and make recommendations to address areas of weakness in the current system.

The Office of the State Public Defender (OSPD) is a California State Agency. In 2020, in part because of *Phillips v. State of California*, the State recognized it had to play a role in providing competent defense services to meet its constitutional obligations under the United States and California Constitutions. As part of this recognition, the Legislature expanded the mandate of OSPD to include improving indigent defense by providing training and technical assistance to attorneys representing the indigent and by engaging in other efforts to improve the overall quality of indigent defense. See Gov. Code 15420(b). The Indigent Defense Improvement Division effectuates this part of OSPD's mandate.

Del Norte County Data

Population / Demographics¹

- Population: 27,692
- Average income per capita: \$24,361
- 17.1% of the population below the poverty line
- Median value of owner-occupied housing units: \$227,500
- High School Diploma Rate: 79.7%
- Bachelor's Degree or Higher: 15.4%
- Veteran Population: 8.3%
- Race: 61% White, 20% Hispanic, 7% Native, 3% Asian, 3% Black, 1% Other, 5% 2+ races
- Four federally recognized Tribal Nations are in Del Norte County.
- Pelican Bay State Prison is in the County.



Del Norte Has the Highest Jail Admission Rate in California

The rate of jail admissions in Del Norte County is the highest in the entire state.² Jail admissions for Del Norte County were 15,507 per 100,000 residents in 2020.³ Del Norte admitted a significantly higher rate of its residents to the jail than other similarly sized counties (see e.g., Glenn, Colusa, and Lassen)⁴. Compared with large urban counties, Del Norte is admitting up to 8 times more people per capita to its jail (see e.g., 2020 data from Los Angeles [1,920 per 100,000], Orange [3,893], Riverside [3,170]).

In addition, Del Norte's rate of women's incarceration in the jail is three times higher than the California state average.⁵

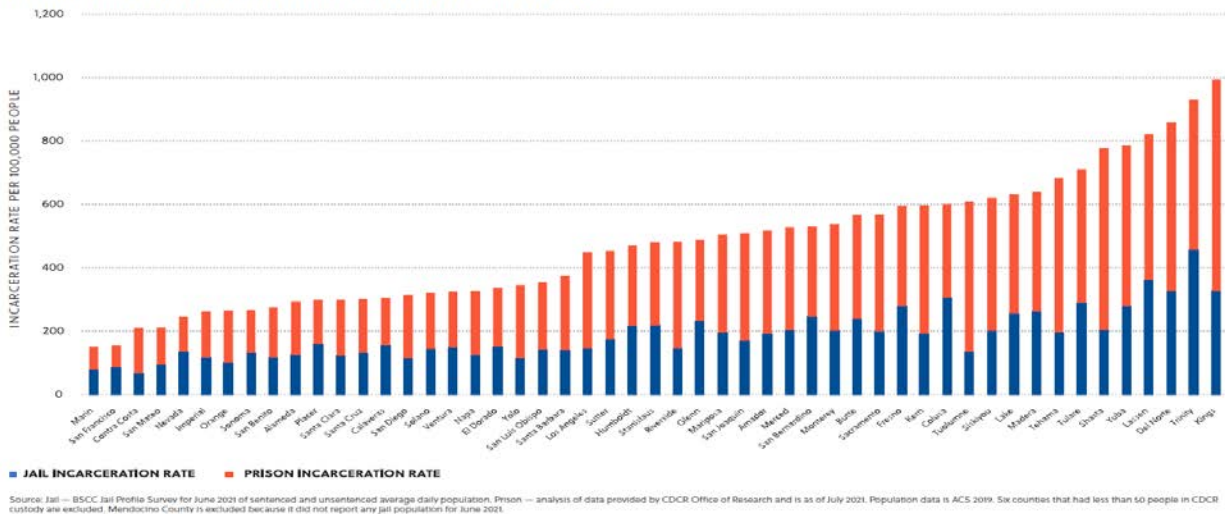
[See chart for 2018 data and *Appendix A: Jail Admissions by County*].

Del Norte Has the Third Highest Rate for Jail and Prison Combined

The rate of people incarcerated from Del Norte County in both jail and prison combined is the third highest rate in the state.⁶ [See *Appendix A: Incarceration Rates by County*].

This means that Del Norte County sends a higher percentage of people per capita to jail and prison than 55 of the 58 counties in California and that Del Norte County sends large portions of its relatively small population to state prison.⁷ This is true even though Del Norte has a lower rate of serious and violent crime than the rest of the state.

FIGURE 10: CALIFORNIA INCARCERATION RATES BY COUNTY



Disproportionate Number of Native People in Jail and Prison

There is an overrepresentation of Native people in the jail population of Del Norte. Native people comprise a reported 22 percent of the jail population, though Native people are under 10 percent of the County's population.⁸

There are four federally recognized Tribal Governments in the County and other Nations unrecognized by the Federal Government. Further, the rate of incarceration for Native people from the Smith River Rancheria (known as the *Tolowa Dee-ni' Nation*) who are in prison is 1,399 per 100,000 people and that from the Yurok Tribe is 802 per 100,000. This is much higher than the general state average of 310 per 100,000, and even higher than the already high rate of the average Del Norte rate of prison incarceration which is 473 per 100,000.

[See *Appendix D: Prison Population by Native Area in Del Norte*].

Current Indigent Defense System Overview

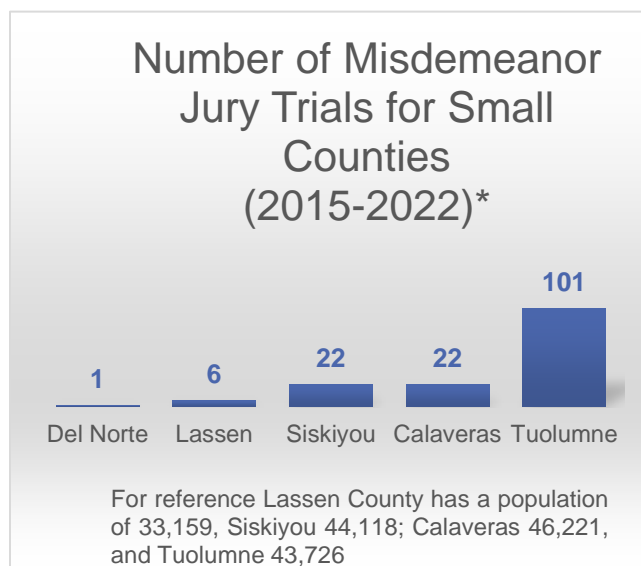
It has been 60 years since the Supreme Court affirmed that the Sixth Amendment right to counsel applies in state prosecutions and that those who are arrested and accused of a crime must be provided an attorney if they could not afford one. *Gideon v. Wainwright*, 372 US 335 (1963). In California this constitutional responsibility is delegated to the counties through [Cal. Pen. Code 987.2\(a\)](#) and [Gov. Code 27700](#): “The board of supervisors of any county may establish the office of public defender for the county. Any county may join with one or more counties to establish and maintain the office of public defender to serve such counties.”

There is a significant body of law and research on what the Sixth Amendment requires from indigent defense systems. To help policymakers that may not be versed in constitutional law, the American Bar Association promulgated the [Ten Principles of a Public Defense Delivery System](#), which represents in the words of the ABA 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.” These are not best practices but rather minimum standards.⁹

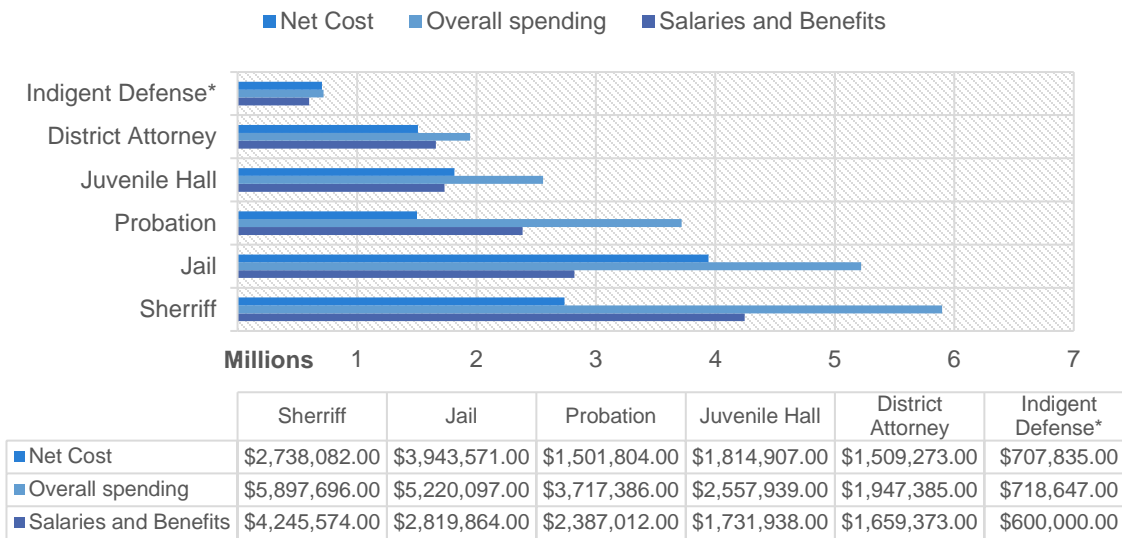
Del Norte’s Criminal Justice System

Del Norte has one superior court with two judges, a commissioner and 23 full time equivalent staff. It has an institutional District Attorney’s office with seven attorneys, an investigator and support staff. The County has a jail, sheriff’s office (with a patrol division, jail division, civil office, court security and county wide emergency communications), and a probation office. Del Norte County does not have an institutional Public Defender’s office. Instead, the County currently contracts with four individual attorneys to fulfill the defense process for all misdemeanors, felonies, juvenile cases, and probation violations. Del Norte also has Pelican Bay State Prison in its county. Attorneys handling cases that arise out incidents in Pelican Bay are separate from those who contract with the County for defense services. Those costs and administrative services are reimbursed by the State.

Per state court records, in 2021 Del Norte County had 4,416 criminal case filings. This is down from previous year averages of 6,300 criminal case filings, likely due to Covid. Del Norte County has seen a total of about 34 felony jury trials in the County in the last seven years.¹⁰ Misdemeanor cases are not going to jury trial in Del Norte County.



2022-2023 Adopted County Budget



*These figures do not include county spending on the Pelican Bay Defenders. The County budgets \$450,000 for contract fees with an additional \$30,000 on professional services for that benefits. The \$480,000 is repaid in its entirety to the County. Although

Del Norte's Indigent Defense Contracts

Each attorney who contracts with the County is an independent contractor. Two attorneys currently handle the misdemeanors, and two attorneys handle the felonies. All attorneys contract with the County for one year. The contracts are for \$150,000 a year for felony attorneys and \$102,000 a year for misdemeanor attorneys. In addition, beginning in 2021-2022, the contracts include a provision for reimbursement up to \$1,000 for travel and training and \$250 a month for practice management or legal resources. If a contract is not renewed the contractor is expected to continue to represent their clients at an agreed upon rate of \$75 an hour.

The felony contract requires attorneys to take half of all felonies that arise in Del Norte County with no cap on the allowable number of court appointments. The misdemeanor contract requires attorneys to take half of all misdemeanors along with felony and juvenile conflicts.

The contracts require quarterly reporting of the number and type of cases each attorney is handling.

The contracts allow for termination if the Presiding Judge notifies the County that the attorney failed to provide his or her duties, "to the satisfaction of the Court".

Pursuant to the contract all administrative, office and malpractice insurance must be provided by the attorney at their own expense.

Expert fees, investigative costs, forensic services, and other costs necessary for representation must be approved by the Court. The County maintains an investigator on contract, but the use of that investigator's hours must be approved by the Court for the County to reimburse the cost.

The County currently spends more than twice as much on the district attorney function than on the constitutionally mandated defense function.

Strengths to Build On

The Sheriff's office communicated about wanting additional out of custody programs or alternative work programs for those who could benefit for them. The County has relatively strong data tracking of those in custody, their charges, and record of their release. That information is also made publicly available. This tracks with local leadership speaking of transparency and a genuine desire to identify problems and potential solutions. There is collaboration between the tribes and the courts. There are diversion courts in existence. The four attorneys who provide indigent defense have many years of experience. In addition, county staff have actively sought out grant funding opportunities and technical assistance.

Indigent Defense System Challenges

Challenge 1: Recruitment of Attorneys

Stakeholders reported concerns regarding the future of the contract system, noting that if one of the current attorneys were to leave or retire, there was no back-up plan for another attorney to take over cases. There is no recruitment of summer interns, and no mentoring or training programs for newer attorneys. It is impossible for recent law school graduates to enter the legal defense community in Del Norte unless they are willing to start a private practice. 2022 data indicates there are 62 attorneys in Del Norte County.¹¹

Challenge 2: Current Contracts do not Protect Attorneys or Their Clients

The defense attorneys in Del Norte County are professionals who work hard to represent their clients. But the contract system creates certain systemic challenges that cannot be overcome on an individual level. Most notably the contracts do not provide the defense with the needed independence from the judiciary. Nor do they provide sufficient time and resources for attorneys to devote to their cases.

The first standard of the American Bar Association's, *Ten Principles of a Public Defense Delivery System*, is that the public defense function is independent. This would mean that attorneys have the freedom to litigate their cases with the same judicial oversight that retained attorneys have, and no more. In Del Norte County, the contracts allow for termination of the contract if a Judge determines that the attorneys' actions are not to "the satisfaction of the court." What this does is create a conflict for the attorneys, where fighting zealously for their clients may put them in tension with the person who controls their paycheck. This is difficult for the lawyer but disastrous for the client.

Independence of the defense is further stymied by the need to go to the judge for approval for every investigative and expert cost. Defense counsel have a constitutional requirement to zealously represent each of their clients, even when it is not desired by other system stakeholder. However as repeat players in a small system, attorneys hesitate to make the request as often as they would because they do not want to seem difficult, unreasonable, or risk their contract.

In addition to not promoting independence of the defense function, Del Norte's contract system does not control defense counsel's workload to permit the rendering of quality representation. The constant influx of cases with no ability to take sick time or paid vacations was reported to be taxing on attorneys' health. Anecdotes of previous attorneys in Del Norte suffering from burnout, health issues, and substance abuse were reported. [See also *Caseloads below*].

Multiple individuals stated that when one felony attorney had COVID for two weeks and the other felony attorney was in trial, the felony criminal court calendars came to a halt and cases had to be continued. When the attorney returned to the office, they had 17 new clients, all with felony charges. These clients had not met their attorney or had their cases worked on.

Flat fee contracts with no case caps, such as Del Norte has, have been banned in some states and are specifically disapproved of by the American Bar Association because, “such arrangements create an ‘acute financial disincentive for the lawyer’ and ‘involve an inherent conflict between the interests of the client and personal interests of the lawyer.’”¹² As the Office of Justice Programs at the United States Department of Justice stated, policymakers should ensure that decisions of “funding are removed from parties that can pressure defense counsel into engaging in less than a vigorous defense to satisfy court processes or funding goals.”¹³

Challenge 3: Provision of Legal Services Are Delayed

Del Norte County appoints individuals a contract attorney in court at arraignment. This generally happens 2-5 days after arrest. The attorney and client do not have an opportunity to talk in that process. At the point of arraignment, the case is put over to a later date so that the attorney can have a meaningful conversation with their client. This means the individual was incarcerated for 2-5 days without counsel, then waits another couple of days for their lawyer to come see them at the jail and talk to them. The first substantive conversation they will have with their attorney will likely take place a week or more after their arrest. It is only at some point after that, that the attorney could even begin to get their client back before a judge, and for that judge to receive vital information from the attorney that might allow for the client’s release.

Critically for the health of the community, these extra days in custody can jeopardize a person’s employment, housing, and custody of their children, and may destabilize individuals with preexisting physical or mental health issues. Systems that lack prompt representation can have higher rates of incarceration and additional incarceration costs due to inefficiency. It is even worse for people with children because having a parent incarcerated contributes to childhood trauma, the cycle of poverty, and increased child welfare cases within the County. This is particularly important in Del Norte County where the [rate of incarceration for women](#) is more than three times the state average and where the percentage of children living in female led single parent households is 27 percent.¹⁴

Prolonged stays in county jail cost the County food, housing, overtime costs for supervision, medical care, and mental health care. The longer it takes for active representation to begin, the longer it takes to get people to their next location, whether it is a mental hospital, state prison, or home. Days of incarceration for any reason other than a real risk of danger to the public creates great harm to community and the individual with no benefit to the public.

Challenge 4: Accountability to Clients and the Public

When there are concerns about performance, whether by clients or other counsel, there is no supervisor or county official with the ability to provide training support or supervision ensure changes are made to their practice and that constitutionally required levels of representations are being provided. Court stakeholders reported that when they receive concerns from clients about their attorney's performance, they do not have anyone to report it to other than the attorney themselves.¹⁵ Moreover, because there is no supervisor or county employee who is charged with ensuring adequate resources for the attorneys and overseeing their work, there is no way for the County to assess whether the problems clients are raising stem from insufficient attorney resources and structural issues, or individual poor performance.

Whereas wealthy clients can choose their own attorneys, indigent clients are reliant upon county government leaders to ensure effective representation. Moreover, it is one of the few services that the government has a constitutional obligation to provide. The lives and liberty of Del Norte residents depend on government officials ensuring that defense attorneys have proper supervision and support. Without a provision for supervision and accountability, the County cannot be sure it is providing this service.

Challenge 5: Attorneys Cannot Pool Resources to Maximize Efficiency

Appointed counsel in Del Norte County are each incurring separate, inefficient out-of-pocket expenses that could be mitigated if they shared a county-run office. In addition, the costs these attorneys incur are out-of-pocket expenses that other county employees do not have. Defenders reported that they are living "paycheck to paycheck" because of all the extra expenses involved in running their own separate businesses.

Contract counsel must either spend time working on administrative tasks or they must pay for support staff out of their flat fee earnings. For example, attorneys must purchase their own office supplies, create their own files, do their own scheduling, answer their own phone calls, make their own copies, maintain their own copy machines, and file their own pleadings. One attorney reported paying \$28 an hour out of their earnings to an administrative assistant. Another reported that their spouse does the administrative work for them.

Each of the appointed contract attorneys is paying rent for their separate offices out of their own earnings. For example, one attorney reported that they pay \$650 a month in rent for their office space.

Each attorney is responsible for paying malpractice insurance out of their own earnings. For example, one attorney reported that they pay \$300 a month for malpractice insurance.

Unlike other county employees, each attorney is responsible for their own health insurance, dental insurance, and vision insurance, or going without. One contract attorney reported that they pay \$849 a month for health insurance, one pays \$1,000 a month, and another reported only having an emergency "skeleton" policy due to the high cost.

Counsel are paying for their law school loans because they do not qualify for federal loan forgiveness usually available to public defenders, because they are not county employees. One defender reported paying \$1200 a month and still owing \$100,000. Another reported paying \$700 a month and still owing \$80,000 in loans. Another reported owing \$50,000 in loans and the fourth reported defaulting on student loans.

This lack of support and benefits interferes with recruitment and encourages contract counsel to take on additional private practice cases regardless of their caseloads. Unsupported attorneys cannot afford to take the time they need to participate in trainings and make sure they are current on new laws and rules.

Challenge 6: County Stakeholder Coordination

Del Norte has periodic county stakeholder meetings such as the Community Corrections Partnership, the Juvenile Justice Delinquency Prevention Commission, and the Juvenile Justice Coordinating Counsel. Agency heads and their subordinates attend as part of their employment duties. However, there is no provision in the indigent defense contracts to attend these meetings. Moreover, as individual contractors they cannot represent the County or mobilize county resources. Because there is no county employee dedicated to indigent defense, there is no point person who can bring information about defense client experiences with the court, jail, or mental health providers. County agency heads from other departments noted this lack of communication with indigent defense attorneys. As a result, some of the challenges that Del Norte residents face in the criminal legal system go unheard and unaddressed.

Additionally, the Board of Supervisors has no current system in place to hear from defenders who have a sightline into problems at the jail or systemic issues with charging or sentencing. Many stakeholders recounted the recent incident of a mentally ill individual residing in the jail under poor conditions.¹⁶ Public defenders have direct and current information as to what is happening in the jail because defenders visit the jail and regularly meet with their incarcerated clients. Multiple stakeholders complained that the jail is often full and that people with felony warrants are sometimes cited and released due to a lack of beds. One solution for the County to consider is looking at low level sentencing policies. Del Norte County appears to be one of the only counties that requires people charged with first-time DUI to go back into jail to serve 48 actual hours in custody. Having someone who can see issues from defense perspective at the table can highlight these problems earlier and work towards sustainable solutions.

Challenge 7: Caseloads Are High

Caseloads for the attorneys who carry felonies in Del Norte are high. As of June 2022, two of the contract attorneys reported having between 245 to 305 clients with many of those being felonies. Asking one attorney to manage and protect the constitutional rights of 245 to 305 clients is too difficult, even for experienced attorneys. In addition, contract attorneys have no consistent support

via paralegals, investigators, clerical support, social workers, immigration attorneys or even receptionists. This magnifies the workload.

RAND has conducted multiple studies about appropriate caseloads, found in [Utah](#) that adequate representation required attorneys carry no more than 48 non-DUI felonies in a year. In Michigan, where it [studied](#) a contract system, it concluded that adequate representation required attorneys carry no more than 54 high severity felonies or 74 low severity felonies/two year misdemeanors. [High caseloads](#) are one of the most watched aspects of indigent defense and have led to several lawsuits, or threatened lawsuits, against California counties, including in [Fresno](#) and [Shasta](#). Several national agencies are currently collaborating to create national caseload standard for indigent defense systems. The report will be published this fall and should be reviewed by Del Norte.

There is evidence that the case loads are high even in comparison to a similarly situated group. In Del Norte, there are some defense attorneys who conduct the cases arising out of Pelican Bay. Those contracts are not flat fee but are paid \$100 per hour for the first 30 hours a month and then \$85 per hour. Those costs are entirely reimbursed by the state. Reviewing one attorney's August billing showed that he had 28 cases total, and 22 active cases (defined for this purpose as cases that more than one hour was spent on in the month). That attorney time tracked for billing purposes and needed to work full time hours with that caseload.¹⁷

Challenge 8: Lack of Services for People Charged Repeatedly with Low Severity Offenses

In Del Norte County, there does not appear to be a system in place to effectively work with people cycling through the criminal system on low severity offenses. There is no social worker or client advocate responsible for working directly with contract counsel to connect indigent defense clients with services in the community. The public data for Del Norte County jail admissions reflects that numerous people are booked or booked and released within a day or two for low-severity crimes. In the span of one week, from September 1, 2022 to September 8, 2022, 48 people were booked at the jail, many of them for low-severity offenses involving driving, alcohol, or drugs.¹⁸

Diversion courts such as drug court, mental health court, and veterans court exist, but were reported to be underutilized.

Challenge 9: Record Sealing Services

Del Norte County does not have a "clean slate clinic" or any attorneys working directly with people who are eligible for record sealing to legally modify their records to make them employable.¹⁹

The ability for those with convictions to attain gainful employment is one of the most important ways for communities to ensure their rehabilitation and continued contribution to the community. It is an effort supported by the [U.S. Chamber of Commerce](#) and a [well-studied](#) intervention.

Recommendation for Del Norte County

The people who are entering the criminal justice system are primarily residents of Del Norte. They are likely to return to the community after court involvement or incarceration—whether it's after two days, two weeks or two years. Their families, neighbors and employers are affected by whether they are stabilized or destabilized from their experience. Therefore, proactive solutions are desirable for everyone. Moreover, the entire community is better served when the budgets spent on criminal justice services are done so in a way that ensures accountability, strong outcomes, and best practices. Public safety efforts require constant evaluation about whether the money spent is providing the outcomes that are desired and whether there are better ways to protect the County, the community and those needing to access their constitutional rights.

Currently Del Norte has county or state employees as prosecutors, police, judges, and probation officers. The only system stakeholder it does not provide oversight to is the one stakeholder it is constitutionally required to provide—the defense. Including the defense function in the County employment system will help grow Del Norte's County's commitment to its criminal justice system.

Restructuring Del Norte's Indigent Defense System

Many of the challenges observed in Del Norte and included in this report, can be addressed through restructuring the indigent defense system in the County. A county office, funded in line with the District Attorney's office will become an important county resource over time, providing an efficient way to meet client's needs, recruit attorneys to the County and provide partnership in recommending and implementing changes that can reduce Del Norte's rate of incarceration.

The primary recommendation of this report is to create an indigent defense system with a county employee who is a subject matter head at the helm.

This system would need to include a Chief Defender who is a county employee. That defender would have the power to establish, implement, and enforce mandatory standards regarding the provision of the right to counsel. The chief public defender would also need to create standards regarding attorney qualifications, attorney performance, attorney supervision, case load, client communication, and data collection.

The Chief Defender would need the budget and authority to hire office support staff, an investigator, a social worker or client advocate, and staff attorneys. In addition, the ability for the Chief Defender to contract for experts and immigration will be necessary.

The chief public defender should be the County's point person in building out the new indigent representation system, including establishing a conflicts counsel division. Conflict cases can be handled through a small alternate division. Humboldt, El Dorado, and Stanislaus counties are such examples. Conflicts can also be handled through a panel system where individual attorneys are given cases at a reasonable hourly rate.

The budget for this office should as a baseline reflect the number of cases it shares with the District Attorney's office but also recognize the public defenders unique needs to protect individual rights, investigate cases, and help clients with reentry.

Meeting the Challenges

Reducing Incarceration in Del Norte

Given Del Norte's high rates of incarceration, higher than any urban rate in California and higher than almost any county, it needs to invest in proven ways to reduce recidivism and increase compliance with release conditions. A public defender system is one important way to do so.

Studies have demonstrated that public defender offices produce better outcomes for clients than appointed systems. Moreover, systems that provide even a small additional service, such as interviewing clients before they appear in court, create significant decrease in failures to appear, increased compliance with release conditions, and decreased rearrest, as well as reducing racial disparities. A public defender system with strong attorneys and supportive ancillary staff such as social workers or case managers, has been proven to so without any increased harm to public safety. This is sometimes referred to as "holistic" defense, and has been shown in a random controlled trial to decrease sentence length without public safety harm—it reduced the likelihood of a prison sentence by 16 percent and actual prison-sentence length by 24 percent.

In addition, having an office that can house a dedicated case manager will help alleviate concerns from the Sheriff, and other stakeholders, about the jail being filled with people charged with low severity crimes. Pursuant to California Government Code Section 27707(a) a public defender's office could begin representation of clients earlier in the process--prior to arraignment--and ensure that those clients who are likely to be released anyway, are released sooner.²⁰

With a full-time attorney and support staff, Del Norte County could benefit from expanded referrals to its Drug Treatment Court, Veterans Court, and Mental Health Diversion.

Having a chief public defender can also ensure that stakeholder meetings in the community are inclusive of the defense perspective. The public defender can provide data trends for all clients and see where there are problems that can be identified and addressed in specialty courts, with service providers or with the jail.

Ultimately, reducing incarceration will require changes in charging policies, something only the District Attorney can address. However, having a public defender system has been shown to reduce the length people spend incarcerated without creating public harm. Moreover, a comprehensive public defender system can provide connections to additional support for those who are repeatedly encountering the criminal justice system due to mental health or drug issues and that could better be served through behavioral health or medical systems.

Increasing Recruitment of New Counsel

Del Norte County struggles with recruitment in virtually all its criminal justice system roles. But given the specific credentialing of lawyers, and the few lawyers that live in the County, attorney recruitment is particularly challenging, and the County needs to develop a long-term plan to address this challenge. While creating a public defender's office will not be a panacea, providing secure employment with benefits, office resources, training programs and the ability to participate in federal

loan forgiveness programs will increase the pool of people who are interested and able to fill these positions.

Having a county office will also create a space to recruit a pipeline of future attorneys. The Chief Defender could recruit summer law clerks who are interested in exploring the practice of public defense in a beautiful part of the state. High school interns could be supervised in community service projects such as assisting clients with filling out forms or making appointments. The Chief Defender would also be able to hire recent law school graduates who can work under public defender supervision.

Improved and More Accountable Legal Services

Despite being a small legal community, the County struggles to know the quality of legal services being provided in Del Norte. Hiring a Chief Defender as an independent subject matter expert, to oversee these services will allow for greater independence of the public defense function. In addition, the Chief Defender can develop appropriate work standards and work to ensure their offices meets those standards. In addition, it will allow for training to be provided to all defense attorneys at once and allow lawyers to stay current on ever changing law. The County should provide, and expect the public defender to use, a case management system.

The Chief Defender will be tasked with making important decisions about case assignment, ensuring that the skills of the attorney match the needs of the case, as well as creating systems of continuity during attorney absences. The Chief Defender would also be responsible for ensuring that a staff investigator is appropriately allocating time to cases based on need and communicating with the County about budget needs. In addition, when there are concerns about performance, stakeholders, clients, and the public will have somewhere to turn.

One specific challenge that was voiced was clients being able to communicate with attorneys, with clients expressing frustration at not being able to reach counsel. *See endnote 15*. Communicating with counsel is a basic building block for providing legal representation. Forming a public defender's office will allow for office support staff to answer the phone during business hours. Staff would input client calls into a case management system and attorneys would be required to input when clients are contacted. This would allow the Chief Defender to see where the communication breakdowns are occurring and address them promptly.

Public defenders ensure that the constitutional amendments that are critical to our liberty are protected and enforced. It is critical to have a well-functioning defense system to investigate cases and bring to light when police practices are unfair, when charges do not match the severity of the offense and when people are not guilty of the charges. Most of the time this is done on the individual level by ensuring that defense attorneys bring this information to prosecutors, judges, and juries. But a public defender office also has the benefit of being able to see statistical trends over time. Without a public defender office, the County is currently risking not hearing about these issues until well after they have become entrenched.

County Coordination

Many of the Del Norte County stakeholders we spoke with expressed interest in working together to understand the high incarceration rates in the County and to address the systemic problems of incarcerated people. Adding a criminal justice subject matter expert who does not focus their practice on prosecution or incarceration will benefit the County in this pursuit.

The public defender should meet with county stakeholders on a regular basis to develop effective alternatives to incarceration in cases that are appropriate. Having a consistent stakeholder meeting that includes the public defender office will also allow for swift responses when things like COVID erupt, or there are big legislative changes such as CARES court. They should also meet regularly with the Board of Supervisors to bring attention to client's perspectives on jail conditions, police practices and probation processes. The County should not first be hearing about these matters in a media piece or lawsuit.

In addition, the public defender's office can be expected to provide services to the broader county through record clearing, "clean slate" projects, [voter restoration workshops](#), advocating for work alternative programs, and conducting know your rights sessions.

Conclusion

All counties must continually balance the needs of their constituents and their budgets, making decisions about how best to use limited resources to get the best outcomes. This is particularly true in small counties. Del Norte County is spending a significant number of resources on incarceration and criminal justice infrastructure. It should continue to assess whether that spending is achieving the results.

The creation of a public defender's office will make it easier for Del Norte County to apply for grant funding in indigent defense and will create budget stability over time.²¹ But it is unavoidable that a public defender's office will cost the County more than it is currently spending on indigent defense. *See Appendix E: Funding Sources to Explore.* However, the current county budget spends less than half of the District Attorney's budget on the indigent defense system. The District Attorney can also rely on resources outside of its direct budget stream. Most notably the Sheriff and local police provide investigative services, pursuing witnesses, getting witness statements, photographing the scene, and serving subpoenas. This makes the disparity even more stark. Given the fundamental protections the indigent defense function serves, and the critical role it plays in ensuring residents' liberty, such a disparity is difficult to justify.

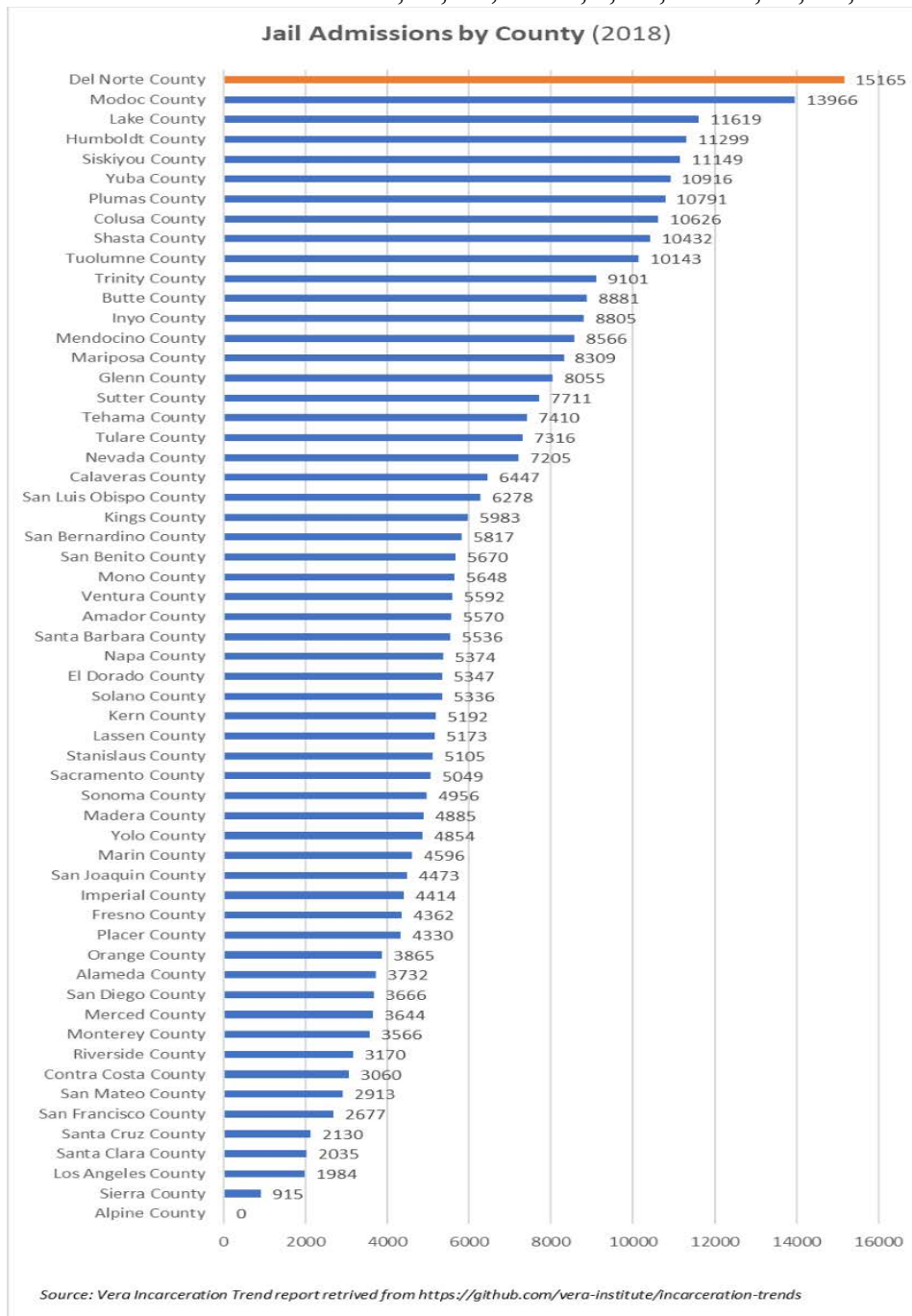
Having a well-staffed public defender's office is one well studied way to decrease lengths of sentences, reduce racial disparities in incarceration, and increase compliance with release conditions. All while not increasing public safety harm and ensuring that residents of Del Norte who are accused of offenses have their rights and dignity protected.

Appendix A: Jail Admissions by County

Vera identified “Jail Admissions” as “the number of times people were booked into jail each year” calculated as a rate per 100,000 residents, found at <https://trends.vera.org/state/CA>

For 2018, jail admission rates for Del Norte County were 15,165 per 100,000 people, the highest among all counties in California; similarly sized counties: Glenn County had 8,055, Colusa County 10,626, and Lassen County 5,173 jail admissions per 100,000 population.

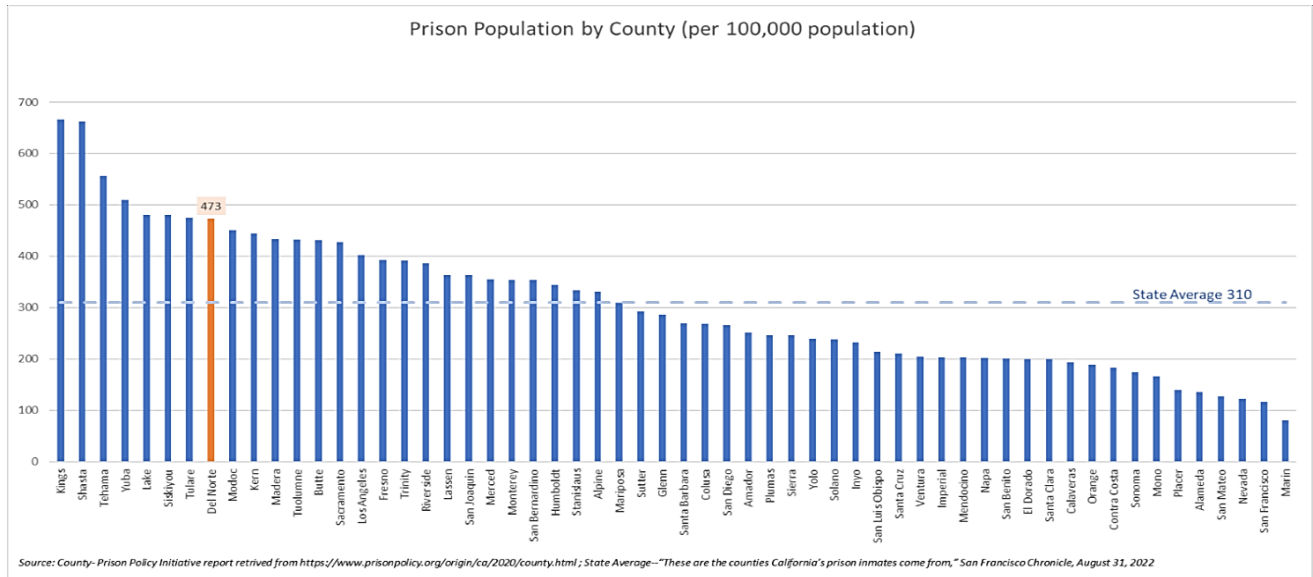
2020 data was similar: Del Norte, 15,507; Glenn, 9,249, Colusa, 10,801, Lassen, 5,342.



Appendix B: Prison Population by County

Prison Policy calculated imprisonment rates for each geographical location by first calculating a corrected population from the Census in 2020 plus the number of incarcerated people from that geographical location; and then dividing the number of incarcerated people by the corrected total population, and then multiplying it by 100,000 to get an imprisonment rate per 100,000.

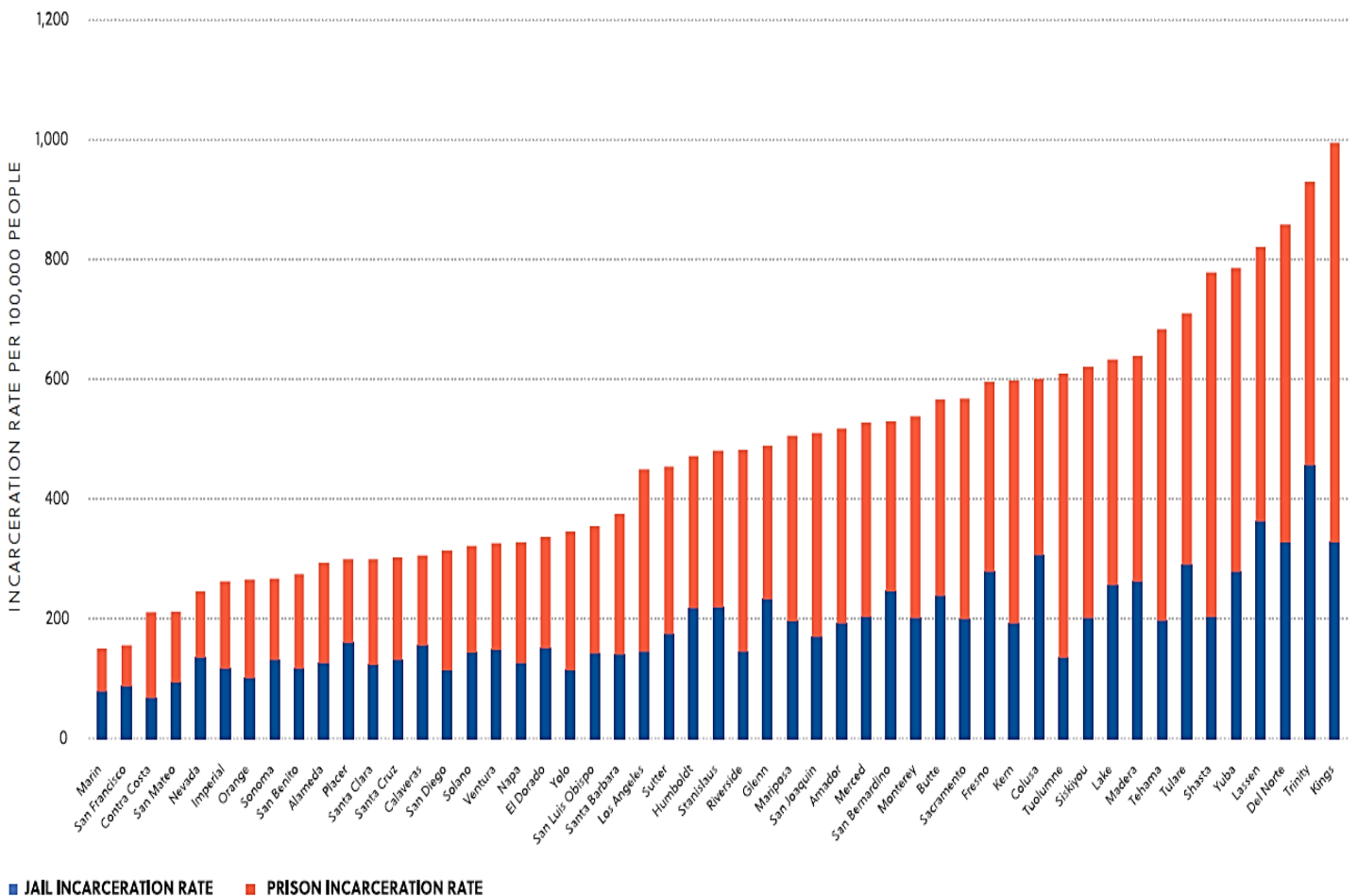
Explained at <https://www.prisonpolicy.org/origin/ca/2020/report.html#methodology>



Appendix C: Incarceration Rates by County

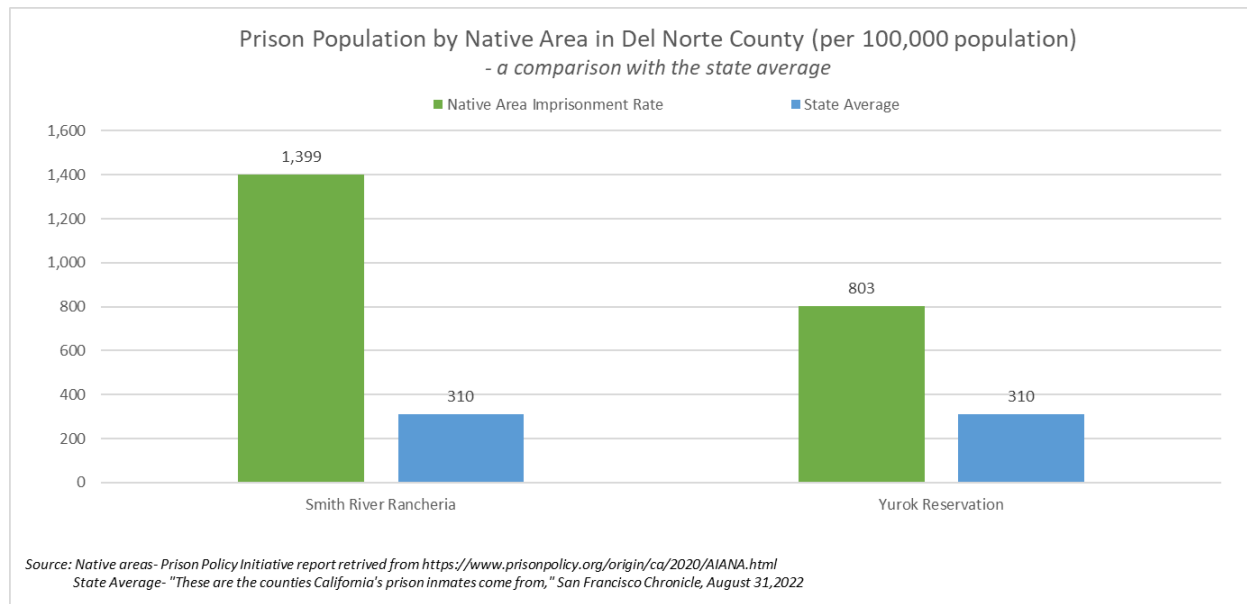
Del Norte County has the third highest combined incarceration rate in California (the percentage of the population held in prison and jail). Only Kings County and Trinity County have higher rates. This chart is from the “2021 Committee on Revision of the Penal Code Annual Report”, p. 21, found at http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf

FIGURE 10: CALIFORNIA INCARCERATION RATES BY COUNTY



Source: Jail — BSCC Jail Profile Survey for June 2021 of sentenced and unsentenced average daily population. Prison — analysis of data provided by CDCR Office of Research and Is as of July 2021. Population data is ACS 2019. Six counties that had less than 50 people in CDCR custody are excluded. Mendocino County is excluded because it did not report any jail population for June 2021.

Appendix D: Prison Population by Native Area in Del Norte



Imprisonment rate per 100,000

This is the number of imprisoned people divided by the total population and then multiplied by 100,000. It allows ready comparison of the frequency of imprisonment between each American Indian and Alaska Native area of different population sizes. 310 per 100,000 is the average statewide prison incarceration rate. Native people are often undercounted or misclassified, so the numbers could be higher.

<u>American Indian and Alaska Native areas (AIANAs) ⇐ Z</u>	<u>Number of people in state prison from each AIANA, 2020 ⇐ Z</u>	<u>Census population, 2020 ⇐ Z</u>	<u>Total population, 2020 ⇐ Z</u>	<u>Imprisonment rate per 100,000 ⇐ Z</u>
Smith River Rancheria	2	141	143	1,399
Yurok Reservation	10	1,236	1,246	803
Elk Valley Rancheria	0	93	93	0
Resighini Rancheria	0	33	33	0

Found at <https://www.prisonpolicy.org/origin/ca/2020/AIANA.html>

Appendix E: Funding Sources to Explore

- ✓ Current county budget funds
- ✓ State Grants
- ✓ Realignment money from prisons to counties AB 109
 - Based on high prison population, a higher percentage of funds should be allocated to defense
- ✓ American Rescue Act of 2021 (Covid) H.R. 1319
- ✓ Cal Fresh Benefit Worker could do some social worker referrals
- ✓ Temporary project-based Byrne/ Jag Grant Funding 34 U.S.C. § 10152(a)(1)
- ✓ Penal Code 4075—Pelican Bay State Reimbursement
 - Could fund partial support staff for both contracts
 - Could fund partial investigator for both contracts
 - Could fund supplies
- ✓ Prop 172—Half Percent Sales Tax for Public Safety
 - If a client advocate or social worker was funded in partnership with a public safety partner
- ✓ Forthcoming: Measure S or Measure R, sales tax for public safety (if passes in 2022)
- ✓ Forthcoming: President Biden’s Safer America Plan (announced August, 2022)

ENDNOTES

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- ¹ Demographics are according to the website Census Reporter, found at <https://censusreporter.org/profiles/05000US06015-del-norte-county-ca/> [as of September 12, 2022].
- ² “Incarceration Trends: Del Norte County”, *Vera Institute*, 2022, found at https://trends.vera.org/state/CA/county/del_norte_county.
- ³ “Incarceration Trends”, *Vera Institute*, 2022, found at <https://trends.vera.org/> (Vera institute adjusted to calculate so all counties could be measured the same, at incarceration per 100,000 residents).
- ⁴ Del Norte County population 28,100, Glenn County 28,805, Lassen County 33,159, Colusa County 21,917, “California Counties by Population, *California Demographics by Cubit*, 2021, found at https://www.california-demographics.com/counties_by_population
- ⁵ “Incarceration Trends”, *Vera Institute*, 2022, found at <https://trends.vera.org/>
- ⁶ “2021 Annual Report and Recommendations”, *Committee on Revision of the Penal Code*, p. 21, found at http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf.
- ⁷ “Where people in prison come from: The geography of mass incarceration in California”, *Prison Policy Initiative*, August, 2022, found at <https://www.prisonpolicy.org/origin/ca/2020/report.html>; Data Table in article entitled “Number of People in State Prison Per County 2020” reflected that Del Norte County had 119 people in prison out of its population of 27,743 in 2020, which placed the county at 473 people in prison per 100,000, among a handful of counties with the highest prison populations in the state.
- ⁸ “Incarceration Trends: Del Norte County”, *Vera Institute*, 2022, found at https://trends.vera.org/state/CA/county/del_norte_county and “QuickFacts: Del Norte County, California”, *United States Census*, 2021, found at <https://www.census.gov/quickfacts/delnortecountycalifornia>
- ⁹ *The Sixth Amendment Center* is a center that serves to inform the public and policymakers about the fundamental right to counsel.
- ¹⁰ Numbers listed in annual reports from 2017-2022 “Court Statistics Report, Statewide Caseload Trends”, *Judicial Council of California*, Table 3, Jury Trials, by County and Type of Proceeding, Fiscal Year 2015-2021, found at <https://www.courts.ca.gov/13421.htm>
- ¹¹ California State Bar registered addresses, received via email on 9/19/20. This data set included all attorneys, both active and inactive, who had registered their home or office as a Del Norte County address with the California State Bar.
- ¹² “Abolishing Flat Fee Contracts for Public Defense Services—ABA Principle 8”, *Sixth Amendment Center*, 2022, found at <https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/abolishing-flat-fee-contracts-for-public-defense-services-aba-principle-8/>
- ¹³ Tony Fabelo, “[What Policymakers Need to Know to Improve Public Defense Systems](#)”, *Office of Justice Programs, Department of Justice*, December, 2001.
- ¹⁴ Data collected at [Kids Data](#) which partners with the Population Reference Bureau.
- ¹⁵ Court staff reported that there are regularly 3-4 complaints per day from indigent defense clients. Anecdotal, many of the complaints were about a lack of communication between the client and the attorney, with clients stating to court staff “I need another attorney.” Similarly, the judge reported a recent increase in *Marsden* motions, where a client requests to replace their appointed attorney in court.
- ¹⁶ [Daniel Schmidt, “Filthy jail conditions exposed to supervisors”, *Del Norte TriPLICATE*, April 30, 2022.](#)
- ¹⁷ We recognize that practicing at Pelican Bay has certain increased time requirements because all of your clients are incarcerated at a state prison and therefore visiting, client calls, and record gathering are all more time consuming.
- ¹⁸ Del Norte County Sheriff’s Office-Online Information System, Inmates Tab, found at <https://ois.dnco.org/Default> as of September 8th, 2022.
- ¹⁹ California Penal Code section 17(b) allows for clients to request that the court reduce felonies to misdemeanors and California Penal Code section 1203.4 allows clients who have successfully completed probation to petition a court to withdraw some misdemeanor guilty pleas. California Welfare and Institutions Code has similar provisions, see e.g. Welfare and Institutions Code 781.

²⁰ Notification of arrest and prompt appointment allows counsel to reach their clients at the earliest opportunity, conduct conflict checks, and confirm housing and employment information. A study of Chicago and Cook County, Illinois, predicted that providing an attorney within 24 hours of arrest would save \$12 million to \$43 million a year. Bryan L. Sykes, Eliza Solowiej, & Evelyn J. Patterson, *The Fiscal Savings of Accessing the Right to Legal Counsel Within Twenty-Four Hours of Arrest: Chicago and Cook County*, 2013, 5 U.C. Irvine L. Rev. 813 at table 4. In a 2022 RAND study in Pittsburgh, researchers found that, “providing a public defender at the bail hearing led to a significant decrease in the use of monetary bail and short-term pretrial detention, with no impact on failure to appear rates or the probable cause determination at the preliminary hearing.” Anwar, Bushway, & Engberg, *The Impact of Defense Counsel at Bail Hearings* (March 2022). See also, Keyser, M., *As Calls for Bail Reform Ring Nationwide, Could the Answer Lie with Public Defenders?* ; Roger A. Fairfax, Jr., *Searching for Solutions to the Indigent Defense Crisis in the Broader Criminal Justice Reform Agenda*, 122 Yale L.J. 2316, 2328 (2013) (“Those who are receptive to the smart-on-crime approach eventually will recognize that the better equipped our indigent defense system is, the less waste and inefficiency our criminal justice system will produce.”).

²¹ In reviewing the County’s budget from 2014 to present, it appears the investigation costs have fluctuated between \$67,000 to \$160,000. A staff investigator would reduce these fluctuations to almost zero.