

Justice Delayed Is Justice Denied — Marin District Attorney's Office in Crisis

May 15, 2023

SUMMARY

There is a substantial backlog of criminal cases pending in Marin County. This backlog affects the community at large, including victims of crime, people charged with crimes, and the law enforcement agencies responsible for investigating and prosecuting criminal cases. Once charges are filed in Marin, there is an unreasonable delay in bringing these cases to a resolution - in many cases more than a year.

The scope and impact of the delays in resolving cases in Marin are considerable.

1. Of the 1,896 misdemeanor cases pending in February 2023, 42.4 percent had been pending for more than a year and 17.9 percent for more than two years.
2. Of the 458 felony cases pending in February 2023, 38.4 percent had been pending for more than a year and 12 percent for more than two years.
3. Of the 251 people in the Marin County Jail as of February 28, 2023, 79 percent (199) were awaiting trial. Twenty percent (40) of those people had been in the county jail for more than a year.

The Grand Jury's investigation has concluded that the District Attorney's Office is the primary reason for the delays in resolving criminal cases in Marin. The District Attorney's Office faces significant challenges.

1. Deputy district attorneys struggle to carry out their legal duties due to the backlog of pending cases and overwhelming individual caseloads.
2. During the past four years, the District Attorney's Office has experienced a high turnover of attorneys, especially among the more experienced attorneys, including 13 attorneys departing in the last fourteen months as of February 2023.
3. The District Attorney's Office lacks the internal organizational structure and procedures to facilitate the processing and resolution of cases.
4. There are multiple lawsuits filed by current and former employees pending against the office alleging various claims, including discrimination based on race, gender, and age.

This report, completed in March 2023, examines the challenges confronting the District Attorney's Office and makes a number of recommendations, including:

1. Retention of an independent consultant to analyze office operations with the objective to reduce caseloads of individual attorneys and to recommend operational changes to facilitate the efficient processing and resolution of cases.
2. Hiring two or more experienced attorneys on short term (6-12 mos.) contracts with responsibility for reducing the backlog of pending cases through plea negotiations.
3. Hiring additional deputy district attorneys to maintain caseloads at manageable levels.

BACKGROUND

The pandemic had a significant impact on virtually all aspects of our community and daily life. The criminal justice system was no exception. In March 2020, Governor Gavin Newsom issued executive orders which effectively closed the courts for criminal trials. In the same month, the Chief Justice of the California Supreme Court, in her capacity as Chairperson of the Judicial Council, issued the first of several emergency orders that permitted courts to extend trial dates beyond the statutory time periods to bring a criminal case to trial. The Marin Department of Public Health also issued guidelines for in person gatherings, which encumbered the processing of criminal cases. During this period, it was understandably difficult to resolve cases.

By early 2021, Marin courtrooms had reopened, and criminal cases were again going to trial, although in fewer numbers because only one courtroom had been reconfigured to address Covid issues. By the end of 2021, Marin courtrooms were available for civil and criminal trials. However, it should be noted that most criminal cases (more than 90 percent) are resolved through plea negotiations between the District Attorney's Office and defense counsel. The plea bargains, as they are known, must be approved by the court. While the pandemic impeded the trials of criminal cases, it did not stand in the way of the District Attorney's Office negotiating the disposition of cases with defense counsel.

Nevertheless, by February 2023, 79 percent of people incarcerated in the Marin County Jail had not been convicted but were awaiting trial or disposition of their cases. This led the Grand Jury to investigate why such a disproportionate number of people in the county jail had not had their cases resolved. While the pandemic was certainly a factor in 2020 and 2021, it became apparent through the Grand Jury's investigation that the District Attorney's Office is currently the primary reason for the delays in resolving criminal cases.

APPROACH

The Grand Jury interviewed many people involved in the criminal justice system, including current and former prosecutors and defense attorneys, as well as probation, law enforcement, and county jail personnel. The Grand Jury collected data on the criminal cases pending in Marin, the population in the county jail, and statistics from the District Attorney's and the Public Defender's Offices. The Grand Jury reviewed articles on pending lawsuits and government claims filed by current and former employees against the District Attorney's Office. Reported cases, statutes, newspaper articles, and other articles concerning the backlog of cases in counties throughout the state were also reviewed.

This report was completed in March 2023.

DISCUSSION

The delays in resolving criminal cases in Marin adversely impact the community at large, including the victims of crime, the people charged with crimes, and the law enforcement agencies that investigate and prosecute criminal cases.

People Charged with Crimes in Marin Wait an Unreasonable Length of Time for Their Cases to Be Resolved

The right to a speedy trial is a fundamental right guaranteed by both the United States and California Constitutions.¹ Penal Code Section 1382 implements the speedy trial right. Section 1382 provides that an individual charged with a misdemeanor who is in custody must be brought to trial within 30 days of arraignment or entry of a plea (whichever is later), or within 45 days if out of custody. An individual charged with a felony must be brought to trial within 60 days of arraignment.² The right to a speedy trial is often waived by defendants, which allows cases to proceed beyond the statutory time periods in Section 1382. Nevertheless, prosecutors and defense attorneys agree that cases should be resolved in a reasonable period of time.

Table 1 reflects the length of time that misdemeanors and felonies have been pending in Marin as of February 3, 2023.³ Table 1 does not include cases in the diversion program.

Table 1: Cases Pending from Filing Dates, as of February 3, 2023

| | < 91 Days | > 90 Days | > 180 Days | > 1 Year | > 2 Years | > 3 Years |
|-----------------------------|-----------|-----------|------------|----------|-----------|-----------|
| Misdemeanors (1,896) | 326 | 1,570 | 1,279 | 803 | 339 | 120 |
| Felonies (458) | 99 | 359 | 289 | 176 | 55 | 15 |

Source: Marin County District Attorney’s Office

Of the 1,896 misdemeanor cases filed by the District Attorney’s Office, 82.8 percent (1,570) have been pending for more than 90 days; 67.5 percent (1,279) for more than 180 days; 42.4 percent (803) for more than a year; 17.9 percent (339) for more than 2 years; and 6.3 percent (120) for more than 3 years.

Of the 458 felony cases filed by the District Attorney’s Office, 78.4 percent (359) have been pending for more than 90 days; 63.1 percent (289) for more than 180 days; 38.4 percent (176) for more than a year; 12 percent (55) for more than 2 years; and 3.3 percent (15) for more than 3 years.

¹ *Hernandez-Valenzuela v. Superior Court* (2022) 75 Cal. App. 5th 1108. <https://casetext.com/case/hernandez-valenzuela-v-the-superior-court>.

² *California Penal Code Section 1382(a)*, (Accessed March 28, 2023) https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1382.&lawCode=PEN

³ In addition, there were another 524 cases (e.g., certain offenses for first time offenders) that were in diversion status, meaning in most cases the charges would be dismissed if the terms of the diversion program are successfully completed. The 524 cases in the diversion program are not included in the pending cases. (Table 1.)

Prosecutors and defense attorneys agree that it is taking too long to resolve criminal cases in Marin. They also agree that most misdemeanors should be resolved in less than three months and most felonies in less than six months. There may, of course, be a variety of factors in individual cases that extend resolution beyond those time periods, including complexity of the case, unsuccessful plea negotiations, and availability of courtrooms for trials. A significant consequence of failing to resolve cases in a timely manner falls on the shoulders of people who are in custody while awaiting trial.

Vast Majority of People in the County Jail Are Awaiting Trial

As of February 28, 2023, 79 percent of the people incarcerated in the Marin County Jail were still awaiting trial because their cases had not been resolved. (See Table 2.)

Table 2: Demographics of Incarcerated Persons by Those Awaiting Trial and Those Convicted

| | White, Non-Hispanic | Black | Hispanic | Asian | Native American | Other |
|--|----------------------------|--------------|-----------------|--------------|------------------------|--------------|
| Those Who Are Awaiting Trial (Total:199) | | | | | | |
| No. of Males | 62 | 39 | 76 | 1 | 0 | 4 |
| No. of Females | 9 | 4 | 3 | 0 | 0 | 1 |
| Those Who Have Been Convicted (Total: 52) | | | | | | |
| No. of Males | 22 | 9 | 11 | 0 | 0 | 2 |
| No. of Females | 1 | 2 | 4 | 0 | 0 | 1 |

Source: Marin County Sheriff’s Office.

These statistics and demographics are based on the incarcerated persons population of 251 on February 28, 2023.

Of the 251 incarcerated inmates, 199 were awaiting trial - 182 men and 17 women. There are various reasons for being incarcerated pending trial, including inability to post bail, the serious nature of the charges, and the potential threat an individual poses to the community.

The burden of being in custody pending trial fell disproportionately on people of color. Sixty-four percent (128) of the 199 inmates identified as Black, Hispanic, Asian, or Other, while thirty-six percent (71) identified as White.

A significant feature of the jail population awaiting trial was the length of time they had been in custody without a trial. (See Table 3.)

Table 3: Length of Time Incarcerated - By Those Awaiting Trial and Those Convicted

| | Number Awaiting Trial | Number Convicted |
|---------------------------|-----------------------|------------------|
| Less Than 30 Days | 51 | 10 |
| 31 - 90 Days | 44 | 19 |
| 91 - 180 Days | 29 | 15 |
| 181 - 365 Days | 35 | 6 |
| More Than 365 Days | 40 | 2 |

Source: Marin County Sheriff’s Office. These statistics and demographics are based on the incarcerated persons population of 251 on February 28, 2023.

Fifty-two percent (104) of the inmates awaiting trial had been in jail more than 90 days, thirty-seven percent (75) more than 180 days, and twenty percent (40) more than a year.

Impact on People Awaiting Trial Who Are in Custody

The impact on people charged with crimes who are in custody pending trial is considerable. Their custodial conditions affect their ability to prepare for trial, disrupt their family life, and may interfere with employment and education.

People in custody awaiting trial are confined under highly restrictive conditions, particularly given that they are presumed innocent until proven guilty.⁴ All inmates in the county jail are treated the same; there is no attempt to distinguish between inmates who have been convicted and those awaiting trial. Typically, they are confined to their cells for 22 to 23 hours per day. There are no contact visits with their families; the only contact is by phone through a plastic partition or via Zoom on a tablet at a set time. The county jail restrictions also hinder the ability of inmates awaiting trial to prepare a defense to the criminal charges.

Except in rare circumstances that require a court order, defendants awaiting trial cannot meet with their attorney in a room in person. They must meet with their attorney on a tablet via Zoom or by telephone through a plastic partition, making it difficult to review documents together and to include a third party, such as an investigator. During a meeting at the county jail, documents can only be shared through a narrow slot that must be unlocked by a sheriff’s deputy.

Impact on the Community at Large

A community’s values are reflected in the need for the criminal justice system to resolve cases in a fair, consistent, and timely manner. The long delay in resolving cases in Marin affects the community at large, including the victims of crimes, people who are charged with crimes, and the law enforcement agencies that carry out the criminal investigations.

The impact of these delays is considerable. Victims of crimes live with the uncertainty of the outcome as cases drag on through the criminal justice process. For example, domestic violence and sexual assault cases present particularly delicate and challenging issues that unnecessary

⁴ California Penal Code Section 1096.
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1096.&lawCode=PEN, (Accessed March 28, 2023)

delays can aggravate. Victims become frustrated by the delays, witnesses' memories fade with time, and cases become more difficult to prosecute.

The impact on people charged with crimes is considerable. The dark shadow of the criminal charge affects their reputation in the community and may adversely impact their family life and employment. Witnesses may move and be unavailable many months, or years, after charges are filed, depriving defendants of testimony for their defense.

Unreasonable delays also adversely impact the prosecution's ability to present a winning case. Frustrated victims, faded memories, witnesses moving out of the area, and police officers leaving their departments are just a few of the complications that arise with the passage of time for prosecutors.

In summary, the community at large is adversely affected by the failure to resolve cases in a timely manner. This raises the question: why is Marin experiencing such a backlog of criminal cases? The Grand Jury's investigation has concluded that the District Attorney's Office is the primary reason for the delays in resolving criminal cases.

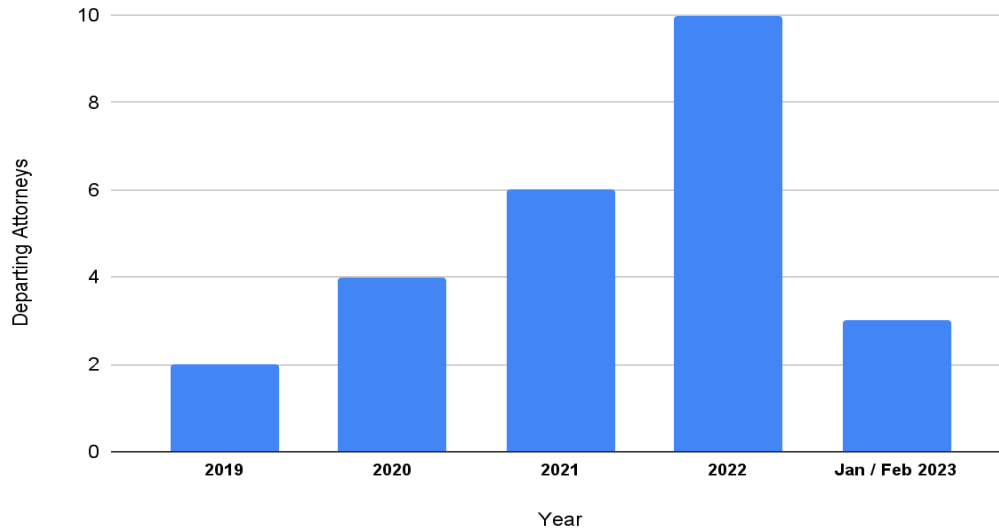
The Marin District Attorney's Office is the Primary Reason for the Backlog of Criminal Cases

The District Attorney's Office plays a crucial role in the criminal justice system. It investigates potential crimes, files criminal charges, and then is responsible for pursuing those charges through the criminal justice system to their resolution. The Grand Jury's investigation revealed that the Marin District Attorney's Office faces significant operational challenges to reduce the backlog of cases in Marin and to resolve cases in a timely manner. The reasons for the operational issues are discussed below.

1. Departures of Deputy District Attorneys

There has been a substantial turnover of attorneys in the District Attorney's Office. In January 2019, the office had 30 attorneys - an elected district attorney, an assistant district attorney, 2 chief deputy district attorneys, and 26 deputy district attorneys. Since then, 14 of those attorneys have departed. In addition, 11 other attorneys hired since January 2019 have departed, for a total of 25 departures over the past four years and two months. (See Chart 1.)

Chart 1: Number of Attorneys Departing District Attorney’s Office (2019- February 2023)



Source: Marin County District Attorney’s Office as of March 1, 2023

As is evident from Chart 1, the departures have increased each year since January 2019. *A total of 192 years of experience have departed the office* during that period, leaving the office understaffed with a disproportionate number of inexperienced attorneys. As of February 2023, there were eight attorney vacancies in the office. While there are undoubtedly a variety of reasons for the departures, one of the principal reasons is the overwhelming caseload.

2. Overwhelming Caseloads

As the departures accelerated over the past four years, the number of cases managed by individual deputy district attorneys has increased significantly. As of February 2023, there were individual deputy district attorneys assigned 600 to 800 misdemeanor cases, a caseload so great that office management recognizes it cannot be handled competently. By contrast, attorneys handling misdemeanors in the Public Defender’s Office are assigned 150 to 200 cases.

The figures for the felony caseloads are equally alarming. The individual deputy district attorneys handling felonies are often assigned 70 to 95 cases; again, a caseload difficult to handle competently, as confirmed by office management. By contrast, the attorneys in the Public Defender’s Office were assigned 30 to 50 felony cases, depending on their complexity.

The result of the overwhelming caseload is that deputy district attorneys are challenged to perform their duties in an organized, competent, and timely manner. They are frequently unable to respond promptly to discovery requests. They often do not have time to evaluate their pending cases and make settlement offers. And they are confronted with a trial backlog that is daunting. In effect, they are just trying to keep their heads above water to deal with what they must do “tomorrow.”

3. Backlog of Trials

As experienced attorneys leave the office, the trial backlog continues to mount. In January 2020, there were 254 cases set for trial. As of February 2023, there were 325 cases on the trial calendar. A further complicating factor is the increase in the number of murder cases that have been filed in recent years, many resulting from gang activity. These cases require experienced

attorneys to manage, and they are time consuming. For example, as of March 2023, a gang related homicide case was in trial for six months, during which time the lead trial attorney had little time to work on other cases.

One of the ways to reduce the trial backlog is to analyze the cases on the trial calendar to determine those that can be resolved through plea negotiations. This requires the time of experienced deputy district attorneys to perform the evaluations and to ensure the discovery materials for those cases have been distributed to the defense counsel. The uncertainty of a trial outcome, however, provides an incentive for both prosecutors and defense attorneys to resolve a case short of trial.

4. Office Operations

In addition to staff shortages, overwhelming caseloads, and a daunting backlog of trials, the District Attorney’s Office also has operational issues that need to be addressed. These include putting systems in place to produce discovery materials to defense counsel in a timely manner, to evaluate cases early in the criminal proceedings to encourage plea negotiations, and to consider reinstating the position of an expeditor to facilitate production of discovery and plea negotiations in misdemeanor cases.

The District Attorney’s Office is having difficulty meeting its statutory and constitutional obligations to provide discovery to defense counsel. After a criminal case is filed, the District Attorney’s Office is required to provide defense counsel with a variety of materials, including copies of the police report, the defendant’s criminal history, forensic reports, camera footage and any potentially exculpatory information.⁵ The District Attorney’s Office has acknowledged that in many cases it has not provided the required discovery materials in a timely manner. Without these materials, defense counsel is unable to evaluate the case and prepare a defense, resulting in cases being continued and unnecessarily delayed.

The early production of discovery materials is essential to facilitating plea negotiations. Both parties rely on these materials to evaluate the strength and weaknesses of their cases. However, the District Attorney’s Office does not have a system in place to produce these materials in an organized, timely fashion. The office does not have a system that identifies what materials need to be produced in each case, whether they have been produced, and if not, who is responsible for producing them. The office also does not have someone overseeing this process to ensure compliance.

One way to facilitate the discovery and plea negotiation process in misdemeanor cases is to reinstate the position of an expeditor. In the past, the position of expeditor was held by an experienced deputy district attorney who addressed discovery issues and facilitated plea negotiations. It was a single point of contact in the office to resolve misdemeanor cases, which are the majority of cases in the District Attorney’s Office. While there have been discussions about reinstating this position, little progress is being made on that front.

Concerns have also been raised as to whether the current case management software should be updated to provide attorneys with ready access to the information they need to effectively

⁵ *California Penal Code Section 1054*, https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=6.&part=2.&chapter=10.&article= (Accessed March 30, 2023); *Brady v. Maryland*, 373 U.S. 83 (1963), <https://caselaw.findlaw.com/us-supreme-court/373/83.html>.

perform their duties. This includes information on the status of discovery, witness lists and availability, and upcoming court appearances, hearings, and trials.

5. Office Morale, Lawsuits, and Recruiting

The issues discussed in this report have had a significant impact on office morale. As deputy district attorneys depart and caseloads are shifted to the remaining attorneys, the deputy district attorneys are enduring unsustainable stress levels. As a result, an increasing number of attorneys are going out on mental health stress leave or seeking other employment, leaving the remaining attorneys with additional case responsibilities.

The District Attorney’s Office is also embroiled in multiple lawsuits brought by current and former employees alleging various claims, including discrimination based on race, gender, and age. While the Grand Jury has not investigated the merits of these claims, their mere existence is a point of concern and affects office morale.

Office morale, overwhelming caseloads, and pending lawsuits make it difficult to recruit new deputy district attorneys. Given its challenges, the office is having difficulty attracting experienced candidates to fill open positions.

The District Attorney’s Office has a profound impact on our community. As discussed in this report, it is facing many challenges that must be overcome immediately. The Grand Jury has identified the challenges and makes specific recommendations.

FINDINGS

- F1. There is a substantial backlog of criminal cases pending in Marin County.
- F2. Victims of crimes and people charged with crimes in Marin are waiting an unreasonable length of time for cases to be resolved - in many cases more than a year.
- F3. The District Attorney's Office is primarily responsible for the delays in resolving criminal cases in Marin.
- F4. The District Attorney's Office lacks the internal organizational structure and operations to facilitate the efficient processing and resolution of criminal cases.
- F5. Deputy district attorneys are unable to consistently carry out their legal duties due to overwhelming caseloads.
- F6. The caseloads must be reduced to manageable levels to stem the departures of attorneys from the office and to facilitate recruiting efforts.
- F7. The District Attorney's Office needs additional experienced deputy district attorneys to facilitate the processing and resolution of criminal cases.
- F8. The District Attorney's Office does not consistently provide discovery materials (e.g., police report, defendant's criminal history, camera footage) to defense counsel in a timely manner, thereby significantly delaying the resolution of cases.
- F9. People in custody awaiting trial are treated the same as convicted inmates and are subjected to unduly restrictive conditions in the county jail.

RECOMMENDATIONS

- R1. By November 1, 2023, the Marin County Board of Supervisors should request the Marin County Administrator to hire an independent consultant who reports to the County Administrator's Office to analyze operations of the District Attorney’s Office with the following objectives: reducing the overwhelming caseloads of deputy district attorneys, facilitating timely production of discovery materials, implementing early evaluation of cases to promote plea negotiations, improving office morale, and updating the case management system.
- R2. By December 1, 2023, the District Attorney’s Office should hire two or more highly experienced former deputy district attorneys on short term (6 - 12 mos.) contracts whose sole responsibility would be to reduce the backlog of cases through plea negotiations, starting with the longest pending cases.
- R3. Once the caseload has been significantly reduced, the District Attorney’s Office should hire experienced deputy district attorneys to maintain caseloads at a manageable level.
- R4. By December 1, 2023, the District Attorney’s Office should implement a new process to provide discovery materials (e.g., police report, defendant’s criminal history, and camera footage) to defense counsel within a reasonable time of arraignment.
- R5. By December 1, 2023, the District Attorney’s Office should institute a position, such as an expeditor, that is primarily responsible for facilitating plea negotiations in misdemeanor cases.
- R6. By October 1, 2023, the District Attorney’s Office should hire paralegals to assist attorneys with discovery, witness coordination, and trial preparation.
- R7. By November 1, 2023, the District Attorney’s Office should commence providing a quarterly update and statistical report to the Board of Supervisors and the County Administrator’s Office on its progress to reduce the backlog of criminal cases.
- R8. By October 1, 2023, people in custody who are awaiting trial should be granted more accommodations than inmates who have been convicted. Possible accommodations include, where appropriate, contact visits with family, utilization of technology (e.g., tablets) within their cells, and contact visits with defense counsel.

REQUIRED RESPONSES

The following responses are required pursuant to Penal Code Sections 933 and 933.05 from the following elected county officials within 60 days:

- Marin County District Attorney (F1-F8, R2-R7)
- Marin County Sheriff (F9, R8)

And from the following governing bodies within 90 days:

- Marin County Board of Supervisors (F1-F9, R1-R8)

INVITED RESPONSES

The following responses are invited pursuant to Penal Code Sections 933 and 933.05 from the following elected county officials within 60 days:

- Marin County Administrator (F1-F8, R1 and R7)

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| Note: At the time this report was prepared information was available at the websites listed. |
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| Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury <u>not</u> contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation. |
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