

**MANAGEMENT AUDIT OF THE  
OFFICE OF THE DISTRICT ATTORNEY**

**Prepared for the  
Board of Supervisors of the  
County of Santa Clara**

**Prepared by the  
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**March 27, 2008**

# County of Santa Clara

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March 27, 2008

Supervisor Pete McHugh, Chair  
Supervisor Liz Kniss, Vice Chair  
Board of Supervisors Finance and Government Operations Committee  
70 West Hedding Street, 10<sup>th</sup> Floor  
San Jose, CA 95110

Dear Supervisors McHugh and Kniss:

Pursuant to the direction of the Board of Supervisors, we have completed a comprehensive management audit of the Office of the District Attorney. This study was conducted pursuant to the authority of the Board of Supervisors under the Board's power of inquiry, as provided in Article III, Section 302 (c) of the County Charter. The audit was conducted in accordance with government auditing standards of the United States Government Accountability Office.

This audit was initiated at the request of the newly elected District Attorney and was approved by the Board of Supervisors. The request by the District Attorney was timely, since the Office of the District Attorney had never been previously audited, and because it was one of 14 high-risk audit areas that had been identified for future audit by the Board of Supervisors' annual management audit program risk assessment analysis. The FY 2007-08 adopted budget of the Office of the District Attorney, including the Crime Laboratory, amounts to approximately \$94.9 million and includes 500.5 authorized positions. The scope of this audit included a detailed review of the operations of the District Attorney's Office, including all prosecution, investigation, crime laboratory, support service, fiscal, and managerial functions and programs. The objective of this audit was to identify opportunities to increase the efficiency, effectiveness and economy of the Office, and to develop and present such issues for consideration by the District Attorney.

The audit commenced on July 26, 2007, a draft report was issued on January 23, 2008, and an exit conference was conducted on February 13, 2008. During the audit, more than 60 staff were interviewed and records from throughout the organization were analyzed. In addition, a survey of 10 other California counties was conducted to obtain comparable information on specific areas of District

Supervisor McHugh  
Supervisor Kniss  
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Attorney operations and to identify policies and procedures utilized by these other jurisdictions.

Based on the audit procedures, surveys, and other audit techniques described above, a total of 15 findings with 49 corresponding recommendations were developed. The implementation of these recommendations would improve staff and resource utilization, increase accountability, enhance management information, reduce costs and increase revenues. The written response from the District Attorney is included on pages 159 to 179. The District Attorney's written response indicates agreement or partial agreement on 39 of 42 recommendations on which a position was stated. No position was reported on seven of the 49 recommendations, which were directed at, or the purview of other County departments. The report also identifies \$112,000 in potential ongoing revenues, and \$1,914,419 of gross expenditure savings and/or increased services at no additional cost. These potential savings and increased services include General Fund monies, grant funds and State and federal reimbursements. Additionally, the report includes potential on-going expenditures of \$97,888 in order to strengthen internal controls over the payroll system and facilitate the commencement of detailed time reporting by all staff in the Office of the District Attorney. The implementation of a detailed time reporting system will ensure the full reimbursement of all state, federal and other grant funds.

Due to delays in obtaining access to payroll records of the Central Identification Unit of the San Jose Police Department, we were not able to complete our audit of fingerprint identification services provided by the City of San Jose to the County and the other cities within the County that are members of the 1987 Cal-ID Memorandum of Understanding (MOU). Once the audit of the Cal-ID MOU is completed, it will be issued as a separate report.

We would like to thank the District Attorney, the Assistant District Attorneys, and the many Deputy District Attorneys, investigative, administrative and operational staff throughout the organization for their cooperation and assistance during this audit. The review of this report by the Board of Supervisors and the District Attorney, and the use of the information contained herein to evaluate existing policies and procedures, will result in the implementation of recommendations that will improve the quality, timeliness and cost effectiveness of the Office of the District Attorney. This report will also assist the District Attorney to increase accountability throughout the organization, and to establish a performance standard consistent with the high expectations of the District Attorney and the citizens of the County of Santa Clara.

Supervisor McHugh  
Supervisor Kniss  
March 27, 2008

Respectfully Submitted,



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## **Executive Summary**

The Santa Clara County Board of Supervisors authorized a management audit of the Office of the District Attorney in FY 2007-08. This audit was conducted in accordance with generally accepted government auditing standards of the United States Government Accountability Office. The audit was performed to the Board's power of inquiry specified in Article III, Section 302 (c) of the Santa Clara County Charter.

The purpose of the management audit was to examine the operations, management practices and finances of the Office of the District Attorney, and to identify opportunities to increase the Office's efficiency, effectiveness and economy. Consequently, the audit scope included interviewing representatives from the Office of the District Attorney and other County departments; reviewing documentation provided by the Office, survey responses provided by other jurisdictions and various other internal and external documents; and analyzing data from systems maintained by the Office or elsewhere in the County.

This report contains 15 findings with 49 corresponding recommendations. Included are finds related to prosecutorial, investigator, and crime laboratory operations and organization, support services issues, and fiscal and management issues. Full implementation of the report's recommendations would result in \$112,000 in potential ongoing revenues, and \$1,914,419 of gross expenditure savings and/or increased services at no additional cost.

A synopsis of each of the findings and related recommendations is provided on the pages that follow.

### **Section 1: Felony Case Issuing**

The District Attorney's Office seeks consistency in case charging decisions by centralizing these responsibilities with key staff members, either persons whose primary responsibilities are case charging, or the supervisor or other designated person in specialized prosecution teams. Beyond an express charging policy, and a Pleading Manual that assists prosecutors in using the proper language to allege specific crimes, and to make sure all allegations are included in a criminal complaint, the Office does not make consistent use of formal training, written guidelines, statistical analysis or other tools to assess whether to file criminal charges in specific factual events referred by police agencies for charging review.

As a result, Supervising Deputy District Attorneys spend a majority of their time issuing cases, and correspondingly less time observing trial lawyers in court and other supervisory duties. Furthermore, if supervisors or designated persons were to leave an assignment suddenly, there is the potential for compromising this sought-after consistency. Furthermore, a review of departmental statistics suggests variances in the application of case-rejection codes (reasons) and the rejection rates of different attorneys.

Each unit in the Office of the District Attorney should develop and implement periodic formal training in the charging function, including consistent application of case

rejection codes, and should encourage the expansion of charging functions to additional staff. The Office should consider periodic reviews of identified, rejected cases to assess possible patterns in such cases or in the decisions of the staff that reviewed them. These steps will permit Supervising Deputy District Attorneys to spend correspondingly greater time observing trial lawyers in court and performing other supervisory functions. These steps will also promote consistency in charging decisions and protect against negative impacts from any sudden unexpected loss of attorneys with significant case charging responsibilities.

Based on these findings, it is recommended that the District Attorney's Office:

- 1.1 Place more emphasis on existing charging guidelines, and expand the use of specialized-case procedures and use notes to increase the utility of the Pleading Manual, by adding additional information to it from internal and external sources. The use notes should include references to recurring evidentiary and factual issues in certain classes of cases, and guidance, including citation to statutory and case law, in analysis of those cases. (Priority 1)
- 1.2 Develop specific definitions for, and train staff in the use of, formal case rejection codes. Periodic statistical review should occur to examine potential trends related to the charging function, and determine whether additional action is warranted. (Priority 1)
- 1.3 Develop a training system for attorneys assigned primarily to issuing functions, to include mock fact patterns and reference materials which include relevant legal authority. (Priority 2)
- 1.4 Develop additional issuing resources in each specialized unit by expanding issuing responsibilities beyond supervisors and/or one primary issuing attorney per unit. (Priority 2)

Implementing the recommendations of this section will provide more formality in recording reasons for case rejections, and increase the ability to statistically analyze this information. These changes will in turn foster greater uniformity in charging decisions, and permit Supervising Deputy District Attorneys to spend correspondingly greater time observing trial lawyers in court and performing other supervisory functions. The changes would also protect against adverse effects of any sudden, unexpected loss of attorneys with significant case charging responsibilities. Assigning the development of this program to the existing Assistant District Attorney for Special Projects, or other existing staff, should permit these changes to be employed without additional cost.

## **Section 2: Drug Court Operations**

Santa Clara County operates five courts dedicated to felony narcotics prosecutions at its Terraine Street facility. These courts manage felony narcotics cases that have not yet reached the preliminary examination stage of prosecution. They also monitor narcotics defendants who are eligible for and choose to participate in court-monitored drug treatment programs. The District Attorney's Narcotics Unit reports that defendants who reject case settlement offers at the Drug Court often receive later settlement offers

from trial judges (usually at the Hall of Justice Facility) similar to what was proposed at the Terraine Street Facility. The Unit also reports that drug court calendars have a high number of routine status (review) hearings for defendants that could be heard without a prosecutor present, if these matters were coordinated into a single daily calendar. Review of a random sample of 100 cases that moved from Drug Court to trial courts, and a separate sample of 24 days of calendars at Drug Court confirmed these problems.

As a result of these problems, Drug Court does not operate as efficiently as it could. Further consequences of the present operation include the District Attorney's Narcotics Unit spending time to prepare for preliminary hearings and trials on cases that do not end up going forward, and being present for routine court hearings where their presence does not add value.

The District Attorney's Office should confer with the Superior Court on two changes to the current procedure. One change would set up a rotating calendar among the five drug courts, on a daily or weekly basis, to conduct routine review hearings for Drug Court defendants. The other change would recognize and enforce the premise that while defendants generally receive favorable consideration in exchange for a case disposition that includes acceptance of responsibility and acknowledgment of guilt before preliminary examination, absent unusual circumstances, these favorable offers would not be renewed (and never undercut) after preliminary examination. These steps would improve the efficiency of the Drug Court and the Narcotics Unit, keeping cases where a trial is not required in Drug Court, and permitting prosecutors to focus on cases that are actually going to trial or require some further court. We estimate that these steps would permit eliminating one or two attorney positions in the Narcotics Unit, for savings of \$231,000 to \$462,000 annually, or reassigning them to other duties.

Based on these findings, it is recommended that the District Attorney's Office:

- 2.1 Confer with the Superior Court and other affected groups to establish a separate calendar in one Drug Court for routine status reviews in Deferred Entry of Judgment or Proposition 36 cases. A prosecutor would not be present at this hearing, which would be continued to a subsequent date for a prosecutor to be available, in the event that violations of program requirements or other matters requiring further court action are discovered. (Priority 1)
- 2.2 Confer with the Superior Court and other affected groups to modify existing procedure to recognize and enforce the premise that while defendants generally receive favorable consideration in exchange for a case disposition that includes an early acceptance of responsibility and acknowledgment of guilt (e.g. before preliminary examination) absent unusual circumstances, these favorable offers would not be renewed and never undercut after preliminary examination. (Priority 1)

The recommendations of this section would improve the efficiency of the District Attorney's Narcotics Unit. By reducing the number of cases going forward from Drug Court to Trial Court, Recommendation 2.2 reduces the number of cases where prosecutors must prepare for preliminary examination and/or trial. Recommendation 2.1 reduces the number of drug court proceedings where prosecutors must be present



by about 20 percent, allowing that time to be spent on other duties. This would permit one position, costing \$231,328 annually, to be eliminated from the Unit's Terraine Street staff, or moved to other duties. Ultimately, the combination of these two recommendations is expected to permit at least one position, and possibly two, to be eliminated or moved to other duties, depending on the extent of reductions in cases that must be prepared for preliminary hearing or trial. Eliminating two positions would save \$462,656. Once these recommendations are implemented, the results should be evaluated to determine if actual staff reductions are justified by the anticipated efficiency increases.

### **Section 3: Regional Misdemeanor Staffing**

The amount of work assigned to misdemeanor attorneys in the District Attorney's San Jose, North County and South County offices varies widely. The attorney in South County handles all aspects of prosecuting misdemeanors – from issuing cases to taking them to trial – in addition to traffic court. In contrast, misdemeanor case prosecution follows a horizontal structure in San Jose, with one attorney issuing cases, three attorneys handling pre-trials, and five attorneys handling trials. Also in contrast to South County, the two misdemeanor attorneys in North County are not primarily responsible for issuing cases. Furthermore, law clerks handle traffic court in both San Jose and North County.

The workload of attorneys who prosecute misdemeanors in Santa Clara County thus appears inequitable. Based on new misdemeanor cases that were assigned in 2006 and the current level of attorney staffing on each unit or team, the misdemeanor attorney in South County is assigned approximately 51 percent more misdemeanor cases than the average of all locations. As a result of being assigned more work, the South County attorney is not always able to review complaints for issuing or prepare cases for trial during normal business hours.

The District Attorney's Office should therefore augment misdemeanor staffing in South County. This could be accomplished by assigning responsibility for misdemeanor trials in South County to the Central Misdemeanor Team, or assigning a Bar Certified law clerk to the South County Unit that would be responsible for traffic court, legal research and logistics support. If the Central Misdemeanor Team were to handle South County misdemeanor trials, responsibility for the bond calendar could be transferred from the District Attorney's Office to the County Counsel's Office.

Based on these findings, it is recommended that the District Attorney's Office:

- 3.1 Augment misdemeanor staffing in South County through one of the following two options:
  - A. Assign responsibility for the misdemeanor trial calendar in South County to the trial attorneys on the Central Misdemeanor Team. This would require a trial attorney (either a staff attorney or volunteer attorney) to appear at the South County Courthouse each Monday; or

- B. Assign a Bar Certified law clerk to the South County Unit whose primary responsibilities would include traffic court, legal research and logistics support. This would include assisting misdemeanor and felony attorneys with motions and trial preparation. (Priority 2)
- 3.2 Confer with the County Counsel's Office about transferring responsibility for the bond calendar in San Jose to that office if the Central Misdemeanor Team were to handle misdemeanor trials in South County. (Priority 2)
- 3.3 Continue to monitor misdemeanor caseload levels in the outlying offices in comparison to the Central Misdemeanor Team, and more fully evaluate staffing for the entire South County Unit with the opening of the new courthouse in Morgan Hill. (Priority 3)

Implementing the recommendations above would require minimal costs. If a staff attorney or volunteer attorney needed to use a personal vehicle to travel between the offices for the Central Misdemeanor Team and South County Unit during the workday, the District Attorney's Office would be responsible for reimbursing them for their mileage at the Internal Revenue Service's standard rate of 50.5 cents per mile in 2008. With approximately 28.5 miles separating the two offices, the cost to the Department would amount to approximately \$14.39 each way, or \$28.79 round trip.

The benefit of augmenting South County misdemeanor staffing would be to provide the sole misdemeanor attorney greater time to perform issuing and pre-trial functions, which appear to demand the most of his time, thereby increasing case processing efficiency and improving workload manageability. The law clerk would also help to offset the loss of a half-time attorney position for felony prosecution in South County.

Transferring responsibility for the bond calendar in San Jose would have a minimal impact on the County Counsel's Office, since an attorney would need to appear in court for bond calendar matters on Mondays for about two hours, in addition to time spent preparing for the calendar. The benefit of this change to the District Attorney's Office would be to provide trial attorneys on the Central Misdemeanor Team with more time to prepare for trials, including those in South County, and perform other duties. It would also help in continuing to protect the County's interest in the financial outcome of the issues addressed on that calendar.

Finally, continuing to monitor misdemeanor caseload levels in the outlying offices in comparison to the Central Misdemeanor Team would ensure that staffing levels remain appropriate.

#### **Section 4: Prosecutorial Staff Organization**

Prosecutorial services in the District Attorney's Office are organized into approximately 40 different teams to carry out specific functions. The District Attorney, a Chief Assistant District Attorney and five Assistant District Attorneys serve as executive managers, while working-level Supervising Deputy District Attorneys and team leaders oversee teams and key functions. Santa Clara County's District Attorney's Office differs

from other counties in the way certain functions are combined, in how executive managers are classified, and in its mix of attorneys by experience level.

As a result of these differences, Santa Clara County does not have the same flexibility of other counties of moving attorneys among similar types of assignments. It also faces potential executive management functioning problems when there is a change of administration, and has a staffing that is dominated by attorneys paid at the highest job classification and pay levels.

The District Attorney's Office should also follow other counties in promoting staff to executive management at the discretion of the District Attorney, rather than having a dedicated job classification. It should attempt to fill vacancies with entry-level staff where feasible, to provide a better mix of prosecutors at various experience and pay levels. It should also follow other counties in providing periodic formal job evaluations for attorneys. Lastly, it should combine selected prosecutorial teams as recommended in this section to improve flexibility in using staff. These steps would provide more flexibility to the District Attorney's Office in carrying out prosecutorial functions.

Based on these findings, it is recommended that the District Attorney's Office:

- 4.1 Eliminate the existing dedicated job classification for Assistant District Attorneys, replacing it either with a system that would temporarily promote Attorney IVs to executive management at the District Attorney's discretion, or with a County Charter change that would define Assistant District Attorneys specifically as unclassified positions, serving at the discretion of the District Attorney. (Priority 3)
- 4.2 Fill future job vacancies with entry-level staff, reallocating staff as necessary to assign the new staff to misdemeanor prosecution or other duties appropriate to entry-level staff. (Priority 2)
- 4.3 Consider establishing a limited-term hiring system for entry-level staff, similar to that provided in Contra Costa County and Orange County. (Priority 1)
- 4.4 Establish a system of formal written evaluations for attorney staff, as called for by the County Ordinance Code. (Priority 2)
- 4.5 Combine the Consumer Protection and Environmental Crimes units, and place the existing Major Fraud, Real Estate Fraud and Elder Fraud units under the same Supervising Deputy District Attorney position, eliminating one of the two vacant positions created by pending retirements in the Major Fraud and Consumer Protection units. (Priority 1)

The recommendations of this section will provide greater flexibility in the allocation of attorney staff, and will avoid future problems in organizing executive management when there is a change of administration in the District Attorney's Office. Furthermore, each replacement of a Step 5 Attorney IV position with a Step 1 Attorney I position would generate savings of approximately \$100,000 per year initially, diminishing to zero over 9.5 years as entry-level attorneys progress to the top of the classification and

salary scale. Furthermore, placing the Major Fraud, Real Estate Fraud and Elder Fraud units under the same Supervising Deputy District Attorney, and eliminating one of the two positions expected to be vacated by this retirement and a separate retirement in the Consumer Protection Unit, would save up to \$248,730 in salary and benefits annually.

## **Section 5: Bureau of Investigation: Operations**

The Investigation Bureau supports the District Attorney's Office with an authorized staff of 91 sworn positions, including three management positions, eight division supervisors, 15 team-lead criminal investigators, and 65 criminal investigators. Although the job description for Criminal Investigator III (division supervisors) specifies that these positions are working supervisors, the two supervisors over public assistance fraud units do not carry current caseloads, despite the fact that the public assistance fraud units have a backlog of more than 500 open, but unassigned cases, and cases are regularly closed without having been investigated or prosecuted due to the expiration of the four-year statute of limitations.

In addition, the Investigation Bureau's case management system, CRIMES, would provide the capability for management and supervisors to monitor caseload, timeliness, productivity, and backlogs, if CRIMES was diligently used by investigators. However, a review of the data in CRIMES as of November 2007, showed that approximately 42 investigators in the system with open cases and/or tasks no longer work for the District Attorney's Office, other staff who are current employees are not using the system, and staff in some special units use alternative systems and do not use CRIMES at all. Consequently, monitoring and reporting of individual and unit caseload and productivity is inconsistent and based on unreliable data.

As a result, the public assistance fraud case backlog is exacerbated, and the reliability and value of the CRIMES case management system as a management tool has been diminished.

By adhering to the requirement that all Criminal Investigator III positions carry a caseload as working supervisors, and ensuring the diligent usage of CRIMES by all investigative staff as described in this section, operational efficiency, investigator and investigation unit productivity could be improved.

Based on these findings, it is recommended that the District Attorney's Office:

- 5.1 Require all Criminal Investigator III division supervisors to perform as working supervisors in accordance with County job specifications. (Priority 1)
- 5.2 Implement procedures to ensure that all investigative staff diligently use the CRIMES case management system so that management and supervisory monitoring and reporting of individual and unit caseload and productivity is consistent throughout the Bureau and based on reliable data. (Priority 1)

The implementation of these recommendations would improve operational efficiency, and investigator and investigation unit productivity, and would make some reduction

in the current level of reported public assistance fraud that is not investigated or prosecuted.

## **Section 6: Bureau of Investigation: Organization and Staffing**

The organizational structure of the Bureau of Investigation includes approximately 30 separate units divided among eight divisions. Bureau staffing includes a total of 104 positions. Twenty-three senior level positions have day-to-day supervisory duties, resulting in a span-of-control ratio of approximately 1:2.96 (one supervisor for each 2.96 investigative staff). In addition, 79 of the 80 Criminal Investigator positions are staffed at the higher Criminal Investigator II level, qualifying persons in this classification to work at a fully qualified journey level with minimal supervision.

Further, the disproportionate weighting of the current staffing mix with Criminal Investigator II positions (79) versus Criminal Investigator I positions (1), is not consistent with prevailing practices in many comparable counties that utilize a substantially greater proportion of entry level sworn and civilian investigative assistants. This practice also deviates from previous investigator staffing models of the Bureau of Investigation that included approximately 40 percent Criminal Investigator I and Investigative Assistant positions.

Lastly, a review of investigator hiring practices in recent years indicated that vacancies were often filled by late-career transfers from other law enforcement agencies. While this practice brings in staff with long years of investigative experience, a mixture of entry-level, mid-career and late-career staff would better balance the goal of having experienced day-to-day investigators with other goals, such as developing a cadre of staff as potential future managers within the Bureau who have direct experience in many Bureau assignments.

Due to these organizational and staffing issues, the Investigation Bureau is more costly than necessary, operates with a span-of-control ratio that is inconsistent with its highly experienced journey level investigative staff, and lacks a continuing base of investigative staff hired and trained by the District Attorney's Office with broad experience in its many units and functional specialties.

By reorganizing the Bureau as described in this Section, and increasing the usage of Criminal Investigator I and Investigative Assistant staffing in the future, the Bureau can achieve a supervisory span of control more consistent with its staffing mix, improve cost effectiveness and reduce total County, State and federal costs by an estimated \$434,000 annually.

Based on these findings, it is recommended that the Bureau of Investigation:

- 6.1 Reorganize Bureau reporting responsibilities as shown in Exhibit 6.1 and consolidate the two Public Assistance Fraud Divisions to improve span-of-control ratios in the Bureau, including the deletion of one Criminal Investigator III position and the addition of one Criminal Investigator II position as described in this section. (Priority 2)

- 6.2 Make an assessment of the investigative responsibilities throughout its units to identify those positions that could be filled with lower level sworn or civilian support staff, based on the duties and responsibilities of the positions, and fill positions as they become vacant with appropriate lower level sworn or civilian staff. (Priority 1)
- 6.3 Establish an investigative recruitment policy that will result in a more balanced workforce of entry, mid and senior level sworn investigative and civilian support staff on an ongoing basis. (Priority 1)

It is recommended that the Employee Services Agency and County Counsel:

- 6.4 Prepare an amendment to the Personnel Section of the County Ordinance Code to provide a generic, but thorough definition of the duties, responsibilities, and other issues pertaining to the use of Lead positions in County service. In addition, ESA should review the job descriptions of the Criminal Investigator series to determine if changes and/or an expanded description should be prepared for Lead-Criminal Investigator II positions, and if any changes are needed in the Criminal Investigator III job description, to clarify the working supervisor responsibilities of the position. (Priority 2)

The implementation of these recommendations would improve organizational efficiency, and increase cost effectiveness. Operational savings are estimated to amount to approximately \$434,000 annually, including \$178,000 General Fund savings and \$256,000 State and federal savings or increased State and federal program services.

## **Section 7: Bureau of Investigation: Staff Accountability and Organizational Policies and Procedures**

The Bureau of Investigation of the Office of the District Attorney is the only County law enforcement agency that does not conduct annual performance evaluations of sworn staff.

In addition, most investigative staff of the Bureau are not required to submit detailed periodic timesheets, nor are they required to account for their time on a daily activity log. Although Bureau supervisors prepare divisional status reports every four months, these reports compare division goals and prior year workload and statistics to the current period. Individual investigator caseloads and productivity are not consistently monitored and evaluated by supervisors on a monthly basis, and supervisors do not receive monthly management reports pertaining to individual investigator caseloads, productivity or other performance indicators.

The Bureau of Investigation policy and procedure manual was written about 13 years ago and was substantially updated approximately eight years ago. Although six of the 74 policies and procedures were rewritten in the past two years, the manual is no longer comprehensive or fully current and should be updated.

Due to these personnel and internal control issues, the level of accountability is inadequate for highly compensated professional staff on whom the taxpayers rely to

perform a vital law enforcement function, and incomplete or dated policies and procedures can diminish the consistency and quality of investigative performance.

By developing and implementing organizational, accountability and performance policies and procedures as described in this section, investigation quality, timeliness, productivity, and cost effectiveness can be improved.

Based on these findings, it is recommended that the District Attorney's Office:

- 7.1 Request the Employee Services Agency begin a meet and confer process with the District Attorney Investigators Association, Inc. to develop and implement a performance evaluation system for its investigative staff. (Priority 1)
- 7.2 Develop and implement a Department-wide monthly time reporting system for all staff. This information should be used to create monthly management reports for all managers and supervisors. (Priority 2)

It is recommended that the Bureau of Investigation:

- 7.3 Review and update its general policy and procedure manual as well as its operational policy and procedure manuals in each division, and amend Bureau policies to ensure that all Bureau policy and procedure manuals are continuously reviewed and updated. (Priority 2)

The implementation of these recommendations would improve organizational, division, unit and individual efficiency, productivity, cost effectiveness, and accountability. The cost associated with the development and/or acquisition of a time reporting system has not been estimated.

## **Section 8: Bureau of Investigation: Interdepartmental Services**

The Investigation Bureau provides interdepartmental security services to the Department of Child Support Services (DCSS), based on its prior relationship to the Department when Child Support Services was administered by the Office of the District Attorney. Although the co-location of the Department of Child Support Services and the District Attorney's Public Assistance Fraud Investigation Unit is an advantage for the District Attorney's Office to provide these services, the high cost of the Criminal Investigator II position exceeds the cost of a typical public agency security guard by approximately \$94,000 per year, making it an inappropriate choice.

As a result, the cost of security services provided to the Department of Child Support Services is excessive.

By obtaining building security services through an appropriate job classification, the Department of Child Support Services could improve cost effectiveness and save up to \$94,133 annually. The District Attorney's Investigation Bureau could redirect professional investigation resources to the intended purposes immediately upon the vacancy of another investigator position within the Bureau.

Based on these findings, it is recommended that the Department of Child Support Services:

- 8.1 Purchase the services of a Protective Services Officer from the Social Services Agency, or a Deputy Sheriff or Sheriff's Security Guard from the Sheriff's Department, or request a position of Protective Services Officer in the FY 2008-09 budget and reduce or delete the object two funds currently used to purchase security services from the Office of the District Attorney. (Priority 3)

It is recommended that the District Attorney's Office:

- 8.2 Delete one Criminal Investigator II position from the FY 2008-09 budget and reassign the criminal investigation staff who are currently providing DCSS facility security to appropriate criminal investigation functions through attrition. (Priority 3)

The implementation of these recommendations would result in savings for the Department of Child Support Services ranging from \$38,909 to \$94,133 annually. The Office of the District Attorney would be able to immediately fill a Criminal Investigator II position when a vacancy occurs with an experienced investigator, who is fully knowledgeable of the policies and procedures of the Bureau of Investigation.

## **Section 9: Crime Laboratory Photography Services**

The Crime Laboratory for Santa Clara County provides photography services to local law enforcement agencies. Its main photographic service is to develop film taken by local law enforcement agencies at crime scenes. In very rare instances, the photographer is sent to photograph crime scene locations for evidentiary purposes.

However, with the advent of digital technology, local law enforcement agencies, the District Attorney and the Sheriff's Department are using less film and thus rely less on the services of the Crime Lab's photography unit. Also as a result of new technology, the Crime Laboratory's picture-taking workload for its core functions is decreasing. To offset the decrease in Crime Laboratory work, the Crime Laboratory's photographer is providing photography services to County non-criminal justice agencies. However, with the decrease in workload there is insufficient work to warrant a 1.0 full time equivalent photographer at the Crime Lab.

By charging the non-General Fund agencies for services related to photography services, the County could increase revenue. However, the non-Crime Laboratory work would not generate enough revenue to make the position cost neutral, or even generate enough revenue to make the position less costly for the County.

Deleting the Crime Laboratory's Photographer position through attrition would reduce the District Attorney's salary costs by approximately \$83,000 annually. Elimination of this position should be offset by a contract photographer or cross-training of existing staff for non-Crime Laboratory work and the remaining Crime Laboratory work, should any exist, should be carried out by a part-time position.



Based on these findings, it is recommended that the District Attorney's Office:

- 9.1 Delete the Photographer (J39) position from the Crime Laboratory through attrition and delete non-salary expenditures when the position becomes vacant. (Priority 2)
- 9.2 Assess the quality of photographic evidence it is receiving from law enforcement agencies, particularly those that are doing all the photography and photo processing themselves. If necessary, the Office should require the Crime Laboratory photographer to provide training to County and non-County law enforcement agencies on digital camera photography and other work that these agencies could provide in lieu of the Crime Laboratory providing these services. (Priority 3)
- 9.3 Develop a plan for replacement of this position by a contractor, training of existing staff, or a part-time position if necessary for non-Crime Laboratory photography work. (Priority 3)

Implementation of these recommendations would result in savings of approximately \$75,000 in salary and non-salary savings, the reduction of the position minus replacement costs for a part-time position or a contractor.

## **Section 10: Break Periods for Clerical Staff**

Pursuant to the labor agreement between the County of Santa Clara and SEIU Local 715 (now 521), County departments must grant workers covered by this agreement a fifteen minute rest period during each four hours of work. As of August 20, 2007, there were 90 filled non-supervisory clerical FTEs in the Legal Support Operations Division of the District Attorney's Office, with an average cost around \$79,000 per position. Interviews with staff and limited survey responses from applicable support personnel indicate that the large majority of these clerical staff are taking two 30-minute breaks each day.

Clerical staff that take an additional 30 minutes of non-productive break time daily are operating in a manner that is inconsistent with the labor agreement, resulting in a large number of non-productive work hours each year over and above the amount permitted by the labor agreement. The value of this time is estimated to be at least \$281,000, and could be more than \$500,000 per year.

By limiting the length of each break to 15 minutes, the equivalent of approximately four to six additional clerical staff positions would be available each year. This would effectively expand the filled clerical support positions by four to seven percent, improving the availability of support staff to fulfill the Department's mission. A small amount of additional paralegal support might also be available.

Based on these findings, it is recommend that this matter be referred to the Administration of the Employee Services Agency:

- 10.1 To enforce the break times authorized for clerical and paralegal staff in the District Attorney's Office to 15 minutes for each four hours worked. (Priority 1)

- 10.2 To determine whether there are other County departments in which a majority of personnel take breaks in excess of that specified by the applicable MOU, and enforcing the negotiated break time. (Priority 3)

The implementation of these recommendations would better ensure that clerical and Paralegal employees are operating in a manner that is consistent with the Local 715 (521) labor agreement. This would result in the availability of several thousand hours of additional staff time each year to devote to unmet workload demands. These unproductive hours cost County taxpayers at least \$281,000 to as much as \$500,000 per year, and reduce the efficiency of the Department.

## **Section 11: Inefficient Allocation of Support Duties**

As a result of the poor ratio of paralegal staff to attorneys in the District Attorney's Office, lawyers are spending up to half of their time engaged in duties such as coordinating witnesses' court appearances and associated travel arrangements, preparing information that must be released to the defense, creating visual depictions of evidence, compiling and summarizing evidence, typing letters, transcribing tapes, and similar activities. We estimate that more than two dozen attorneys spend between 40 and 50 percent of their time on such paralegal tasks.

The average prosecutor costs more than double that of a Senior Paralegal; therefore, the office pays at least \$3.34 million more per year than necessary to carry out many paralegal tasks, while simultaneously depleting the time and energy attorneys have to prepare for trials. Lack of sufficient paralegal staff sometimes causes prosecution delays, results in overwork of some paralegals, reduces "counts" filed, and curtails assistance to victims and witnesses. In at least one case, insufficient paralegal staff resulted in the prosecutor having the crime victim compile evidence for trial.

Paralegal positions should be increased by as much as a level equivalent to the number of hours attorneys are spending on paralegal duties, with this expense offset by a reduction in attorney positions equivalent to as much as the number of hours that attorneys engage in paralegal duties. Consolidating attorney functions among fewer prosecutors while increasing the total work hours would enable the District Attorney's Office to substantially improve its service level and efficiency, and generate an undetermined but potentially significant amount of savings as a result of more timely prosecution.

Based on these findings, it is recommended that the District Attorney's Office:

- 11.1 Reduce attorney staffing through attrition by up to 12 positions – the number of positions equal to the conservatively estimated number of work hours that attorneys now spend on non-attorney duties – and use most of the savings to gradually increase the paralegal staff by up to 25 positions. (Priority 1)
- 11.2 Implement a training program to assist attorneys in learning to delegate to and maximize use of paralegal staff. (Priority 1)

- 11.3 Use a portion of the additional savings from implementation of Recommendation 11.1 to add a Messenger Driver whose route includes daily service to the South County. If Recommendation 11.1 is not implemented, the District Attorney should attempt to provide for a Driver through other funding sources, if and when they become available. (Priority 2)

Implementation of Recommendation 11.1 would substantially improve the Department's efficiency and internal and external service levels by re-allocating up to \$3.34 million worth of tasks that are currently carried out at more than twice the necessary rate. The extent of benefits would depend on the extent to which the recommendation is fully implemented. If fully implemented, this would save the General Fund an estimated \$75,000 per year in personnel costs, and result in undetermined savings as a result of improved timeliness of prosecution, while adding as many as 21,500 net new professional staff hours. It would also potentially improve the effectiveness of prosecution, due to the filing of additional counts in some cases, and improvements in the level of preparation that attorneys would be able to complete in advance of trial. Implementation of 11.2 would assist attorneys in learning to use paralegal support, and ensure that duties are delegated where appropriate. There would be modest costs associated with this recommendation, which would be offset by savings as a consequence of improved timeliness of prosecution. Implementation of Recommendation 11.3 would improve the timeliness of prosecution of South County cases. This recommendation could be paid for entirely from the net savings from Recommendation 11.1, leaving approximately \$5,400 in additional direct personnel savings, plus an undetermined amount of savings resulting from efficiency gains.

## **Section 12: Payroll Inefficiencies and Control Concerns**

The administration of payroll in the District Attorney's office is inefficient, as there are approximately 24 individuals performing time tracking and data inputting duties at some time during the year. Of the 15 persons who regularly devote several hours per pay period to these duties, more than half are in classifications that do not specify payroll as part of their duties.

Some staff who are carrying out payroll tasks have had limited training in payroll procedures and are uncomfortable preparing payroll and resolving intricate payroll questions and problems. In addition, assignment of payroll duties to the clerical manager and clerical supervisors diverts time from the supervision and management responsibilities of individuals who have large spans of control.

Furthermore, because there are no timecards and most employees have their payroll administered by someone other than their supervisor, the possibility exists that some staff could take vacation or sick leave without ever having it recorded, resulting in possible double payments. In addition, the lack of adequate documentation of time worked has resulted in the State's denial, currently under appeal, of more than \$1 million of the District Attorney's SB 90 reimbursement claims.

We recommend that the District Attorney implement supervisor-approved timecards for all employees, and hire an Associate Management Analyst-B to process and manage payroll each period. This would improve the accuracy, efficiency and internal controls

in the District Attorney's payroll process, and ensure the recovery of all eligible reimbursements and grants.

Based on these findings, it is recommended that the District Attorney's Office:

- 12.1 Implement a timecard system, with time worked and leave time approved by each employee's supervisor, and which clearly delineates time spent on reimbursable activities, and which is submitted to a central payroll processing position. (Priority 2)
- 12.2 Hire an Associate Management Analyst-B position to manage the Office's payroll processes and inquiries and ensure that the Office accounts for and charges the maximum amount of eligible work time to grant-funded and reimbursable activities. (Priority 1)

Implementation of Recommendation 12.1 would result in negligible costs to produce, complete, sign and deliver timecards. Implementation of Recommendation 12.2 would result in additional personnel costs. The top-step cost, including all benefits, for an Associate Management Analyst-B in the FY 2007-08 budget is \$97,888. The costs for both of these changes would be partially or entirely offset by improved efficiencies resulting from having existing staff focus on their area of expertise instead of payroll, ensuring that leave time is not double paid, reducing payroll errors and corrections, and ensuring that the Office obtains all grants and reimbursements to which it is entitled.

### **Section 13: Vehicle Assignment and Use**

The District Attorney's Office has approximately 116 assigned vehicles, 29 of which are self-reported (and authorized by management) to be used for commute purposes. Through this process, approximately 25 percent of the Bureau of Investigations staff is commuting in County-owned vehicles, some of which are grant funded. The rationale for the assignment of commuter vehicles to most commuting Bureau staff is that employees are "frequently required to perform County business before or after normal working hours and/or on-call 24 hours."

However, none of the Bureau's staff are ever placed "on call." Of the 15 vehicles assigned to staff for which we were able to assess usage based on available records, documented after-hours calls for service in 2006 were infrequent. Included among the staff whose vehicle use appears inconsistent with the assignment rationale are persons whose round-trip commutes from home to the District Attorney's main office span nearly 100 miles, and one individual with a recent history of multiple at-fault accidents in a County vehicle.

Bureau administrators have said that the practice of providing numerous vehicles is a more cost-effective means of ensuring staff are available to respond to after-hours calls than paying a few individuals "on-call" pay. However, our estimates indicate that providing on-call pay and temporary vehicles to limited staff would be less expensive than the current vehicle assignments, saving as much as \$94,500 per year. In addition, providing "on-call" pay and temporary commute vehicles would reduce the potential for accidents in County vehicles and associated costs.

The County should therefore develop and implement a County-wide policy governing the criteria for assignment of commuter vehicles, and the District Attorney should restrict use of commuter vehicles to individuals whose positions and actual work demands clearly necessitate such vehicle use. The District Attorney should improve records to enable upper management to better monitor vehicle needs and uses, and the Bureau should provide staff with “on-call” pay and temporary “on-call” vehicles when necessary.

Based on these findings, it is recommended that the Board of Supervisors:

- 13.1 Direct the County Executive’s Office, Fleet Management and Risk Management to develop and implement a County-wide policy governing the criteria for assignment of commuter vehicles and the assigned party’s responsibilities, including payment of any required income taxes, associated with use of such vehicles. (Priority 2)
- 13.2 Direct County payroll personnel to determine whether there are applicable taxes owed by any current and all future commuters in the District Attorney’s office, in keeping with its recent practice. (Priority 3)

It is recommended that the District Attorney’s Office:

- 13.3 Improve records available to upper management regarding vehicle needs, assignments and usage, and monitor vehicles whose mileage is higher or lower than expected or reasonable given the nature of the assigned individual’s job duties to assess whether the vehicle is needed and usage appears appropriate. (Priority 1)
- 13.4 Restrict use of commuter vehicles to individuals whose positions and work demands clearly necessitate such vehicle use. It appears likely that this restriction would facilitate a reduction of the 13 commute vehicles shown in Appendix 13.2. (Priority 2)
- 13.5 Evaluate implementation of a policy requiring investigators to inform dispatchers when they are on the scene of events to improve officer safety and facilitate the capture of information regarding the time and nature of responses, or cease installing emergency radio equipment. (Priority 3)

Implementation of Recommendation 13.1 would establish specific criteria for assignment of vehicles and commute authorization, and delineate responsibilities for users. Recommendation 13.2 would ensure that taxes are paid, if and when they are applicable. Implementation of Recommendation 13.3 would facilitate management’s ability to ensure that individuals have vehicles necessary to carry out their duties, help ensure that uses are authorized and appropriate, and ensure that commute vehicles are issued on the basis of clear, documented need. An undetermined amount of savings would be generated if the District Attorney were to reduce driving and/or reduce the overall size of its fleet. Implementation of Recommendation 13.4 would save the District Attorney an estimated \$94,500 per year. Implementation would also reduce the chance of staff having a vehicle accident in a County car. If deemed necessary following the

evaluation called for in Recommendation 13.5, implementation of a policy requiring investigators to inform dispatchers when they are on the scene of events could improve investigator safety and provide better documentation of investigators' responses and vehicle needs. Conversely, if investigators are not using the equipment, the District Attorney should cease having it installed as vehicles are replaced. For each vehicle in which such equipment is not purchased and installed, the County would save approximately \$2,000.

## **Section 14: Fee Collection for Crime Laboratory Services**

Although the Crime Laboratory has received \$1.9 million in fees in Calendar Year 2006, and anticipates \$2.3 million in Calendar Year 2007, the Crime Lab has implemented a method for charging fees that is inequitable, does not fully recover costs, and does not charge for specific types of analysis.

Further, the Crime Laboratory and the Sheriff's Department do not assess any Crime Laboratory fees for jurisdictions and agencies where the Sheriff is the municipal police department. The failure to collect revenue from these jurisdictions and agencies has resulted in a current calendar year projection of approximately \$112,000 in lost County revenue.

As a result, the Crime Laboratory does not recover all costs for which it can legitimately charge, and law enforcement agencies may not utilize its services as efficiently as they would if they were properly charged for services.

To address these problems, the Crime Lab should revise its agreements with local law enforcement agencies to get a more accurate billing structure that charges for various types' of analysis that are included in the major cases. The Crime Laboratory and County Executive should perform a full cost accounting to determine specific costs of providing crime lab services. In addition, the Crime Laboratory should begin billing jurisdictions and agencies where the Sheriff's Department provides police services, with the County collecting those charges through the law enforcement contracts.

Based on these findings, it is recommended that the District Attorney's Office:

- 14.1 Implement staff tracking by case to determine specific staff costs associated with cases when the new LIMS system is implemented and perform a full cost accounting analysis. (Priority 2)
- 14.2 Coordinate with the County Executive and the Sheriff's Department to implement Crime Laboratory fees to jurisdictions and agencies for whom the Sheriff's Department acts as a municipal law enforcement agency. (Priority 1)
- 14.3 Collaborate with the County Executive and the County Police Chiefs' Association to determine a more equitable fee schedule for Crime Laboratory services, which still recoups costs from non-County agencies. (Priority 2)
- 14.4 Report back to the Board of Supervisors in six months on the status of Recommendation 14.2 and 14.3. (Priority 3)

- 14.5 Work with the County Executive to perform an analysis of the fee schedule for non-County agencies to improve cost recovery. (Priority 3)

Implementing new fees charged to jurisdictions in the County in which the Sheriff's Department provides local police services would result in approximately \$112,000 in additional revenues annually and provide a more equitable fee schedule. Developing a new fee schedule for non-County agencies would ensure that these agencies are charged equitably, while also ensuring that fees are properly based on costs, and that costs are recouped where possible.

## **Section 15: District Attorney Management Information**

Supervising Deputy District Attorneys overseeing functional teams, Assistant District Attorneys and the Chief Assistant District Attorney, generate various statistical reports on key functions, as do managers in the Bureau of Investigation, while the Administrative Services Unit generates financial and budget reports. Many of these reports are generated on an ad hoc basis, and in some cases limitations in data systems reduce their utility. Furthermore, there is limited sharing of these reports among executive management of the Office, and relatively little information from these reports is migrated to the District Attorney.

As a result, the District Attorney is not as informed as she could be about the activities going on in the District Attorney's Office, and executive management members miss opportunities to share information that could lead to reconfiguring staff or making other procedural changes based on changing office priorities.

Coincident with the implementation of a pending new data management system in the District Attorney's Office, the Office should develop a set of management reports, as described in this section, to track key performance indicators in the Office, and to provide limited narrative description of key activities in prosecutorial or investigative units. Collection of information for these reports should be coordinated by the Administrative Services Division. These reports will provide a method for information sharing among executive management in the District Attorney's Office, provide more information for the District Attorney on the activities of her staff, and enhance the managerial capabilities of the Office.

Based on these findings, it is recommended that the District Attorney's Office:

- 15.1 Create a list of all existing reports generated from CRIMES or other sources and used by supervisors and executive managers in the District Attorney's Office. (Priority 2)
- 15.2 Determine, through a series of shorter discussions at regular weekly meetings of executive management or several lengthier workshops, which of the existing reports should be carried over to the new CRIMES system, and which ones the District Attorney desires to receive on a monthly or quarterly basis. Also identify any new reports that are desired from the new system, consulting with the Information Services Manager as to whether they can be created. (Priority 2)

- 15.3 Develop, as described in this section, a more extensive procedures manual for entering information into the new CRIMES system, including defining in greater detail what information should be entered when cases are referred by law enforcement or at other key milestones. (Priority 2)
- 15.4 Provide the District Attorney and all executive managers monthly and/or quarterly management reports as developed through Recommendation 15.2, including statistical information and short narrative explanations of that information and other key topics. Information for these period reports will be collected by the Administrative Services Unit, working in conjunction with the Chief Assistant District Attorney and the Assistant Chief of the Bureau of Investigation. (Priority 2)

The process described in this section will result in the District Attorney and executive management having key information needed to monitor the Office's performance. Developing a new system of management reports is timely, because of the expected implementation of a new version of the CRIMES database system in the District Attorney's Office. The development and implementation of a quarterly management report will enhance the ability of District Attorney management to operate in a cost-effective manner, and to maximize the effectiveness of the Office's law enforcement efforts.



## **Introduction**

This *Management Audit of the Office of the District Attorney* was authorized by the Board of Supervisors of the County of Santa Clara as part of the County's FY 2007-08 Management Audit Program, pursuant to the Board's power of inquiry specified in Article III, Section 302 (c) of the Santa Clara County Charter. The Board of Supervisors selected the audit topic after considering the annual County-wide audit risk assessment conducted by the Management Audit Division in accordance with Board directive.

## **Purpose and Scope**

The purpose of the management audit was to examine the operations, management practices and finances of the Office of the District Attorney, and to identify opportunities to increase the Department's efficiency, effectiveness and economy.

As part of this management audit, we interviewed representatives from the Office of the District Attorney and other County departments, including the County Counsel's Office, Controller-Treasurer Department, Facilities and Fleet Department, Sheriff's Office, County Communications, Public Defender's Office, Information Services Department and Employment Services Agency. When necessary, we contacted these other departments to verify processes and discuss audit areas in which they played an important role. To understand the operations of the Office of the District Attorney and the areas discussed in the audit, we reviewed documentation provided by the Department, survey responses provided by other jurisdictions, and various other internal and external documents. We also analyzed data collected from systems maintained by the Department or elsewhere in the County.

This report includes 15 findings that encompass major areas of Department operations. Included are findings related to prosecutorial and investigative operations and organization, support services issues, and fiscal and management issues. While the Management Audit Division seeks to focus its work on the auditee and its operations, the inter-relatedness of County departments occasionally requires audit findings to consider other departments and include recommendations to improve the overall effectiveness of County operations.

The report identifies \$112,000 in potential ongoing revenues, and \$1,914,419 of gross expenditure savings and/or increased services at no additional cost. These potential savings and increased services include General Fund monies, grant funds and State and federal reimbursements. Additionally, the report includes potential on-going expenditures of \$97,888 in order to strengthen internal controls over the payroll system and facilitate the commencement of detailed time reporting by all staff in the Office of the District Attorney. The implementation of a detailed time reporting system will ensure the full reimbursement of all state, federal and other grant funds, which will produce increased reimbursements that are projected to equal or exceed the cost of this position on an on-going basis.

## Audit Methodology

This management audit was conducted under the requirements of the Board of Supervisors Policy Number 3.35 adopted June 26, 2001. That policy states that management audits are to be conducted under generally accepted government auditing standards issued by the United States Government Accountability Office. In accordance with these requirements, we performed the following management audit procedures:

- Audit Planning – The management audit was selected by the Board of Supervisors using a risk assessment tool and estimate of audit work hours developed at the Board's direction by the Management Audit Division. After audit selection by the Board, a detailed management audit work plan was developed and provided to the Department.
- Entrance Conference – An entrance conference was held with the District Attorney and managers to introduce the management audit team, describe the management audit program and scope of review, and respond to questions. A letter of introduction from the Board, a management audit work plan, and a request for background information were also provided at the entrance conference.
- Pre-Audit Survey – A preliminary review of documentation and interviews with managers from the involved departments were conducted to obtain an overview understanding of the District Attorney's Office, and to isolate areas of operations that warranted more detailed assessments. Based on the pre-audit survey, the work plan for the management audit was refined.
- Field Work – Field work activities were conducted after completion of the pre-audit survey, and included: (a) interviews with management and line staff of the Department; (b) a further review of documentation and other materials provided by the Department and available from other sources; (c) analyses of data collected manually and electronically from systems maintained by the Department or elsewhere in the County; and, (d) surveys of other jurisdictions to measure performance and to determine organizational and operational alternatives that might warrant consideration by the County of Santa Clara.
- Status Reporting – Informal status reports were provided to the District Attorney or managers to describe the study progress and provide general information on our preliminary findings and conclusions.
- Draft Report – A draft report was prepared and provided to the District Attorney. The draft report was also provided to County Counsel to obtain input regarding legal issues that surfaced during the course of the study. The Employee Services Agency and the Controller-Treasurer's Office were also provided sections of the report.
- Exit Conference – An exit conference was held with the District Attorney and responsible managers to collect additional information pertinent to our report, to obtain their views on the report findings, conclusions and recommendations, and to make corrections and clarifications as appropriate.

- **Final Report** – A final report was prepared after review and discussion of the report content with the District Attorney and responsible managers. The Department was requested to provide a written response, which is attached.

## **Description of the Office of the District Attorney**

The Office of the District Attorney is the public prosecutor responsible for attending the courts and conducting all prosecutions for public offenses on behalf of the people. The Office prosecutes violations of State law and County ordinances, but not federal law or city ordinances. The District Attorney, an elected official, is the chief law enforcement official in the County and acts as both a county officer and a state officer.

### *Revenues and Expenditures*

Approximately 45 percent of the District Attorney's total budget is supported by General Fund subsidy. Non-general fund funding is from a variety of sources including grants, fees, revenues from Superior Court for juvenile dependency, SB90 revenues and Public Safety Sales Tax revenues.

In FY 2007-08, the Department's approved budget totaled \$81.2 million in net expenditures after \$17.8 million in expenditure transfers. The gross expenditures include \$80 million for salaries and benefits, \$19.2 million for services and supplies and the remaining \$0.5 million for fixed assets.

### *Caseload Compared to Other Counties*

In order to gain a better understanding of the Department's caseload compared to other jurisdictions, we surveyed District Attorney's Offices in several of the most populous counties in California. A complete summary of the five responses is provided at the end of this section. Table I.1 on the following page summarizes the number of total complaints, including misdemeanors and felonies, filed in each county in 2006, as well as attorney and investigator staffing levels. Staffing counts include all classifications of attorneys and investigators, some of whom are supervisors who do not carry caseloads. It should be noted that the number of staff shown in Table I.1 includes all staff, irrespective of the funding source. Therefore, the workload data is based on total complaints and total staffing, including General Fund and grant funded positions.

Table I.1

**Complaints Filed in 2006 Among Counties Surveyed**

	Attorneys	Investigators	Total Complaints Filed	Complaints per 100 persons in population	Complaints per Attorney	Complaints per Investigator
Fresno	135	66	45,195	4.90	335	685
San Bernardino	239	59	57,795	2.83	242	980
<b>Santa Clara</b>	<b>171</b>	<b>90</b>	<b>34,722</b>	<b>1.91</b>	<b>203</b>	<b>386</b>
Contra Costa	100	26	15,407	1.48	155	593
San Diego	326	185	46,349	1.49	142	251
San Francisco	136	83	12,434	1.52	91	150
Average	184	85	35,317	2.35	195	507
Avg Excl Fresno	194	89	33,341	1.84	167	472

Source: Population estimate is from the California Department of Finance.

As shown in the table, the Santa Clara County District Attorney's caseload for attorneys is slightly higher than the average of all counties surveyed. By comparison, there are at least one hundred fewer complaints filed per investigator in Santa Clara County than the average of all other counties surveyed.

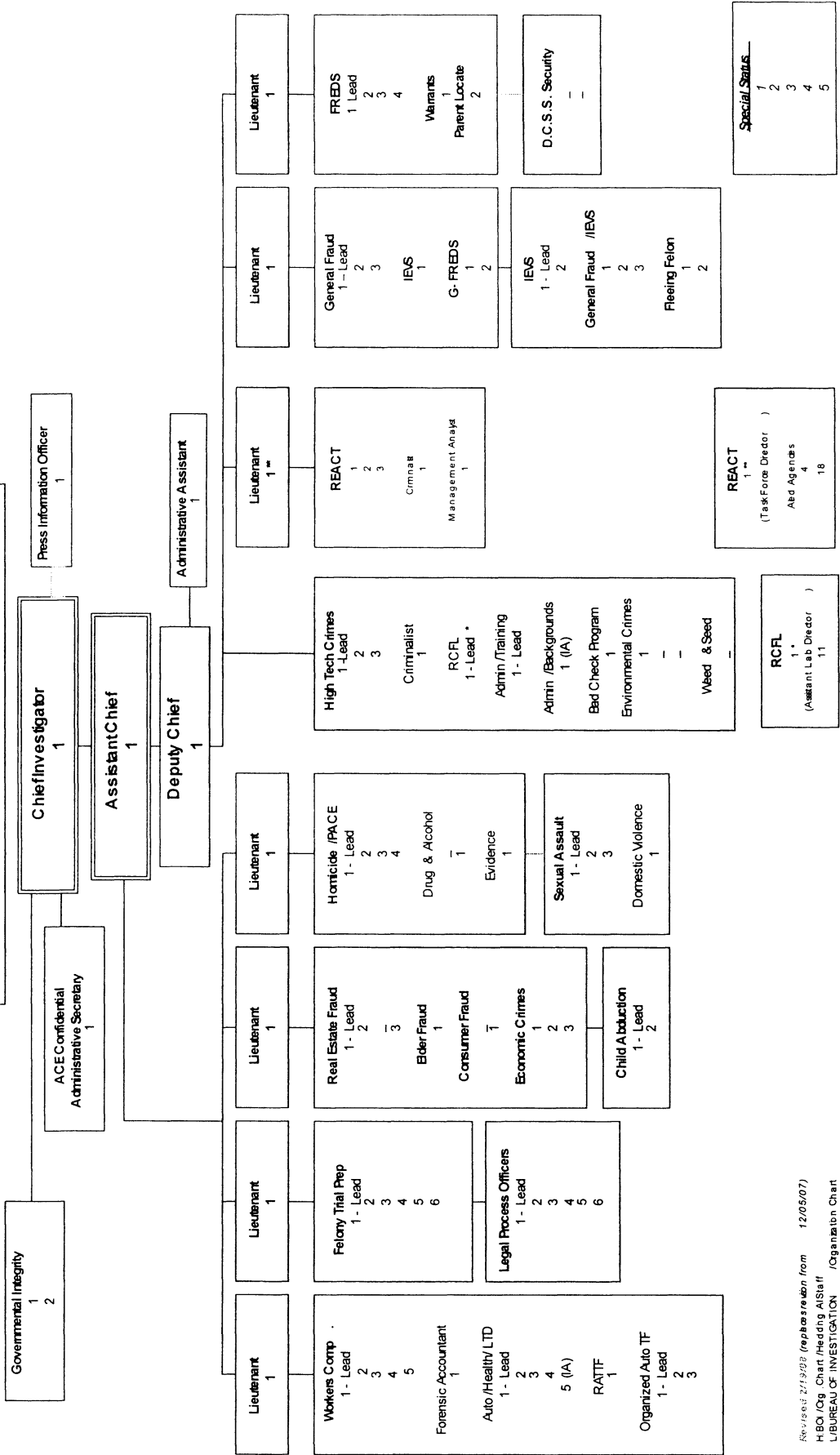
As previously indicated, Table I.1 reports gross comparison data for all counties based on total complaints filed (felony and misdemeanor), and total staff (General Fund, grant funded, and State and federal reimbursed). While the FY 2007-08 Mandate Study showed that the felony workload of the 36 investigative staff funded by the General Fund was approximately equal to the average felony workload in the 10 most populous counties, the purpose of Table I.1 is to provide a broad overall comparison of total staffing and total workload with the five counties that responded to our survey of district attorney offices. No workload analysis was conducted of the 54 non-General Fund investigative positions in Santa Clara County, compared with the non-General Fund staffing and workload in the survey counties. This information is not intended to be the basis of staffing decisions, but rather to provide a frame of reference for information to follow in this report.

### *Organizational Structure*

The Office of the District Attorney consists of 41 functional units comprised of 500.5 budgeted positions. The units and positions are divided as depicted in the organizational charts on the next three pages. In addition to the 165 deputy district attorneys, the units are staffed by administrative personnel, investigators, and paralegals.



# BUREAU OF INVESTIGATION



Revised 2/19/98 (replaces from 12/05/07)  
 H/BOI/Org Chart/Heading A/Staff  
 L/BUREAU OF INVESTIGATION /Organization Chart

# County of Santa Clara Crime Laboratory

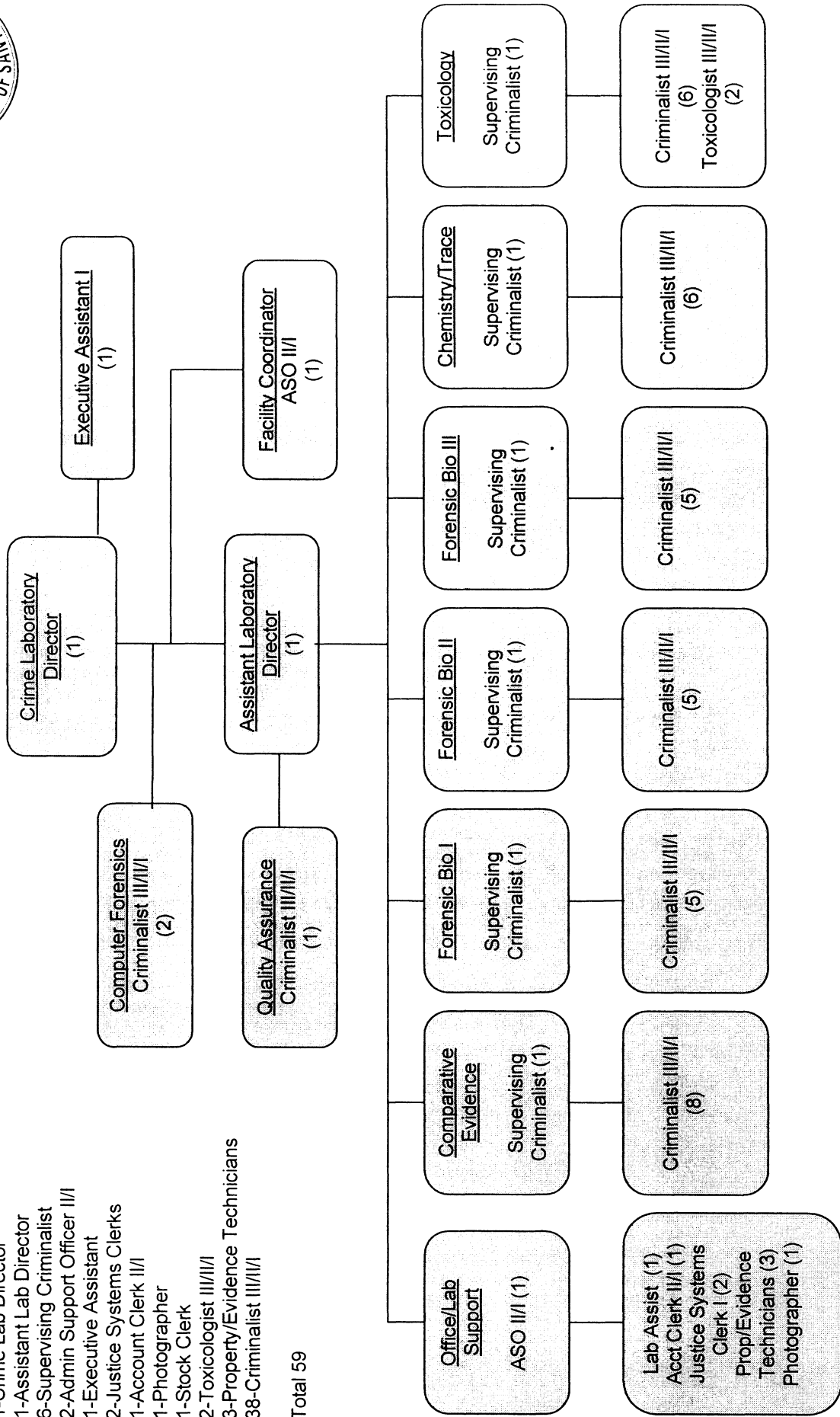
## Office of the District Attorney



### Position Summary

- 1-Crime Lab Director
- 1-Assistant Lab Director
- 6-Supervising Criminalist
- 2-Admin Support Officer III/I
- 1-Executive Assistant
- 2-Justice Systems Clerks
- 1-Account Clerk III/I
- 1-Photographer
- 1-Stock Clerk
- 2-Toxicologist III/II/I
- 3-Property/Evidence Technicians
- 38-Criminalist III/II/I

Total 59



- Administration and Support – The District Attorney sets policy and directs the operation of the Office at the highest level. The policies are implemented by the chief assistant district attorney who manages the day-to-day affairs of the law office, along with five executive management attorneys. The Business Services unit is responsible for general department infrastructure, including auditing, accounting, budgeting, personnel, purchasing, grants, travel, maintenance and intergovernmental liaison. Additionally, public information officers, information systems management, graphic services and 116.5 clerical staff support the Department. Clerical staff work with attorneys and investigators in units that work specific types of cases, but have a separate management structure.
- Bureau of Investigation – Led by the Chief Investigator, the Bureau has 101 authorized positions, including 91 sworn investigator positions and 10 non-sworn support staff. Staff of the Bureau of Investigation work with attorneys in the various units to provide law enforcement investigative services. Investigators are typically assigned to units responsible for specific case types, similar to the attorneys, but have their own separate management structure.
- Paralegals – Twenty-one paralegals work under the direction of a supervising paralegal to provide support to attorneys and, to a lesser extent, to investigators. Paralegals assist in preparation of cases for trial, prepare legal documents, interview victims and witnesses, and perform legal research and writing. They are distributed throughout the units listed below and a small number of them cover multiple units.

A brief description of each of the Department's major functions is provided below.

**AIDS Litigation**—The Sexual Assault Team reviews cases where the victim has been exposed to blood or other bodily fluids that could contain HIV or AIDS. The law requires the crime victim be notified of their right to testing. If they would like to have the criminal tested for those viruses, the deputy district attorney prepares search warrants for court orders to have the testing done in a sensitive and timely manner. This function has one attorney, who carries out the function among other duties in the Sexual Assault team.

**Anti-Drug Abuse Enforcement**—The Anti-Drug Abuse Grant Team targets street level dealers and users, which if left alone cause serious deterioration to community neighborhoods. The Anti-Drug Abuse Enforcement Grant Program, which works in concert with the larger Narcotics Unit, has two attorneys and is fully funded by the California Office of Emergency Services.

**Asset Forfeiture**—The efforts of this unit result in the County being the beneficiary of funds in excess of the cost of the unit. These funds are disbursed based upon court order to several County departments. The efforts of this single attorney assignment, in close cooperation with local law enforcement, result in the seizure and forfeiture of property and monies identified as being the proceeds of illegal narcotics activity. Forfeited assets are divided between participating agencies in accordance with applicable law (including revenue flow to the County General Fund, not the DA's



Office) to deprive criminals of any illegally-derived income or assets. This function operates as part of the Narcotics Unit.

**Burglary, Assault, Theft**—The Burglary, Assault, Theft Team is responsible for prosecuting general felony crimes of burglary, theft and assault that are set for trial. The team handles all pretrial hearings with the court and defense counsel. This function has 10 attorneys.

**Career Criminal**—The Career Criminal Unit is responsible for prosecuting felonies committed by serious repeat offenders the majority of whom are “Three-Strike Defendants.” This function has three attorneys.

**Child Sexual Assault Vertical Prosecution**—This unit is responsible for prosecuting sexual assaults on victims under the age of 14. The team is almost entirely grant-funded and the staffing is consistent at two attorneys and a part-time paralegal.

**Complaint Unit**—The Complaint Unit is responsible for issuing complaints for felony crimes not prosecuted by vertical units. This function has three attorneys.

**Consumer Mediation Services**—The mediation function is responsible for assisting consumers in resolving their disputes with businesses, by offering to mediate those disputes. The mediation staff, together with nearly ten volunteers, provides the consumer and the business with the opportunity to present and review both sides of the dispute. The mediation process ends when an agreement is reached, or when the consumer or the business chooses not to participate in the mediation. This function has 3 FTEs, supplemented by the volunteers.

**Consumer Protection**—The Consumer Protection Unit is responsible for prosecuting either civil or criminally, unfair business practices, false advertising or other violations where consumers have been victimized. It also provides the public with information about consumer transactions and educates consumers and businesses as to their rights and responsibilities. This function has four attorneys.

**DNA Collection Compliance**—This function is responsible for ensuring that individuals convicted of serious crimes submit samples to the State DNA Database in accordance with the requirements of Proposition 69. This function is staffed by one paralegal.

**Drug and Alcohol Residential Facility Certification**—In accordance with Certification Guidelines promulgated by the Office of the District Attorney and approved by the Board of Supervisors, the Office of the District Attorney designates attorney and investigative staff to manage the certification of adult drug and alcohol residential treatment facilities in Santa Clara County. Designated investigative staff review applications, conduct necessary background checks and monitor facility operation and compliance. One attorney (designated as the “Certification Coordinator”) assists in these functions and also makes decisions with respect to applicable sanctions for guideline violations. The attorney component of this function operates as part of the Narcotics Unit.

**Drug Treatment Court Services**—The Drug Treatment Court focuses on treatment for drug offenders. The Drug Treatment Court team deals with the most addicted defendants with felony charges. These defendants are provided with the most extensive treatment services available to the court with a goal of promoting drug dependency recovery to reduce future violations. This function has one attorney.

**Elder Fraud**—The Elder Fraud Unit is responsible for prosecuting financial crimes against the elderly. This includes forged checks, unauthorized use of credit cards and embezzlement. The unit is an integral part of the Financial Abuse Specialist Team (FAST) which combats elder fraud in collaboration with the Public Guardian and other agencies. This function has two attorneys and one investigator.

**Environmental Crimes**—The Environmental Crimes Unit is responsible for enforcing laws intended to protect human health and the environment, and to ensure workplace safety. These responsibilities encompass laws governing such diverse areas as air pollution, asbestos, hazardous waste, hazardous materials, hazardous substances, illegal land development, illegal pesticide use, exposure warnings, timber protection, underground storage tanks, water pollution, unlawful streambed alterations, wildlife protection and workplace safety where fatalities or serious injuries are involved. The staff also works with agencies that investigate alleged violations of this type. Enforcement of these laws includes civil as well as criminal proceedings, which can result in substantial monetary penalties and recovery of damages to natural resources, as well as incarceration. This function has two attorneys and one investigator.

**Family Violence**—The Family Violence Division is responsible for the prosecution of all criminal cases involving physical abuse or neglect of children, elders, and dependent adults including cases that occur in nursing homes, schools, and hospitals. This team is also responsible for reviewing all domestic violence cases referred, determining which charges, if any, will be filed, and assigning those cases to team members to litigate them. Additionally, this division is responsible for investigating and prosecuting child abduction cases and enforcing custody and visitation orders. This function has 14 attorneys and five investigators.

**Forensic Mental Issues**—The Forensic Mental Issues Unit is responsible for handling civil commitments and re-commitment proceedings involving sexually violent predators; mentally disordered sex offenders; mentally disordered offenders and the criminally insane. This function has four attorneys.

**Gangs Team**—The Gangs Team prosecutes gang-related felony offenses, including homicides. The Legislature has enacted numerous laws specifically targeting gang-related crime. Gang members and their associates often engage in violent crime, narcotics trafficking and other criminal offenses. Because of difficulties attendant to prosecuting these cases, the District Attorney has designated this team to handle these cases vertically. This function has six attorneys.

**Governmental Integrity**—The Governmental Integrity Unit is responsible for enforcing proper collection and reporting of campaign contributions; prosecuting crimes committed by public officials and employees while acting in their official capacity. This function has one attorney.

**High Tech Crimes**—The High-Technology Crimes Unit was formed to cope with the unique law enforcement problems posed by the emerging high technology environment, generally: (1) theft and sale of computers, computer hardware and software, (2) theft of trade secrets, and (3) hacking, illicit intrusions into computer systems, auction fraud, identity theft, and other Internet crimes. The District Attorney, federal, state and local police agencies formed the south bay regional task force, the Rapid Enforcement Allied Computer Team (REACT), in 1997, to better cope with criminality that affects high-technology crime. This function has four attorneys and three investigators.

**Homicide**—The Homicide Team vertically handles homicide cases, which includes ongoing investigations of unsolved homicides. This function has seven attorneys and five investigators.

**Insurance Fraud**—The efforts of this function are fully supported by grants from the California Department of Insurance. The Insurance Fraud function is responsible for prosecuting and investigating automobile insurance fraud and workers' compensation fraud cases, which are frequently quite complex. This function has five attorneys and 15 investigative positions.

**Juvenile Dependency**—The Juvenile Dependency Unit is responsible for representing children who are harmed or neglected by their parents or caretakers. The Office, through an agreement with the Superior Court, is appointed to represent a child who is brought to the attention of the Juvenile Dependency Court. The attorneys are involved in seeing that the children they represent have appropriate placements, that they are in the right schools, and that they are receiving appropriate services from their social workers. To help keep in contact with the children they represent, each attorney works with a team comprised of investigators and social workers. This function has 11 attorneys.

**Juvenile Wards**—The Juvenile Wards Team is responsible for reviewing and prosecuting juvenile delinquents for criminal violations of the law. This function has eight attorneys.

**Laboratory of Criminalistics**— The Crime Laboratory in Santa Clara County provides criminalist and scientific services to local law enforcement agencies, the Santa Clara County Sheriff's Department, the District Attorney, and other organizations in the criminal justice system. The Santa Clara Crime Laboratory, a full service crime laboratory, offers a broad array of criminalist services including DNA analysis, firearm testing, toxicology services, and latent fingerprint analysis. Staffing for the Crime Lab, which is a separate budget unit under the District Attorney, is 59 FTE positions.

**Major Fraud**—The Major Fraud Unit is responsible for prosecuting cases involving serious and complex fraud, or white collar crime, where the loss exceeds \$100,000. The Unit emphasizes theft cases that are accomplished by lying or the breach of a trusted or fiduciary relationship with the victim, as opposed to the taking of property covertly, or by force or fear. Major fraud theft involves obtaining property through false pretenses, trickery, fraud, or embezzlement. The unit also prosecutes investment and tax fraud cases, regardless of the dollar loss. The unit has expanded its outreach to include the

Internet, which has become a major source for significant fraud. This function has three attorneys.

**Misdemeanor Prosecution**—Misdemeanors constitute the majority of cases prosecuted by the District Attorney countywide. Typical offenses issued, pretried and tried by the unit include: driving under the influence; driving without a valid driving privilege; theft; narcotics violations; battery; sex offenses (including annoying and molesting children and indecent exposure); trespass; disturbing the peace; and domestic violence (in outlying courts). The Central Misdemeanor Team is comprised of 10 attorneys who prosecute these cases in the San Jose facility of the Superior Court. The unit prosecutes misdemeanor crimes that occur in the central portion of the county, including the cities of San Jose, Santa Clara, Campbell, Milpitas, and Los Gatos. Misdemeanors committed outside those areas are prosecuted by deputies assigned to either the Palo Alto Office or the San Martin Office.

**Motions, Writs & Appeals**—This function is responsible for responding to legal challenges filed before trial for non-vertical prosecution teams such as claims of illegal search and seizure; in some cases handling People’s appeals; researching petitioner’s history for findings of factual innocence; responding to writs of Habeas Corpus; and appearing in appeals to the Superior Court Appellate Department. This function has six attorneys, plus the legal intern program.

**Narcotics**—The Narcotics Unit is responsible for handling narcotics cases at all levels; from the high level sellers and traffickers to street level dealers, to manufacturers, and possessors, whether for sale or personal use. See the descriptions in this section for the Asset Forfeiture Unit and the Anti-Drug Abuse Enforcement Unit. This function has 11 attorneys in addition to the two ADA attorneys, the asset forfeiture attorney and one Drug Treatment Court attorney.

**North County Prosecution**—The North County operation has two locations, Palo Alto and Sunnyvale. These offices perform the same mandated functions as does the main office. Some of these are: filing cases; arraigning defendants; advocating at bail motions; providing discovery; conducting follow-up investigations; subpoenaing necessary documents; notifying victims and witness of status of the case; subpoenaing witnesses for hearings and trial; conducting preliminary hearing; filing charging documents; litigating pre-trial motions; starting trial within statute of limitations; and sentencing the convicted within the statutory time. There are six attorneys assigned to felonies (three in each location), two attorneys assigned to prosecute misdemeanors in Palo Alto and one supervisor.

**Preliminary Hearings**—The Preliminary Hearing Team is responsible for handling prosecution of general felony matters to determine if there is probable cause for the defendant to stand trial. This function has four attorneys, two of whom represent the DA in a calendar of felony arrestees making their first court appearance.

**Public Assistance Fraud**—The District Attorney receives reimbursement from the Social Services Agency for this function comprised of approximately 78 percent federal and State Block Grants and 22 percent General Fund. The Welfare Fraud function is responsible for investigating and prosecuting criminal cases involving theft of public

assistance money. This function has one attorney. A separate welfare fraud investigations unit in the Bureau of Investigation includes 23 positions.

**Probation Violation Calendar**—This function is responsible for seeking the appropriate resolution of matters where a person convicted of a felony and placed on probation later violates the terms of probation. The appropriate resolution could be commitment to prison, additional jail time, time in a treatment facility, further fine, restitution, or a combination of the foregoing. This function has two attorneys.

**Real Estate Fraud**—The Real Estate Fraud Unit is responsible for prosecuting crimes involving real estate documents and transactions. Frequently there is overlap with cases of Elder Fraud where the criminal is targeting elders' valuable real assets. This function has two attorneys and 3.5 investigators.

**Regional Automobile Theft Task Force (RATTF)**— RATTF has a contract agreement with the District Attorney whereby the task force pays from its trust fund for the services of positions dedicated to prosecution of task force cases. This function then is to vertically prosecute automobile theft rings and, in some cases, dishonest auto body repair shops, known as chop shops. This function has one attorney.

**Restitution Services**—The efforts of this unit are fully supported by revenue from the California Victim Compensation and Government Claims Board. This function is responsible for assisting crime victims who suffer an economic loss, and are entitled to a restitution order. These losses can include, medical expenses, funeral expenses, mental health counseling, lost wages or profits, or even relocation expenses. The process of obtaining restitution can be complex and time consuming. Process specialists work with individuals to insure proper compensation. This function has one attorney.

**Sex Offender Registration**—This function ensures that convicted sex offenders required to register their whereabouts do so in accordance with applicable statutes. This function has one attorney, and is part of the Sexual Assault Team.

**Sexual Assault**—This vertical prosecution unit handles sexual assaults on adult and child victims. Each year the Sexual Assault Team handles over five hundred felony sexual assault cases and about one hundred and fifty felony violations of the sex registration laws. Many of the cases prosecuted by the Sexual Assault Team carry potential life sentences mandated by the "One Strike" laws that apply to aggravated circumstances such as multiple victims, kidnapping and burglary. This function has 12 attorneys and three investigators, plus the grant-funded positions for serious sex crimes against children and a position prosecuting sex offender registration matters.

**South County Prosecution**—Attorneys in the San Martin Office are responsible for prosecuting misdemeanors and most felony crimes committed in the communities of Gilroy, Morgan Hill, San Martin and the unincorporated areas of South County. As with North County, the vertical prosecution units in the main office handle the specialized cases in South County. This function has five attorneys, of which four prosecute felonies and one prosecutes misdemeanors.

**Truancy Abatement**—The Truancy Abatement Unit works to reduce the number of youths who are truant. Additionally, this unit is responsible for prosecuting habitual truants, and in some cases, their parents. This function has one attorney.

**Victim Witness Services**—The District Attorney manages a contract with the Silicon Valley Conference for Community and Justice to perform this function. Their victim advocates are responsible for helping victims negotiate the criminal justice processes and inform them of their rights. This function has three personnel and is fully supported by grant funds from the California Victim Compensation and Government Claims Board.

Until 2007, the District Attorney's Office included the **Innocence Project**, which investigated possible wrongful convictions, and **Community Prosecution**, which worked with community agencies to prevent crime. Both units were eliminated in the FY 2008 Final Budget.

## **District Attorney's Office Accomplishments**

Management audits typically focus on opportunities for improvements within an organization. To provide a more balanced perspective on operations, Section 8.48 of the Government Auditing Standards, July 2007 Revision, published by the United States Government Accountability Office, requires that the management audit report include "positive aspects of the program reviewed." This section of the Introduction thus summarizes some of the current noteworthy accomplishments of the District Attorney's Office.

In order to allow the Department to highlight accomplishments that it feels are the most noteworthy, Management Audit Division staff requested and received a list of accomplishments from the District Attorney. This list of accomplishments is summarized below.

**The Supervising Paralegal position was created in August of 2007.** The Supervising Paralegal oversees a staff of 21 paralegals and coordinates the paralegal internship program. Prior to the creation of this position an Assistant District Attorney was charged with the oversight of paralegals as well as a staff of attorneys.

**Two Public Information Officers (PIOs) were added to the District Attorney's staff this year.** District Attorney's Office Public Information Officers' responsibilities include delivering timely and accurate information to various media sources. They respond to media inquiries about cases, conduct interviews with television, radio, and print media, set up interviews for attorneys when necessary, and obtain information for the media regarding various cases of interest. In addition, Public Information Officers write press releases, conduct research for various media outlets, and work with attorneys, investigators and other office staff to gather information for the media. PIOs also conduct media relations training to agency employees when needed. The Santa Clara County District Attorney's Office PIOs are also involved in creating and maintaining various community outreach projects.

**An Ethics Advisor position was created in 2007.** The ethics advisor serves as a resource for law-related questions by deputy district attorneys and as a trainer on ethics issues for the Office.

**The management team of the District Attorney** is going through formal management training provided by an outside agency – ExecutiveEdge. The District Attorney arranged for the Chief Assistant District Attorney, assistant district attorneys, supervising deputy district attorneys, Crime Laboratory Director, Assistant Director, administrative services manager, support staff manager, paralegal supervisor, Chief Investigator and Assistant Chief Investigator to participate in an effort too increase the professionalism of the Office.

**A deputy district attorney appeared at a weekly court calendar – Victim Restitution Payment Calendar** – wherein defendants delinquent in their restitution obligations are held accountable. In 2007, that deputy district attorney caused over one million dollars (\$1,026,698.36) to be collected. This amount includes victim restitution paid to DOR (Department of Revenue), SSA (Social Services Agency), and DCSS (Department of Child Support Services); and Fine and Fees Paid to DOR.

**Deputy district attorneys contributed to California District Attorneys Association as well as community legal education.** For example, a deputy taught at a CDAA search warrant seminar and wrote most of the training manual as well as the search and seizure section of the Santa Clara County Judge’s night-time Duty Manual. That same deputy lectured at the San Jose State University Administration of Justice and San Jose Police Department on search warrant law.

**The Crime Laboratory** received renewal of accreditations, had 184 “hits” through the DNA database (including homicides, attempted homicides, sex crimes, robbers and property crimes), and had ten “hits” from the IBIS firearms database. The Director has also been supervising the construction of the County’s new state-of-the-art Crime Laboratory.

**Investigative staff supports the prosecution efforts with traditional law enforcement aid as well as court expertise.** For example, prosecutors in this office who try cases of sexual abuse against children routinely seek to introduce evidence about victim reactions that often are in conflict with the preconceived notions still held by many about such victims. For example, many people might still think that any child who was being molested immediately would tell someone about it; or that any child who was molested would shun the offender. Research and experience show neither of these assumptions to be 100% valid. Expert testimony can be presented to the jury to explain why many assumptions about child sexual abuse victims do not reflect the reality for many victims. One of the District Attorney’s investigators is qualified to give testimony on the Child Sexual Abuse Accommodation Syndrome and has testified nearly 170 times over the past 13 years. Many other prosecutors’ offices have to hire outside experts, many of whom charge approximately \$2,000 per appearance. If such rates were applied to the testimony given by our employee, it would amount to savings of approximately \$340,000.

## Topics Requiring Additional Review

Some issues identified during a management audit either are not of sufficient significance to warrant the preparation of a separate finding, or cannot be funded in a cost-neutral way at this time. In such cases, these lesser or unfunded issues are reported in the introduction so that the auditee is apprised of the issue and can take appropriate action, based on its own assessment. The Management Audit Division identified six such issues, which are reported below.

### *Clerical Staff Shortages*

The Legal Support Operations division of the District Attorney's Office is responsible for the maintenance, storage and retrieval of all of the District Attorney's case files, and the provision of clerks and legal secretaries and other staff to provide administrative support for various prosecutorial, administrative, technology and investigative units. As of August 20, 2007, this unit had 112.5 full-time equivalent (FTE) positions, with 14.5 vacant FTEs. This division is headed by an operations manager, who oversees five supervisors and a small group of transcriptionists. As of late 2007, each supervisor was responsible for overseeing approximately 19 staff, a number that at times has been higher for some supervisors. During the course of the audit, a sixth supervisor was added, reducing the average number of employees per supervisor to about 16.

In addition to the large number of staff managed by the manager, three Supervising Legal Clerks and three Supervising Legal Secretaries, two of the Supervising Legal Clerks must travel frequently from the District Attorney's main office in San Jose to offices in the northern and southern ends of the County to see their employees in those offices. These supervisors are responsible for hiring staff in their units, and there is frequent turnover, particularly among the records unit staff. As a consequence of the sheer number of direct reports, some supervisors' frequent travel, the tremendous volume of records, the need to fill frequently vacant positions and provide oversight and training to newly hired staff, supervisors generally are unable to provide extensive hands-on management of all staff. The turnover in the records unit is especially frequent. The entire unit has turned over at least three times since 2001, and this has resulted in that unit's supervisor spending the majority of her time hiring at least 25 new employees.

At least four additional supervisors are needed in the division. Assuming that transcriptionists would be overseen by a supervisor rather than the operations manager, this would provide for an average span of control of approximately 9.8 FTEs for each supervisor. Such a staffing increase would provide for much better training and oversight of staff, a shift of transcription oversight from the operations manager to a supervisor, better day-to-day management of critical District Attorney records, and better "back-up" coverage, among other improvements. Although there is a tremendous need for additional staff in this division, due solely to the lack of available funds, these additional staff are not recommended at this time. It is recommended that additional staff be added to the division at the earliest time that funds become available.



### *North County Felony Prosecution: Palo Alto Office*

The District Attorney's North County Unit consists of three felony attorneys in Palo Alto and three felony attorneys in Sunnyvale.<sup>1</sup> However, felony prosecution is structured somewhat differently in the two offices. In Sunnyvale, felony attorneys handle almost all aspects of a case, similar to the vertical model employed in the main office in San Jose, from issuing (or shortly thereafter, since many Sunnyvale cases are issued in Palo Alto) through sentencing.<sup>2</sup> However, in Palo Alto, felony cases are managed in a horizontal manner as follows: one attorney issues virtually all new felony (and misdemeanor) cases; a second attorney manages felony cases from arraignment through pre-preliminary examination court appearances; and the third attorney manages felony cases set for preliminary examination until conclusion of the prosecution.

According to Palo Alto Office staff, this structure has been in place since January 2007 and has been efficient and successful. By having one attorney manage virtually all of the case issuing, consistency is enhanced, and the other attorneys are able to spend a proportionately greater amount of time preparing for court calendars, hearings and trials. According to one felony attorney, the horizontal structure is well suited to Palo Alto due to the less sensitive nature of the vast majority of cases that they prosecute. This includes many property crimes. Such a structure might not be conducive to prosecuting domestic violence cases, since they typically involve victims throughout the process.

If felony cases in Palo Alto were to continue to be less sensitive in nature, the Management Audit Division would not see any reason to eliminate the horizontal structure. However, according to Palo Alto Office and Family Violence Division staff, felony attorneys in Palo Alto are beginning to handle more aspects of family violence cases including trial responsibilities, due to workload constraints within the Family Violence Division in San Jose.<sup>3</sup> Because of the sensitive nature of these cases, and the fact they will consume more attorney time through increased victim contact and preparation, the District Attorney's Office should re-evaluate this realignment of duties for felony prosecution in Palo Alto in three to six months.

### *Attorney Ethics*

In 2006, the *Mercury News* published a five-part series entitled "Tainted Trials, Stolen Justice," which examined problems in the Santa Clara County criminal-justice system, as well as subsequent articles questioning the guilt of some defendants. Together, these articles alleged that some prosecutors were engaging in questionable conduct, including withholding evidence from defense attorneys, trivializing the meaning of reasonable

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<sup>1</sup> Felony attorneys from the San Jose Office also appear in Palo Alto and Sunnyvale on vertically assigned cases, including career criminal, sex, gangs and homicide.

<sup>2</sup> The Superior Court no longer operates a clerk's office in Sunnyvale, which necessitates the filing of felony complaints at the Palo Alto Courthouse even though they will be prosecuted at the Sunnyvale Courthouse.

<sup>3</sup> This change is also being implemented in Sunnyvale and South County, but attorneys in those units already prosecute felony cases vertically for the most part.

doubt, disclosing prejudicial details in violation of judges' orders, and delivering improper closing arguments.

The former District Attorney addressed the alleged problems by tightening policies to prevent attorneys from withholding evidence and planning a training session on how to properly discuss reasonable doubt. When the new District Attorney took office at the beginning of 2007, she also vowed to appoint an Ethics Advisor and develop procedures for attorneys to follow on documenting evidence that they turn over to defense attorneys before trial. Since February 2007, an attorney has been serving as the Ethics Advisor, and an Ethics Page has been created on the Department's intranet. The role of the Ethics Advisor is to answer questions and provide advise on ethical issues for attorneys. The Ethics Advisor also periodically issues an "Exemplary Prosecutor Bulletin" on a hot topic, such as the Duke University case involving several lacrosse players accused of sexual assault and kidnapping, or a policy and procedure, such as communication with jurors.

While these changes are a positive sign, the District Attorney's Office should also develop written policies and procedures that instruct attorneys and other staff who to contact with ethical questions or concerns and how to report unethical conduct, since such policies and procedures do not currently exist. Furthermore, because the Ethics Advisor is familiar with the types of ethical dilemmas facing attorneys, she should advise the Assistant District Attorney who coordinates training sessions on topics that should be addressed as part of the training program.

#### *Crime Laboratory Report Review Process*

During this management audit, we interviewed senior Crime Laboratory managers responsible for the day-to-day operation of the lab. One key component of the laboratory's operation includes the review of reports and analysis produced by line staff. These senior managers review reports to ensure accuracy, proper methodology is employed by staff, and that conclusions are sufficiently supported by adequate technical data.

The Crime Laboratory has implemented a rigorous review process for reports. The first level of review is a technical review by a peer where the review is examining the report to guarantee its technically sound and the conclusions drawn by the evidence are appropriate and supported by the data. A second layer of review, an administrative review, is generally performed by a Unit Supervisor (Supervising Criminalist). This review is done to ensure that the laboratory work is done according to general practices and accreditation standards, and policies and procedures. Finally, a third layer of review called a quality review is done for a percentage of reports. According to the Crime Laboratory's Administrative Directives<sup>4</sup> this review is performed to "spot check notes for consistency with laboratory policy and to monitor case reports for clarity, quality, and adherence to laboratory standards."

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<sup>4</sup> Santa Clara County Crime Laboratory Administrative Directives – 9/200 Case Review

The Crime Laboratory's Administrative Directives<sup>1</sup> further state that "review is conducted on at least 25 percent of major cases by the Assistant Laboratory Director, Laboratory Director or their designee." The current practice employed by the Assistant Laboratory Director is to review approximately 53 percent of cases produced by the office. Due to this number of cases being reviewed by multiple layers of staff, the report turnaround time is slightly decreased and reviewing a significant number of reports indicates that the use of the Assistant Crime Laboratory Director's time is not utilized in the most effective manner. Now that the incumbent in the Assistant Crime Laboratory position is no longer a new employee, we recommend that the Assistant Crime Laboratory Director decrease the number of reports receiving a quality review to comply with the guidelines stated in the Administrative Directives which seem reasonable.

### *Phone Call Routing*

In an effort to be more accessible to the public, the District Attorney's phone directory is published online for easy access. Similarly, supervisors' names and direct phone numbers appear on many forms that go out to victims, witnesses and other people involved in District Attorney business. While the intentions of easy access are laudable, the effect of this practice is negative for some unit supervisors, since it interferes with their ability to work as efficiently as possible.

Supervisors in at least two major units cited public inquiries and inefficient phone call routing as a tremendous problem for them in their day-to-day work. According to these supervisors, the vast majority of calls they receive are simple inquiries that do not require their involvement. For example, they oftentimes receive calls asking for the attorney assigned to a particular case, which could easily be looked up in the District Attorney's Case Records Information Management and Exchange System. One supervisor estimated receiving an average of 20 calls per day that could be handled by support or paralegal staff. Instead, callers dial the supervisor directly, or support staff forward calls to the supervisor without conducting any screening.

To establish a more efficient process, the District Attorney's Office should more closely examine how calls are screened and routed throughout the office, and then modify the written policies and procedures that address these issues. Along these lines, the District Attorney's Office could consider removing direct phone numbers of unit supervisors from the online directory and certain forms, and instead encourage the public to contact designated support or paralegal staff in each unit.

## **Survey of Other Jurisdictions**

To gain an understanding of distinctions and similarities between district attorney's offices, we developed a survey and solicited responses from 10 counties in addition to the Santa Clara County District Attorney's Office. The five counties that responded to our survey are Contra Costa, Fresno, San Bernardino, San Diego, and San Francisco.

When appropriate, information from the surveys has been included in various sections of the audit report, or elsewhere in this introduction. It should be noted that the survey responses contain self-reported information. The Management Audit Division did not

verify the accuracy of the reported information. A summary of survey responses from each jurisdiction is included as Attachment I.1. Copies of the full response from each jurisdiction are available upon request.

Highlights from the survey responses include:

- All six counties select executive management team members from the ranks of senior staff attorneys. Such team members serve at the discretion of the District Attorney. Only San Bernadino County and Santa Clara County indicate that executive management team members also have a designated civil service job classification and can only be removed for cause.
- San Bernadino County, San Diego County, and San Francisco County all use screening instruments or written guidelines to assist in screening and issuing cases. Contra Costa, Fresno, and Santa Clara County do not employ such instruments or guidelines.
- All jurisdictions except San Bernadino County and Contra Costa County provide attorneys to staff Proposition 36 cases in court.
- Both Santa Clara County and Fresno County contract out victim witness advocacy services. Contra Costa County, San Bernadino County, San Diego County, and San Francisco County provide advocacy services in-house by departmental employees.
- All jurisdictions' elder fraud team members engage in elder fraud public education and prevention activities and work with volunteer groups in the public education and prevention activities. All but Fresno County employ victim advocates that work with elderly victims.
- San Bernadino County, San Francisco County, and Santa Clara County organize attorneys assigned to consumer protection and environmental protection cases in separate units. Contra Costa County and San Diego County organize such attorneys in combined units.
- Contrary to Contra Costa and Santa Clara Counties, Fresno County, San Bernadino County, San Diego County and San Francisco County employees complete electronic or paper timecards to record their time worked by hours.

## Recommendation Priorities

The priority rankings shown for each recommendation in the audit report are consistent with the audit recommendation priority structure adopted by the Board of Supervisors, as follows:

- **Priority 1:** Recommendations that address issues of noncompliance with federal, State and local laws, regulations, ordinances and the County Charter; would result in increases or decreases in expenditures or revenues of \$250,000 or more;

or, suggest significant changes in federal, State or local policy through amendments to existing laws, regulations and policies.

- **Priority 2:** Recommendations that would result in increases or decreases in expenditures or revenues of less than \$250,000; advocate changes in local policy through amendments to existing County ordinances and policies and procedures; or, would revise existing departmental or program policies and procedures for improved service delivery, increased operational efficiency, or greater program effectiveness.
- **Priority 3:** Recommendations that address program-related policies and procedures that would not have a significant impact on revenues and expenditures but would result in modest improvements in service delivery and operating efficiency.

## **Acknowledgements**

We would like to thank the District Attorney and her staff for their cooperation and assistance throughout this management audit. Staff were cooperative, open and eager to identify methods by which the Department can improve its operations and increase the level of law enforcement in the County. Managers, supervisors, and line staff provided much of the data contained in the report to Management Audit Division staff, and certain recommendations are the result of interviews with managers and other staff during the course of the audit.

## Attachment I.1 District Attorney Survey Results

	Contra Costa County	Fresno County	San Bernardino County	San Diego County	San Francisco County	Santa Clara County
1. Do you have any policies or procedures in any of the following areas?						
a. How cases are issued	No	Yes	Yes	Yes	Yes	Yes
b. How attorneys assigned to economic crimes should approach financial settlements	No	No	No	No	Yes	Yes - Many of our settlements are coordinated efforts with other counties and the Attorney General's office.
c. How restitution is calculated and collected	No	No	No	No	Yes	Yes- We developed and modified judicial council form for this county. See CR110 court order. Further, victims are sent questionnaires that help to determine restitution.
d. Rotation of attorneys between units or teams	No	No	No	No	Yes	Yes- Rotation is at least every five years for deputy district attorneys.
2. In what areas have you established HORIZONTAL prosecution units?	Burglary/ assault/ theft, Juvenile wards, Preliminary hearings, Narcotics, Misdemeanors, Auto theft, Complaints	None	Forensic mental issues, Anti-drug abuse, Regional offices, Elder fraud, Sexual Assault, Narcotics, Drug treatment, Misdemeanors, Auto Theft, Major fraud, Complaints, Motions/Writs/Appeals	None	Juvenile wards, Preliminary hearings, Narcotics, Drug treatment, Misdemeanors, Auto theft, Major fraud, Complaints, Motions/Writs/Appeals	All areas
3. In what areas have you established VERTICAL prosecution units?	Forensic mental issues, Gangs, Asset forfeiture, Anti-drug abuse, Environmental crimes, Insurance fraud, High tech crimes, Elder fraud, Family violence, Sexual assault, Child sexual assault, Homicide, Career criminal, Consumer protection, Public assistance fraud, Real estate fraud	Gangs, Asset Forfeiture, Anti-drug abuse, Environmental crimes, Insurance fraud, Sexual assault, Child sexual assault, Homicide, Career criminal, Narcotics, Consumer protection, Public assistance fraud, Auto theft, Real estate fraud, Major fraud	Gangs, Asset forfeiture, Environmental crimes, Insurance fraud, Government integrity, Family violence, Child sexual assault, Homicide, Career criminal, Consumer protection, Real estate fraud	Gangs, Asset forfeiture, Environmental crimes, Insurance fraud, High tech crimes, Elder fraud, Government integrity, Family violence, Sexual assault, Child sexual assault, Homicide, Career criminal, Narcotics, Consumer protection, Public assistance fraud, Real estate fraud, Major fraud	Forensic mental issues, Gangs, Asset forfeiture, Environmental crimes, Insurance fraud, High tech crimes, Elder fraud, Government integrity, Family violence, Sexual assault, Child sexual assault, Homicide, Career criminal, Consumer protection, Public assistance fraud, Real estate fraud	All areas except misdemeanors
4. Are executive management team members in your department selected from the ranks of senior staff attorneys and serve at the discretion of the district attorney, receiving a pay differential as managers OR do they have a designated civil service job classification, and can only be removed for cause?	selected from the ranks of senior staff attorneys and serve at the discretion of the district attorney, receiving a pay differential as managers	selected from the ranks of senior staff attorneys and serve at the discretion of the district attorney, receiving a pay differential as managers	Both	selected from the ranks of senior staff attorneys and serve at the discretion of the district attorney, receiving a pay differential as managers	selected from the ranks of senior staff attorneys and serve at the discretion of the district attorney, receiving a pay differential as managers	Both
5. Please provide a schedule of all authorized positions by classification.	Provided.	NA	Provided.	Provided.	Provided.	Provided.

## Attachment I.1 District Attorney Survey Results

	Contra Costa County	Fresno County	San Bernardino County	San Diego County	San Francisco County	Santa Clara County
6. Who is responsible for screening and issuing cases in your office?: a) a centralized screening unit issues all cases, b) supervisors of specific units, c) a designated non-supervisor attorney in each unit, d) multiple attorneys in each unit. Please explain, or e) Other, please explain.	Supervisors of specific units, and other: Two DDA's handling different areas of the county issue felony complaints for non-vertical prosecutor units.	Supervisors of specific units	Combination of all options: Each unit has designated issuing deputies and others who issue cases.	a centralized screening unit issues all cases, multiple attorneys in each unit, AND vertical issuance	A combination: Supervisors of specific units, and multiple attorneys in each unit	a centralized screening unit issues all cases, supervisors of specific units, and General Felonies are handled by one unit
7. Does your office use screening instruments or written guidelines to assist in screening and issuing cases?	No	No	Yes	Yes	Yes	No
8. To whom do the following employees report?						
a. Legal Secretaries	Secretarial/ Clerical Supervisor or Manager	Secretarial/ Clerical Supervisor or Manager	Secretarial/ Clerical Supervisor or Manager	Attorney or Supervising Attorney	Attorney or Supervising Clerical Supervisor or manager	Secretarial/ Clerical Supervisor or Manager
b. Legal Clerks	Attorney or Supervising Attorney	Attorney or Supervising Attorney	Secretarial/ Clerical Supervisor or Manager	Secretarial/ Clerical Supervisor or Manager	Attorney or Supervising Attorney and Secretarial/ Clerical Supervisor or manager	Secretarial/ Clerical Supervisor or Manager
c. Paralegals	Attorney or Supervising Attorney	Attorney or Supervising Attorney	Attorney or Supervising Attorney	Paralegal Supervisor	Attorney or Supervising Attorney	Paralegal Supervisor
9. Does your office provide attorney(s) to staff Proposition 36 cases in court?	No	Yes	No	Yes	Yes	Yes
10. Does your office have its own innocence project, which is dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent future injustice?	No	No	No	No	No	Yes (eliminated as of January 2008)
11. What are your targets for time from case filing to disposition for the following felony case types? If you have 2006 actuals to compare to targets, please provide them.						
a. Narcotics	No response	No response	90 days; 120 days for low to average complexity; Targets are not being met.	No response	No response	3 months or less for low to average complexity; 6 months or less for complex cases
b. Sexual Assault	No response	No response	90 days; 120 days for low to average complexity; Targets are not being met.	No response	No response	4-5 months for low to average; 12 months for complex
c. Homicide	No response	No response	90 days; 120 days for low to average complexity; Targets are not being met.	No response	No response	12-18 months for low to average; 18-24 months for complex (excludes death penalty cases)

**Attachment I.1  
District Attorney Survey Results**

	Contra Costa County	Fresno County	San Bernardino County	San Diego County	San Francisco County	Santa Clara County
d. Gang Cases	No response	No response	90 days; 120 days for low to average complexity; Targets are not being met.	No response	No response	3-12 months for low to average, 12-24 months for complex
e. Three Strikes	No response	No response	90 days; 120 days for low to average complexity; Targets are not being met.	No response	No response	No response
f. Burglary, Theft & Assault	No response	No response	90 days; 120 days for low to average complexity; Targets are not being met.	No response	No response	90 days to 6 months for low to average; 12-18 months for complex
g. Domestic Violence	No response	No response	90 days; 120 days for low to average complexity; Targets are not being met.	No response	No response	6 months for low to average; 9-18 months for complex
12. Approximately what percentage of referrals from law enforcement agencies was rejected in 2006 for the following reasons?						
a. Narcotics	No response	No response	No response	No response	No response	17 rejected for interest of justice; 37 were combined with other counts; 139 rejected for insufficient evidence; 32 for improper search and seizure; 69 for Prop 36/ Defer to probations; and 32 rejected for other or unknown reasons
b. Sexual Assault	No response	No response	No response	No response	No response	27 rejected for interest of justice; 6 were combined with other counts; 356 rejected for insufficient evidence; and 17 rejected for other or unknown reasons
c. Homicide	No response	No response	No response	No response	No response	None
d. Gang Cases	No response	No response	No response	No response	No response	10 rejected for insufficient evidence and 2 for other or unknown reasons
e. Three Strikes	No response	No response	No response	No response	No response	5 rejected for insufficient evidence and 1 for other or unknown reasons
f. Burglary, Theft & Assault	No response	No response	No response	No response	No response	148 rejected for interest of justice; 45 were combined with other counts; 582 rejected for insufficient evidence; 5 for improper search and seizure; and 328 rejected for other or unknown reasons
g. Domestic Violence	No response	No response	No response	No response	No response	119 rejected for interest of justice; 22 were combined with other counts; 1905 rejected for insufficient evidence; 3 for Prop 36/ Defer to Probation; and 149 rejected for other or unknown reasons



**Attachment I.1  
District Attorney Survey Results**

	Contra Costa County	Fresno County	San Bernardino County	San Diego County	San Francisco County	Santa Clara County
13. Please indicate the approximate number of each of the following for 2006.						
a. No. of complaints filed	10,843 Misdemeanors, 4,564 felonies	30,768 Misdemeanors; 14,427 Felonies	37,805 Misdemeanors; 19,990 Felonies	27,987 Misdemeanors; 18,362 Felonies	4,662 Misdemeanors; 7,772 Felonies	25,565 Misdemeanors; 9,157 Felonies
b. No. of citations resulting in District Attorney workload	Unknown	No response	No response	56 infractions filed	NA	6,156
c. No. of 'three strikes cases' filed	No response	No response	159	111	NA	73
d. No. of trials conducted	Misdemeanors: 154 in 2006 and 190 in 2005; Felonies: 117 in 2006 and 123 in 2005	No response	No response	221 Misdemeanors; 516 Felonies	126 Misdemeanors; 75 Felonies (based on partial year data)	107 Misdemeanors; 192 Felonies
14. Do you have a method of scoring cases as to their difficulty and complexity in order to balance the caseload of attorneys in your office?	No	No	No	No	No	No
15. When a unit or team experiences an increase in its caseload due to recent trends, such as what is occurring now with real estate fraud, do you: a) Assign some of the cases to an attorney on another unit or team, b) Reassign an attorney from another unit or team with a lower caseload, c) Issue fewer cases that are referred to the office, d) Allow a backlog to develop, or e) other, please explain.	Assign some of the cases to an attorney on another unit or team, and reassign an attorney from another unit or team with a lower caseload	Allow a backlog to develop	Other: Request additional staffing from Board of Supervisors.	Assign some of the cases to an attorney on another unit or team, reassign an attorney from another unit or team with a lower caseload, AND allow a backlog to develop	Assign some of the cases to an attorney on another unit or team, and reassign an attorney from another unit or team with a lower caseload	Allow a backlog to develop (with a staff reduction options are limited)
16. Do employees in your office provide victim witness advocacy services, or is this service area contracted out to another agency?	Advocacy provided in house, by departmental employees.	Advocacy contracted out to another agency: Probation- Victim Services	Advocacy provided in house, by departmental employees.	Advocacy provided in-house by departmental employees	Advocacy provided in-house by departmental employees	Contracted out to the Victim Witness Assistance Program
17. Approximately how many victims are served with victim witness services each year?	2,147 in 2006; 2,961 so far in 2007	No response	8,000	13,894	3,346 in 2006	10,000
18. If victim witness services are contracted out, how are the contracted organizations monitored?	NA	No response	NA	NA	NA	Oversight by an Assistant District Attorney and the Administrative Services Manager
19. If you have a unit or team that prosecutes elder fraud, do the attorneys in the unit or team engage in public education and prevention activities regarding elder fraud?	Yes	Yes	Yes	Yes	Yes	Yes
20. Does your office work with volunteers from organizations, such as the Council on Aging or other groups, to engage in public education and prevention activities?	Yes	Yes	Yes	Yes	Yes	Yes

## Attachment I.1 District Attorney Survey Results

	Contra Costa County	Fresno County	San Bernardino County	San Diego County	San Francisco County	Santa Clara County
21. Does your office employ victim advocates who work with elderly victims?	Yes	No	Yes	Yes	Yes	Yes
22. If you have a unit or team that prosecutes high tech crimes, do attorneys in the unit or team handle only complex cases, such as complicated identity theft rings in which multiple defendants steal from multiple victims, or do they also handle more routine frauds, such as internet scams involving a small number of defendants and victims?	Routine and complex cases	Routine and complex cases	Other: N/A-- High tech crimes are handled as part of the general prosecution caseload.	Routine and complex cases	Routine and complex cases	Routine and complex cases
23. Are attorneys who are assigned to consumer and environmental protection cases in separate units or a combined unit?	Combined units	No response	Separate units	They are under the Economic Crimes Division	Separate units	Separate units
24. If you have a unit or team that handles motions, writs and appeals, do attorneys in the unit handle them for all units or teams or only some units or teams in the office?	Other: Law and Motion unit handles general felony trial team cases, vertical unit DDA's handle own Law and Motion work, but get help from Law and Motion unit when needed.	All units or teams	All units or teams	Only some units or teams	All units or teams	General felonies and narcotics
25. Are any staff permitted to drive County vehicles to and from their homes?	Yes. Only DA Inspectors have vehicle to and from home.	Yes. Policy is included in the Investigators' MOU with the County. Cars cannot be home-garaged out of County and must use at least 1,000 miles per month to maintain privilege	Yes. Take-home vehicles for safety (sworn) DA investigators only use per county policy available online.	Yes	No response	Yes; Countywide policy is followed
26. Approximately how many vehicles are assigned to individual employees?	28	65	59	No response	No response	111 Attorney IVs
27. To determine if a case is "three strikes" eligible, prior criminal history information must be gathered. In your department, what is the position title(s) of the person(s) responsible for gathering this information, and how many people are tasked with this duty?	Police agencies are required to provide a rap sheet at the time of filing. (Number varies)	Prosecutor---120 positions	Office Assistant III. There is 1 full time position and several positions across the county that perform the function as an ancillary duty.	Paralegals-- 132 positions	A committee of 3 people	Supervising DA: one attorney and one paralegal
28. Approximately how many 'three strikes' cases are issued annually?	80-100	No response	150	111 in 2006	NA	80

**Attachment I.1  
District Attorney Survey Results**

	Contra Costa County	Fresno County	San Bernardino County	San Diego County	San Francisco County	Santa Clara County
29. On average, how long does it take to obtain a prior history on a defendant? What steps, if any, has your office taken to expedite this process?	Unknown. How long it takes to get priors varies by jurisdiction. We get most local priors and CDL packets within 30-60 days.	No response	10 minutes. Steps: NA	It varies, no average available	NA-- generally we get history on Felony Rebooking Packets. We are in the process of obtaining CLETS on all lawyers' desktops	2-3 months. Set up Prior Bank
30. Does your office have a central person(s) devoted to managing payroll, or are there many personnel involved in timekeeping, data entry, corrections or other payroll duties?	Central person(s) manages all payroll duties.	Central person(s) manages all payroll duties.	Central person(s) manages all payroll duties.	Various staff are collecting and managing payroll duties for various units	Central person(s) manages all payroll duties.	Central person(s) manages all payroll duties.
31. Do employees complete electronic or paper timecards to record their time worked each day? If so, how is time tracked?	No	Yes, by total hours	Yes, by total hours	Yes, by total hours	Yes, by total hours	No
32. Has your office established a position that heads up formal training program(s) for attorneys, paralegals and other staff?	Yes	No	Yes	Yes	Yes	No

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## Section 1. Felony Case Issuing

- **The District Attorney's Office seeks consistency in case charging decisions by centralizing these responsibilities with key staff members, either persons whose primary responsibilities are case charging, or the supervisor or other designated person in specialized prosecution teams. Beyond an express charging policy, and a Pleading Manual that assists prosecutors in using the proper language to allege specific crimes, and to make sure all allegations are included in a criminal complaint, the Office does not make consistent use of formal training, written guidelines, statistical analysis or other tools to assess whether to file criminal charges in specific factual events referred by police agencies for charging review.**
- **As a result, Supervising Deputy District Attorneys spend a majority of their time issuing cases, and correspondingly less time observing trial lawyers in court and other supervisory duties. Furthermore, if supervisors or designated persons were to leave an assignment suddenly, there is the potential for compromising this sought-after consistency. Furthermore, a review of departmental statistics suggests variances in the application of case-rejection codes (reasons) and the rejection rates of different attorneys.**
- **Each unit in the Office of the District Attorney should develop and implement periodic formal training in the charging function, including consistent application of case rejection codes, and should encourage the expansion of charging functions to additional staff. The Office should consider periodic reviews of identified, rejected cases to assess possible patterns in such cases or in the decisions of the staff that reviewed them. These steps will permit Supervising Deputy District Attorneys to spend correspondingly greater time observing trial lawyers in court and performing other supervisory functions. These steps will also promote consistency in charging decisions and protect against negative impacts from any sudden unexpected loss of attorneys with significant case charging responsibilities.**

The first step in the District Attorney's Office's process of prosecuting a criminal case is the decision whether or not to authorize criminal charges by way of a criminal complaint (a process known as issuing). Typically, law enforcement agencies submit a request for a criminal complaint on a standardized form which contains identifying information for the suspect(s) and corresponding agency information, such as police report numbers, unit name, etc. Attached to the complaint request are copies of relevant police reports, other supplemental documentation and both state and local criminal history information for the suspect(s).

The complaint request is referred to a Deputy District Attorney responsible for issuing the type of crimes believed to be described by the submitted reports (i.e. general felony, general misdemeanor, grant funded investigation/prosecution such as high tech crimes, or other vertical prosecution team, such as narcotics, sexual assault or homicide. The issuing attorney reviews the information and makes a decision whether to file criminal charges. Suspects detained in custody have a right to be brought before a

magistrate within 48 hours of their arrest. Therefore, charging decisions in these “in-custody” cases are given priority. Requests involving suspects not detained in custody are typically assigned a secondary priority, because the 48-hour rule does not apply. However, in some cases where a suspect is not in custody, but is identified as a possible risk to public safety, processing will be expedited, including preparation of a request to the Court for an arrest warrant.

In cases where a decision is made to charge a suspect with one or more felony offenses, the issuing deputy prepares, on a section provided in the complaint request form, a summary of the case facts, including a list of necessary witnesses and physical or documentary evidence. This summary must be sufficient to provide physical or documentary evidence sufficient to meet the People’s burden of proof at a preliminary examination, which is a hearing held in felony cases to determine whether there is probable cause to believe the defendant committed one or more felony offenses, and therefore should be ordered to stand trial. The summary is used by the prosecutor presenting the case in the preliminary examination.

A centralized three-person complaint unit makes the issuing decision regarding less serious felonies, such as burglaries, robberies and assaults. Issuing for more serious types of felonies is conducted by subject-specific prosecution units. These include a sexual assault team for rapes, child molestations and other sex crimes, a homicide team for homicides and a major fraud unit. Within these specialized teams, a single attorney is assigned to review cases and make issuing decisions. In the narcotics team, a single attorney is assigned to issuing duties, and makes most charging decisions for that team. Given the volume of cases, other attorneys on the unit, including the Supervising Deputy District Attorney, also sometimes make charging decisions, and the team’s two grant-funded attorneys in the Anti-Drug Abuse program make charging decisions on those cases. In the other teams, issuing is the responsibility of the supervising deputy district attorney overseeing the team. According to staff interviews, issuing is centralized in one person per unit to help provide consistency in decisions whether to file charges.

In interviews, supervisors and other staff responsible for issuing indicated that there are no written guidelines, screening forms or other instruments they use in the issuing decision. Attorneys do have access to a Pleading Manual. The primary purpose of this manual is to provide the exact language that must be included by the prosecutor in a criminal complaint to allege a particular crime under California criminal statutes. In addition, the Pleading Manual also includes “use notes” that provide information on recent changes in statutory or case law related to the particular code section being examined, and also additional allegations that should be added to the base criminal offense alleged, reflecting a defendant’s prior convictions, or aggravating factors of the criminal incident.

In addition to the Pleading Manual, issuing attorneys generally rely on their own prior training and experience as trial attorneys to review submitted police reports to determine if charges are warranted. Issuing attorneys indicated that they frequently consult with trial attorneys within the unit regarding difficult issuing decisions, and Supervising Deputy and/or Assistant District Attorney input may be sought when

needed. In addition to formal charging review, issuing attorneys also reported that law enforcement officers will commonly approach them with questions about pending investigations to obtain that prosecutor's assessment of the evidence collected, and whether it is likely to support filing charges.

One impact of this system is that supervisors of some specialized units spend a great deal of the time reviewing cases for issuing, leaving proportionately less time for other tasks, such as observing attorneys in court, meeting with them regarding pending cases and performing other supervisory duties. For example, the supervisor of the sexual assault team estimated spending 90 percent of his time reviewing and issuing cases, estimating that he files charges in about 50 cases per month. Other supervisors of specialized units also indicated that they spend most of their time issuing cases and assigning them to staff, rather than observing attorneys in court, meeting with them regarding pending cases, or otherwise supervising them.

Another impact of this system is that it creates a potential vulnerability to changes in staff in specialized units. For example, the attorney assigned to issue cases in the narcotics unit had, until a recent reassignment, been responsible for that function for 14 years. Although issuing responsibilities for this high-volume unit are occasionally performed by other team members, including the supervisor, losing a long-term assigned person such as this suddenly, through illness or other unexpected problems, could have adverse affects. During the exit conference for this audit, the District Attorney's Office reported that the current narcotics team supervisor, as a result of the reassignment of the issuing deputy, has begun to transfer those duties to other team members, including using senior deputies in the team to issue cases that have scheduled out-of-custody arraignment dates in each deputy's assigned courtroom at the Terraine Street drug courts. Implementation of this program included team training on issuing, conducted by the former issuing deputy and the supervisor.

Finally, Management Audit Division review of statistics maintained by the District Attorney's Office on the issuing process indicates that there are unexplained variances from one year to the next, or when issuing staff is changed, in reasons offered for case rejections. Some variance in case rejection rates was also observed. The information we reviewed is based on codes entered by issuing staff on the complaint request form, and also entered into the Office's CRIMES computer system, at the time a decision is made not to file charges in a particular case. The codes provide several finite options to explain the decision not to file. Our review of this information revealed the following:

- In 2005 the narcotics unit issuing deputy rejected 283 cases, and rejected 282 cases in 2006. In 2005, 29.7 percent of rejections were based on insufficient evidence, while in 2006, 47.9 percent of rejections cited this reason. In an interview, the issuing deputy said he did not review the statistics regarding reasons cited for rejecting cases, and did not have an explanation for this significant difference between the two years.
- The Complaint Unit has two attorneys who more or less split the decision-making process on in-custody cases. A third part-time attorney primarily handles out-of-custody referrals, including matters in which arrest warrants are

requested from the Court. In 2005 and 2006, the two in-custody issuers differed greatly in the stated reasons for rejecting cases. One attorney based approximately half the rejections on “insufficient evidence,” and another 30 percent on “the interest of justice.” The percentages were similar in each of the two years. The other in-custody issuing attorney based about one-third of rejections on “insufficient evidence,” and another 50 percent on other unspecified reasons. Contacted about this difference, the current team leader, who was one of these issuers, stated that it was “up to each individual attorney to decide how they classify a rejection,” and could not explain the difference in the statistics.

- There is also a difference in rejection rates between the two attorneys assigned to the in-custody complaint function between January and August of 2007. During that time period, one attorney rejected 15.5 percent of the cases reviewed, a second rejected 14.4 percent, and a third, the newest to the assignment, rejected 4.5 percent.
- A similar difference in rejection rates appeared in the sexual assault unit, which changed supervisors in July 2007. For the months of January through June, the former supervisor rejected 42.8 percent of cases submitted, while in July and August, the new supervisor rejected 34 percent of cases submitted.

In providing these statistics, we do not assert either that there are cases where charges are being filed inappropriately, or cases where charges are being rejected inappropriately. Prosecutors have great discretion as to whether or what charges to file in each case, and assessing decisions in individual cases is beyond the scope of this analysis. However, the observations in this section suggest a need for more formalization in the issuing process, through additional training and consistent utilization of the rejection codes in seeking confidence in the uniformity and transparency of the issuing process.

The District Attorney’s Office already has some limited examples of guidelines provided for the issuing process. Most broadly, there are District Attorney’s Office By-Laws, posted on the DA’s Internet site. These state, in relevant part:

“A four-prong test is utilized in deciding to authorize criminal charges:

- Was there a crime?
- Do we know who did it?
- Can we prove the case beyond-a-reasonable-doubt at jury trial?
- Is charging the right thing to do?

As a resource-allocation mechanism, we should have an 80 percent likelihood of prevailing in cases where future public safety is not at stake. A lesser likelihood is appropriate for especially serious crimes, persons who pose a danger, or to end a dispute which would continue to fester.”



The guidelines (Attachment 1.1) go on to state that the last prong of the test, if the first three are met “should be used sparingly, with great weight put on uniformity.”

Beyond these general guidelines, selected units in the District Attorney’s Office have provide additional guidance. For example, the Real Estate Fraud unit has a one-page checklist for cases referred to that unit for prosecution. The checklist provides about 20 questions to be answered as part of the charging review process to assist in evaluating the quality of available evidence. Similarly, the elder fraud unit includes in the procedural binder provided to attorneys a lengthy presentation of typical types of elder fraud cases, and the elements of the crime that must be identified and the evidence that is required for a successful prosecution.

Furthermore, there is precedent in other prosecutorial agencies for providing more detailed guidelines for decision to issue criminal charges. Perhaps the most extensive guidelines are contained in the United States Attorneys’ Manual, maintained by the U.S. Department of Justice for use by federal prosecutors. Section 9-27 of the manual, Principles of Federal Prosecution, includes extensive discussion of standards to be used by U.S. Attorneys in deciding whether or not to pursue federal charges, including an eight-step test to determine whether there is a substantial federal interest involved, and a four-step test to determine if another jurisdiction could pursue the case.

Beyond the Principles section, the manual also includes extensive discussions of statutory and case law regarding specific offenses, the elements the comprise a specific offense, and the types of evidence that need to be available to prove the criminal charge.

During the exit conference for this audit, the District Attorney’s Office stated that it believes comparison of materials prepared for U.S. Attorneys, and materials prepared for local prosecutors, is not appropriate, because the offices of the 93 U.S. Attorneys are located throughout the nation, at great distances from the oversight of the U.S. Department of Justice in Washington, D.C., and the extensive written materials are a way for the U.S. Attorney General to overcome these distances and enforce uniformity. This decentralization is not an issue in the District Attorney’s Office.

We agree that the level of detail provided in the U.S. Attorneys’ Manual represents the ideal case of provided written guidance for prosecutors, and can only serve as a model in form and a goal for the information a local prosecutor’s office should provide. However, we also believe that more extensive information than what is provided in the use notes of the District Attorney’s Pleading Manual would be beneficial, particularly in the review of very serious or very complex types of offenses. To provide it, the District Attorney should make use of all internal and external sources available. For example, the Alameda District Attorney’s Office publishes an on-line journal called *Point of View*, which provides original articles and case reports on areas of the law relating to criminal investigation. The Santa Clara District Attorney’s Office could provide links to relevant case reports and articles from that journal in the Pleading Manual, as an additional source of information for prosecutors.

In addition to the federal guidelines, the State of New Jersey, as the result of court decisions in that state, maintains an extensive set of charging guidelines promulgated

by the state Attorney General. The courts specifically directed prosecutors to develop the guidelines in order to promote consistency in charging decisions, based on the courts' finding that charging decisions were tightly connected to the sentences that convicted defendants ultimately received. The New Jersey rules also require prosecutors in selected instances to provide a written explanation of how the guidelines were applied to a particular case.

Also, information obtained from other counties as part of this audit and information from Santa Clara County prosecutors who have worked elsewhere indicates that such tools are utilized. In San Bernardino County, the District Attorney's procedure manual includes a section on crime charging that includes 30 different policies related to the decision to charge a crime, including detailed instructions for preparing a statement of facts in the case, detailed descriptions for how charging language should be prepared, how decisions to decline prosecution should be reported to law enforcement agencies, and how certain specific types of cases, such as homicides, should be handled. The policy manual also makes reference to Uniform Crime Charging Manual which has specific language describing the elements of particular criminal violations that may be charged.

Similarly, the current attorney in charge of narcotics issuing reported that when he worked in Alameda County, charging attorneys there were required to fill out a form with specific information as to their evaluation of each case they recommended or rejected for criminal charges, including an assessment of the probability of winning the case at trial. The attorney said having a similar form in the Santa Clara District Attorney's Office would be helpful, particularly when new attorneys take over the function. The attorney noted that in making his own charging decisions, he consults binders he has developed with information on drug case law, photocopies of typical local cases, and other legal information. This information is not part of the formal procedures binder maintained for the narcotics unit, or the overall procedures manual for the District Attorney's Office.

In addition, academic legal experts have suggested more specific guidelines and tools would help make decisions. For example, the Jefferson Institute for Justice Studies, a think tank in Washington, D.C., has developed a Prosecutor's Guide to Intake and Screening in cooperation with selected prosecutors' offices in North Carolina. The Guide, which instructs prosecutors how to evaluate and change their screening systems for issuing criminal charges, states that "Screening and charging decisions should be made by competent trial attorneys following a written set of guidelines." The institute also recommends that, as a method of auditing consistency among attorneys who issue cases, prosecutors should use a simulated set of criminal cases to test uniformity in decision-making, asking attorneys if they would accept the case for prosecution, what the charge(s) should be, and what the expected disposition and sentence would be.

Ronald Wright, a law professor at Wake Forest University, has also written extensively on the need for more specific screening guidelines in prosecutors' offices. He said such "hard screening" systems reduce the likelihood of overcharging or undercharging for offenses at the time cases are issued. According to Wright, this makes it less likely that charges will be changed later in the process, and reduces any incentive for plea bargains

to occur in the form of soliciting guilty pleas to reduced charges. Wright, in an analysis of the New Orleans District Attorney's Office, noted that from 1988 to 1999, 13 percent of charges filed resulted in a trial, and another 65 percent resulted in the defendant pleading guilty to the charge as filed, indicating that this jurisdiction's system, which included an extensive information system requiring prosecutors to explain cases where charges are declined.

Based on the foregoing discussion, we recommend that the District Attorney's Office provide more formality in the issuing process, by taking the following steps:

- More emphasis should be placed on existing charging guidelines and the expansion of specialized-case procedures and use notes should be employed. The use notes should include references to recurring evidentiary and factual issues in certain classes of cases, and guidance, including citation to statutory and case law, in analysis of those cases.
- The District Attorney's Office should develop specific definitions for, and train staff in the use of, formal case rejection codes. Since these codes are standardized in the Criminal Justice Information and Control (CJIC) system, coordination with other affected departments should be considered. These definitions should include brief examples for each code. Once these definitions are defined and staff is trained in their consistent application, periodic statistical review should occur to examine potential trends. These reviews should flag changes in the percentages of cases declined for certain reasons, triggering conferences with issuing attorneys to determine the reason for the changes, or other additional action that is determined to be warranted.
- The District Attorney's Office should develop a training system for attorneys assigned primarily to issuing functions, to include mock fact patterns and reference materials which include relevant legal authority.
- The District Attorney's Office should develop additional issuing resources in each specialized unit by expanding issuing responsibilities beyond supervisors and/or one primary issuing attorney per unit. This change would permit affected supervisors to spend proportionately more time observing trial lawyers in court and performing other supervisory functions, and would also protect against any adverse effects of any sudden, unexpected loss of attorneys with significant case charging responsibilities.

The District Attorneys Office currently has an Assistant District Attorney for Special Projects, who does not oversee any prosecutorial units, and is responsible for carrying out specific analytical and policy-making projects for the District Attorney. The revisions in the issuing process described in this section should be assigned to that position for implementation, working with the Assistant District Attorneys and the Supervising District Attorneys in each unit to pull together existing materials on issuing and developing new ones. The availability of a position to carry out this role should mean that no additional cost is required to carry out these recommendations.

## CONCLUSION

The District Attorney's Office seeks consistency in case charging decisions by centralizing these responsibilities with key staff members, either persons whose primary responsibilities are case charging, or the supervisor or other designated person in specialized prosecution teams. Beyond an express charging policy and a Pleading Manual, the Office does not make consistent use of written guidelines or statistical analysis to assess whether to file criminal charges in specific factual events referred by police agencies for charging review. As a result, Supervising Deputy District Attorneys spend a majority of their time issuing cases, and correspondingly less time observing trial lawyers in court and other supervisory duties. As a further result, if supervisors or designated persons were to leave an assignment suddenly, there is the potential for compromise in this sought-after consistency. Furthermore, a review of departmental statistics suggests variances in the application of case rejection codes (reasons) and the rejection rates of different attorneys.

## RECOMMENDATIONS

It is recommended that the District Attorney's Office:

- 1.1 Place more emphasis on existing charging guidelines, and expand the use of specialized-case procedures and use notes to increase the utility of the Pleading Manual, by adding additional information to it from internal and external sources. The use notes should include references to recurring evidentiary and factual issues in certain classes of cases, and guidance, including citation to statutory and case law, in analysis of those cases. (Priority 1)
- 1.2 Develop specific definitions for, and train staff in the use of, formal case rejection codes. Periodic statistical review should occur to examine potential trends related to the charging function, and determine whether additional action is warranted. (Priority 1)
- 1.3 Develop a training system for attorneys assigned primarily to issuing functions, to include mock fact patterns and reference materials which include relevant legal authority. (Priority 2)
- 1.4 Develop additional issuing resources in each specialized unit by expanding issuing responsibilities beyond supervisors and/or one primary issuing attorney per unit. (Priority 2)

## SAVINGS, BENEFITS AND COSTS

Implementing the recommendations of this section will provide more formality in recording reasons for case rejections, and increase the ability to statistically analyze this information. These changes will in turn foster greater uniformity in charging decisions, and permit Supervising Deputy District Attorneys to spend correspondingly greater

time observing trial lawyers in court and performing other supervisory functions. The changes would also protect against adverse effects of any sudden, unexpected loss of attorneys with significant case charging responsibilities. Assigning the development of this program to the existing Assistant District Attorney for Special Projects, or other existing staff, should permit these changes to be employed without additional cost.

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## Section 2. Drug Court Operations and Staffing

- Santa Clara County operates five courts dedicated to felony narcotics prosecutions at its Terraine Street facility. These courts manage felony narcotics cases that have not yet reached the preliminary examination stage of prosecution. They also monitor narcotics defendants who are eligible for and choose to participate in court-monitored drug treatment programs. The District Attorney's Narcotics Unit reports that defendants who reject case settlement offers at the Drug Court often receive later settlement offers from trial judges (usually at the Hall of Justice Facility) similar to what was proposed at the Terraine Street Facility. The Unit also reports that drug court calendars have a high number of routine status (review) hearings for defendants that could be heard without a prosecutor present, if these matters were coordinated into a single daily calendar. Review of a random sample of 100 cases that moved from Drug Court to trial courts, and a separate sample of 24 days of calendars at Drug Court confirmed these problems.
- As a result of these problems, Drug Court does not operate as efficiently as it could. Further consequences of the present operation include the District Attorney's Narcotics Unit spending time to prepare for preliminary hearings and trials on cases that do not end up going forward, and being present for routine court hearings where their presence does not add value.
- The District Attorney's Office should confer with the Superior Court on two changes to the current procedure. One change would set up a rotating calendar among the five drug courts, on a daily or weekly basis, to conduct routine review hearings for Drug Court defendants. The other change would recognize and enforce the premise that while defendants generally receive favorable consideration in exchange for a case disposition that includes acceptance of responsibility and acknowledgment of guilt before preliminary examination, absent unusual circumstances, these favorable offers would not be renewed (and never undercut) after preliminary examination. These steps would improve the efficiency of the Drug Court and the Narcotics Unit, keeping cases where a trial is not required in Drug Court, and permitting prosecutors to focus on cases that are actually going to trial or require some further court. We estimate that these steps would permit eliminating one or two attorney positions in the Narcotics Unit, for savings of \$231,000 to \$462,000 annually, or reassigning them to other duties.

The Santa Clara County Superior Court operates five drug courts at its Terraine Street facility. These courts operate under Rule 1.E.(3) of the rules of the Superior Court, which states:

"The presiding judge shall assign to the Criminal Division of the Superior Court a sufficient number of judges to serve at a designated courthouse to process all felony drug cases. Judges at this facility shall conduct all felony arraignments, pre-trial proceedings, settlement conferences, pleas and

sentencing proceedings, as well as the assignment of dates for preliminary examinations.”

Based on this rule of court, the drug courts are designed to handle cases that are not going forward to preliminary hearings to determine if there is sufficient probable cause to set a case for trial, and then on to criminal trials on the drug charges.

In general, cases supervised in the drug courts are of three types:

- **Deferred Entry of Judgment (DEJ) cases**—An eligible defendant may plead guilty or no contest to a qualifying narcotics charge, but entry of judgment of conviction and sentencing is deferred while the defendant participates in an 18-month educational and supervisory program. Successfully completing the program entitles the defendant to have the charge dismissed. Failing to complete the program results in the prior judgment of conviction being entered and the defendant sentenced. Generally, defendants with minimal criminal history and no recent participation in the DEJ program are eligible to participate.
- **Proposition 36 Cases**—Under Penal Code Section 1210.1, otherwise known as Proposition 36, an eligible defendant convicted of a non-violent drug possession charge (whether by plea, court decision or trial verdict), receives a grant of probation that includes participation in drug abuse treatment, drug testing and supervision as primary conditions. Eligibility is prescribed by status and is generally limited to defendants with minimal criminal history whose current case(s) contain only non-violent drug possession offenses. Recent DEJ (Including DEJ failure) or a pending grant of Proposition 36 probation are not bars to participation.
- **Drug Treatment Court Cases**—Pursuant to local guidelines, eligible defendants (with significant narcotics criminal history and who are not eligible for Proposition 36 treatment on their current case(s)) are offered significant social services assistance and resources, are closely monitored by the court, and are required to make frequent court appearances as a “last chance” to avoid a prison sentence on their current narcotics case.

## Shifting of Cases from Drug Court to Criminal Court

In interviews, Narcotics Unit managers identified two problems with the operation of this system. First, as noted earlier, the drug courts are designed to handle cases that are settled with a guilty plea by the defendant. When a defendant chooses to plead not guilty to the charges, the case is automatically shifted from the drug courts to the criminal courts at the main Hall of Justice, where a preliminary hearing is held to determine if there is sufficient cause to bind the defendant over for trial, followed by a bench or jury trial on the charges.

According to Unit staff, it is fairly common for defendants in these cases, who reject pre-preliminary examination settlement offers at Drug Court to receive later settlement offers from trial judges (usually at the Hall of Justice facility) similar to what was



proposed at the Terraine Street facility. In effect, this undercuts the authority of drug court judges, because it gives defendants little incentive to enter a guilty plea at an early stage of the process. It also requires the District Attorney's Office to arrange for witnesses and otherwise spend time preparing for preliminary hearings and trials that in fact never take place, an inefficient expenditure of resources.

To assess this claim, Management Audit staff reviewed 100 cases selected randomly from the District Attorney's CRIMES computer system. The 100 cases were not selected through a scientific random sample, but were the first 100 cases for which narcotics charges were filed by the Narcotics Unit in 2006 that had the following characteristics:

- The first appearance in the case was at one of the Terraine Street drug courts.
- The case subsequently was moved out of the drug courts, and into the criminal courts at a later stage, almost always as a result of a not guilty plea by the defendant.
- There was a resolution to the case resulting in a sentence.

The 100 cases included 118 individual defendants. The earliest first appearance for the 100 cases was on January 1, 2006, the latest was on June 14, 2006. The last Terraine Street court appearance in these cases was as early as January 6, 2006, and as late as July 13, 2006. Resolution of the case by a verdict or a judge's ruling occurred as early as January 31, 2006, and as late as November 27, 2006. Results of the analysis of 100 cases are shown in the following table:

**Table 2.1**

**Resolution of 100 Cases in 2006 Moved from Drug Court to Criminal Court**

<b>Resolution Type</b>	<b>Number of Defendants</b>	<b>Percentage of Cases</b>
Deferred Entry of Judgment	15	12.71%
Summary Probation*	5	4.24%
Probation	<u>59</u>	<u>50.00%</u>
<b>Subtotal</b>	<b>79</b>	<b>66.95%</b>
Prison	30	24.42%
Dismissed in the Interest of Justice	4	3.39%
Dismissed for Lack of Evidence	<u>5</u>	<u>4.24%</u>
<b>Total</b>	<b>118</b>	<b>100.00%</b>

As the table shows, about two-thirds of the cases were settled in criminal courts with sentences of probation or deferred entry of judgment, the same types of sentences that occur in the drug courts. Only about one-quarter of the cases that went forward into the criminal courts resulted in prison terms.

Other observations about this data included the following:

- Of the 118 defendants, 50, or 42.37 percent, had progressed in drug court as far as receiving a Felony Advanced Resolution hearing, a hearing in which the defense attorney and prosecutor discuss informally, in the presence of a judge, potential resolution of the case, including the possible sentence. This indicates that prosecutors had attempted to resolve the case in drug court before a not guilty plea moved it out of the court's jurisdiction.
- Only two of the 118 defendants actually completed the process with a trial, one receiving a guilty verdict which resulted in a prison sentence, the other receiving a mistrial for a hung jury, which subsequently resulted in a guilty plea and a probation sentence.
- Only 17 of the 118 defendants settled the case at the pretrial hearing stage, either when the hearing was being set or just prior to the hearing being held.
- Consequently, 85.6 percent of the defendants, 101 out of 118, ended up in a status requiring the District Attorney's Office to prepare for a trial, even though the case settled without one. The majority of the defendants, 65 of 118, or 55 percent, ended up in standby status, where the case was placed on the Superior Court's Master Calendar as ready for trial, and was awaiting an available courtroom for it to be heard. Smaller numbers settled when pretrial motions were heard, when a readiness hearing was conducted on whether both sides were ready for trial, or at the time a formal trial date was set.

Based on these findings, we recommend that the District Attorney confer with the Superior Court and other affected entities, including the Public Defender, the Alternate Defender's Office, Legal Aid Society and the local defense bar, to commit to a Local Rule of Court or other statement of purpose that recognizes and enforces the premise that while defendants generally receive favorable consideration in exchange for a case disposition that includes an early acceptance of responsibility and acknowledgment of guilt (e.g. before preliminary examination) absent unusual circumstances, these favorable offers will not be renewed (and, absent changed circumstances, never undercut) after preliminary examination.

By taking this step, the number of cases where prosecutors must prepare for trial, but never in fact go to trial, will be reduced, allowing resources to be refocused on the minority of cases that go to trial.

## **Reorganizing the Drug Court Calendar**

The second problem identified by Narcotics Unit staff regarding Drug Court operations, is that a significant amount of drug court time is taken up by routine review hearings that are required by defendants who are on probation under Proposition 36. While these hearings are principally for the purpose of allowing Probation Department staff, drug treatment providers and defendants to report to the court on the defendant's

treatment progress, prosecutors are also in attendance. According to District Attorney staff, while prosecutors' appearances at these routine review hearings are not necessary, they do attend since these hearings are folded into the other work of the court.

In order to test this assertion, we requested that the Information Services Department provide a download from the County's Criminal Justice Information Control System, for 24 court working days selected at random in Calendar Year 2005, of all proceedings heard in the drug court departments. Excluded from the analysis was Department 64, the Drug Treatment Court, because frequent court appearances by defendants are considered part of the therapeutic program supervised by that court, and court sessions, as observed by the Management Audit staff, frequently include discussions among the court prosecutor, judge and public offender that do not occur in the other drug courts.

The CJIC download we received included 5,816 separate proceedings, and include the date and time of the proceeding, a five-letter code for the type of proceeding, the department where the proceeding occurred, the judge presiding, and one or more two-digit codes, using both letters and numbers, indicating the results of the proceeding. Our review of this data revealed:

Of the 5,816 proceedings, 2,119, 36.4 percent, were coded either RVHRG or HDEJ, which are the codes for a routine review hearing for a defendant supervised in the drug court either under the Deferred Entry of Judgment or Proposition 36 probation programs. In approximately 90 percent of those proceedings, that was the only coded purpose for the hearing, and did not include other actions such as a probation violation, a return to custody on a bench warrant, or other actions that would merit a prosecutor being present.

Furthermore, analysis of the results of the 2,119 review hearings, found that 1,299 of them, 61.3 percent, had a result that also did not indicate that a prosecutor needed to be present. These results included continuation of the hearing, a notation that the defendant had presented information showing his progress in treatment, issuance of a bench warrant when the defendant failed to appear at the hearing, or an order of the court for the defendant to be reassessed for Proposition 36 eligibility. These hearings could have gone forward even without a prosecutor present, and account for about 22 percent of the total 5,816 proceedings examined. The other 40 percent of hearings, because they revealed some problem with the case requiring court action, would have needed to be continued to a time when a prosecutor could be present.

Based on this analysis, we concur that a reorganization of the drug court's business could free up additional time for drug court attorneys to prepare for cases where a court appearance is needed. We recommend that the District Attorney approach the Superior Court for a second change to the Drug Court rules, which would establish a specific calendar, held daily, or less frequently if feasible, to hear only those matters which represent routine review hearings for defendants in the Deferred Entry of Judgment or Proposition 36 probation programs. In order to spread the burden of this duty among the judges, while achieving the efficiency sought, this calendar should be rotated among the four drug courts, excluding Department 64, on a daily or weekly basis, so that no judge would be required to hear these routine matters all the time. During the exit

conference for this audit, the District Attorney's Office reported that a proposed Drug Court calendar reorganization is already being assessed by a working group comprised of Superior Court, Public Defender, Adult Probation Department and District Attorney representatives. This reorganization is among several court calendar changes suggested by the recent JMI report prepared for the County to assess criminal justice process solutions to jail overcrowding.

No prosecutor would need to be present for this calendar, and any hearing where it is found that the defendant has violated terms of his sentence, or otherwise has a problem requiring action by the court, would be deferred to a subsequent date to be heard when a prosecutor was present. This change would allow prosecutors to spend more time preparing for those matters where they need to advise the court, improving efficiency.

Current staffing for the Narcotics Unit includes five calendar deputies, one for each of the Terraine Street drug courts, and four general trial deputies responsible for cases that are moved out of the drug courts to the regular criminal courts for preliminary hearing and trial. Based on the analysis showing that routine hearings not requiring a prosecutor account for slightly more than one-fifth of the proceedings occurring in the drug courts, the calendar reorganization proposed here should permit elimination of one of the five attorney positions serving as a calendar deputy. Elimination of one Attorney IV position at the top salary step would result in savings of \$231,328. Alternatively, the District Attorney may initially want to move this position to other duties, particularly narcotics trial work. One impact of the proposed recommendations is likely to be a temporary increase in the number of narcotics cases going to trial, as some defendants decide to go forward to trial rather than pleading and returning to the drug courts for sentencing. Ultimately, as the two recommendations take effect the District Attorney should be able to eliminate at least one and perhaps two Narcotics Unit attorneys, one from the Terraine Street due to calendar reorganization, and a second from general trial duties as the volume of cases requiring preparation for preliminary hearing and trial declines. Eliminating two positions would save \$462,656.

## **CONCLUSION**

The County's Drug Court does not operate as efficiently as they could, for two reasons. First, about one-third of the drug court hearings are for routine progress reviews of DEJ or probation-sentence defendants where a prosecutor does not need to be present. Prosecutors currently are present, because these hearings are folded into the other work of the drug courts. Second, attempts by Drug Court judges to expeditiously settle cases with guilty pleas are undercut when defendants are able to enter not guilty pleas, then subsequently receive similar dispositions at the trial court level, which requires prosecutors to expend time preparing these matters for preliminary examinations and/or trials that ultimately do not occur.

## RECOMMENDATIONS

It is recommended that the District Attorney's Office:

- 2.1 Confer with the Superior Court and other affected groups to establish a separate calendar in one Drug Court for routine status reviews in Deferred Entry of Judgment or Proposition 36 cases. A prosecutor would not be present at this hearing, which would be continued to a subsequent date for a prosecutor to be available, in the event that violations of program requirements or other matters requiring further court action are discovered. (Priority 1)
- 2.2 Confer with the Superior Court and other affected groups to modify existing procedure to recognize and enforce the premise that while defendants generally receive favorable consideration in exchange for a case disposition that includes an early acceptance of responsibility and acknowledgment of guilt (e.g. before preliminary examination) absent unusual circumstances, these favorable offers would not be renewed and never undercut after preliminary examination. (Priority 1)

## SAVINGS, BENEFITS AND COSTS

The recommendations of this section would improve the efficiency of the District Attorney's Narcotics Unit. By reducing the number of cases going forward from Drug Court to Trial Court, Recommendation 2.2 reduces the number of cases where prosecutors must prepare for preliminary examination and/or trial. Recommendation 2.1 reduces the number of drug court proceedings where prosecutors must be present by about 20 percent, allowing that time to be spent on other duties. This would permit one position, costing \$231,328 annually, to be eliminated from the Unit's Terraine Street staff, or moved to other duties. Ultimately, the combination of these two recommendations is expected to permit at least one position, and possibly two, to be eliminated or moved to other duties, depending on the extent of reductions in cases that must be prepared for preliminary hearing or trial. Eliminating two positions would save \$462,656. Once these recommendations are implemented, the results should be evaluated to determine if actual staff reductions are justified by the anticipated efficiency increases.

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### Section 3. Regional Misdemeanor Staffing

- The amount of work assigned to misdemeanor attorneys in the District Attorney's San Jose, North County and South County offices varies widely. The attorney in South County handles all aspects of prosecuting misdemeanors – from issuing cases to taking them to trial – in addition to traffic court. In contrast, misdemeanor case prosecution follows a horizontal structure in San Jose, with one attorney issuing cases, three attorneys handling pre-trials, and five attorneys handling trials. Also in contrast to South County, the two misdemeanor attorneys in North County are not primarily responsible for issuing cases. Furthermore, law clerks handle traffic court in both San Jose and North County.
- The workload of attorneys who prosecute misdemeanors in Santa Clara County thus appears inequitable. Based on new misdemeanor cases that were assigned in 2006 and the current level of attorney staffing on each unit or team, the misdemeanor attorney in South County is assigned approximately 51 percent more misdemeanor cases than the average of all locations. As a result of being assigned more work, the South County attorney is not always able to review complaints for issuing or prepare cases for trial during normal business hours.
- The District Attorney's Office should therefore augment misdemeanor staffing in South County. This could be accomplished by assigning responsibility for misdemeanor trials in South County to the Central Misdemeanor Team, or assigning a Bar Certified law clerk to the South County Unit that would be responsible for traffic court, legal research and logistics support. If the Central Misdemeanor Team were to handle South County misdemeanor trials, responsibility for the bond calendar could be transferred from the District Attorney's Office to the County Counsel's Office.

#### Background

The District Attorney's Office includes a Central Misdemeanor Team in San Jose, a North County Unit and a South County Unit. Similar to the Central Misdemeanor Team, the offices in both North and South County have attorneys who are assigned to prosecute misdemeanor cases. This includes two Deputy District Attorneys in North County, one Deputy District Attorney in South County, and nine Deputy District Attorneys on the Central Misdemeanor Team. A Supervising Deputy District Attorney is also assigned to each unit or team. Furthermore, volunteer attorneys occasionally assist the Central Misdemeanor Team on a full-time basis over a 90-day period to obtain criminal trial experience. When a volunteer attorney is assigned to the team, he or she is primarily responsible for trial duties, although some motions work is also included.

The North County Unit and Central Misdemeanor Team are also assisted by law clerks, while the South County Unit is not. During Fall 2007, two law clerks were assigned to the Central Misdemeanor Team, and one law clerk was assigned to North County. At the time fieldwork was performed for the audit, only one law clerk had been assigned

to each location in Spring 2008. Most law clerks in the spring program are part-time students, and work 20 hours per week for the District Attorney’s office without pay.

A summary of attorney positions in each location is provided in Table 3.1.

**Table 3.1**

**Misdemeanor Staffing as of December 2007**

<u>Position</u>	<u>Central Misdemeanor Team</u>	<u>North County Unit</u>	<u>South County Unit</u>
<i>Full-time:</i>			
Supervising Deputy District Attorney*	1	1	1
Deputy District Attorney	9	2	1
<b>Total Positions</b>	<b>10</b>	<b>3</b>	<b>2</b>
<i>Part-time:</i>			
Volunteer Attorney	Occasionally	No	No
Law Clerk	Yes	Yes	No

Source: District Attorney’s Office, Organizational Charts and Staff Interviews

\* Supervisors assigned to the North and South County Units play less of a role than the supervisor on the Central Misdemeanor Team in assisting with the prosecution of misdemeanor cases.

There are consequently more attorneys – both full-time and part-time – assigned to the Central Misdemeanor Team than to North or South County. This is due to the fact that far more cases are generated centrally than in outlying areas. However, based on interviews with misdemeanor attorneys and an analysis of attorney caseloads in each location, the amount of work that the South County attorney handles differs significantly from similar attorneys in San Jose and North County.

**Misdemeanor Case Prosecution**

The North County and South County Units are considered vertical units, so attorneys in those units are responsible for handling everything related to misdemeanor prosecution, from issuing cases to final disposition, including trials. In South County, this means that one attorney handles all issuing, pre-trials, motions and trials for misdemeanors, in addition to traffic court, which results in the following schedule:

- Monday: misdemeanor trials in the morning and misdemeanor motions in the afternoon in alternating departments
- Tuesday: pre-trial preparation



- Wednesday: starting in the morning, pre-trials followed by trials in one department for traffic court
- Thursday: misdemeanor pre-trials all day in alternating departments
- Friday: catch-up and trial preparation

Throughout the week, the misdemeanor attorney in South County also reviews complaints for issuing when he has time.

Because the North County Unit has two misdemeanor attorneys and two departments that handle misdemeanors, the misdemeanor caseload can be divided relatively equally. Each attorney is assigned a department and handles all pre-trials, motions and trials in that department. However, misdemeanor attorneys in North County do not spend as much time issuing cases as the misdemeanor attorney in South County. The felony attorney in North County who issues felony cases took over issuing for misdemeanor cases because felony issuing did not demand all of his time.<sup>1</sup> According to District Attorney staff, it was difficult for the misdemeanor attorneys to stay on top of their work before this change took place. The two misdemeanor attorneys and other members of the North County Unit continue to assist in issuing misdemeanor cases when needed.

Since this past summer, the North County Unit has had a law clerk who handles traffic court every Wednesday afternoon. Law clerks likewise handle traffic court every Tuesday and Thursday afternoon in San Jose. Misdemeanor attorneys in both locations only handle traffic court when no law clerks are available, or an attorney is needed in court. District Attorney staff stated that the law clerks are invaluable because of the assistance that they provide with traffic court. Staff also mentioned that because there are two scales in South County, and truckers are more likely than other motorists to hire attorneys and fight traffic violations, a higher percentage of traffic cases go to trial in South County than elsewhere in the County, and these cases are the responsibility of the sole misdemeanor attorney in South County.

While the Central Misdemeanor Team has the same responsibilities as the North and South County Units with regard to misdemeanors, individual attorneys are responsible for discrete components of case prosecution. Currently, of the nine attorneys who staff the Central Misdemeanor Team, one attorney is responsible for issuing most cases (particularly in-custody matters, while other team members assist with out-of-custody issuing), three attorneys are responsible for pre-trial hearings and motions, and five attorneys are responsible for trials. While pre-trial attorneys handle most motions, trial attorneys occasionally appear in court for them as well. Within the court, a total of six departments handle misdemeanors, and they alternate between pre-trial hearings and trials, with three handling pre-trials and three handling trials each week.

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<sup>1</sup> Further information on felony staffing in North County is included in the Introduction under “Topics Requiring Additional Review.”

The three pre-trial attorneys are thus in court five afternoons a week, covering pre-trials on Monday through Thursday and motions on Friday, which generates a constant and heavy amount of work. When not in court, the pre-trial attorneys are preparing cases for pre-trials and trials. Consequently, the pre-trial attorneys do much of the work associated with getting cases ready for trial. At least two of the pre-trial attorneys also have other cases or tasks for which they are responsible, as a result of former or special assignments.

Because misdemeanor trials in San Jose are scheduled in only three departments each week, each of the five trial attorneys on the Central Misdemeanor Team are generally not required to appear at trial calendars every week. However, as a result of factors such as illness, staff turnover, trial continuances, and the need for trial attorneys to appear in court for certain cases regardless of their court date, these attorneys are not always excused from court appearances on weeks in which they are not assigned a trial calendar. District Attorney staff report that attorneys who are assigned a trial calendar for a particular week typically know early in the week if cases will settle or go to trial.

Attorneys who are not in trial on Monday mornings may be assigned to cover the bond calendar or felony pleas, a duty that rotates through various teams on different days of the week. Otherwise, when not in court, these attorneys are preparing for trials, appearing as necessary on the Friday afternoon motions calendar, or attending to other administrative and special responsibilities.

Table 3.2, on the next page, reflects the distribution of work associated with prosecuting misdemeanor cases in San Jose as compared with the outlying offices. Attorneys with primary responsibility for a particular component are listed first in each category. As shown, the various components are more distributed among staff in San Jose and North County than in South County, indicating workloads that are inequitable.

**Table 3.2**

**Misdemeanor Case Prosecution: Assignment of Each Component**

<b><u>Component</u></b>	<b><u>Central Misdemeanor Team</u></b>	<b><u>North County Unit</u></b>	<b><u>South County Unit</u></b>
<i>Misdemeanors:</i>			
Issuing	Issuing and Team Attorneys*	Issuing, Misdemeanor and Unit Attorneys*	Misdemeanor and Unit Attorneys*
Pre-trials	Pre-trial Attorneys	Misdemeanor Attorneys	Misdemeanor Attorney
Motions	Pre-trial and Trial Attorneys	Misdemeanor Attorneys	Misdemeanor Attorney
Trials	Trial Attorneys	Misdemeanor Attorneys	Misdemeanor Attorney
<i>Other:</i>			
Traffic Court	Law Clerk	Law Clerk	Misdemeanor Attorney
Felony Pleas	Trial Attorneys	Not Applicable	Not Applicable
Bond Calendar	Trial Attorneys	Not Applicable	Not Applicable

Source: District Attorney’s Office, Staff Interviews

\* Team and unit attorneys include supervisors.

**Caseload Comparison**

Since there are numerous differences in the various misdemeanor assignments by location, it is difficult to make accurate comparisons based on caseload figures alone. Nonetheless, we felt it important to analyze caseload data and present the results. The data presented in Table 3.3 thus provides a baseline to compare the number of new misdemeanor cases assigned to each unit or team, but should be considered an incomplete measure of actual workload for the following reasons:

- The caseload figures do not reflect the work involved in reviewing complaints and then issuing or rejecting them as cases for prosecution.
- Some cases assigned in 2006 may not result in court events in the same year due to delays for various reasons, the possibility of charged defendants remaining fugitives for a period of time, or the matter being resolved at arraignment; and,
- Cases that are assigned in previous years may result in court events in 2006, requiring attorney preparation and appearance.

At the same time, we were not provided with any evidence indicating that the prevalence of these factors varied significantly by region relative to the size of their assigned caseload, suggesting that the comparison is valid.

As shown in Table 3.3, based on new cases assigned to each unit or team in 2006 and the average level of attorney staffing during the same year, the misdemeanor attorney in South County was assigned approximately 1,169 more misdemeanor cases than the average of all locations. This results in a misdemeanor caseload that is about 78 percent larger than the average.

**Table 3.3**

**Misdemeanor Caseloads Based on Average Staffing and Assigned Cases in Calendar Year 2006**

	<u>Average Attorneys*</u>	<u>Assigned Cases**</u>	<u>Cases per Attorney</u>
Central Misdemeanor Team	12.4	16,731	1,345
North County Unit	2.0	3,817	1,909
South County Unit	1.0	2,673	2,673
<b>Average of All Locations</b>	<b>5.1</b>	<b>7,740</b>	<b>1,504</b>
<b>South County Over (Under) Average</b>	<b>(4.1)</b>	<b>(5,067)</b>	<b>1,169</b>
<b>Percent Over (Under) Average</b>	<b>(81%)</b>	<b>(65%)</b>	<b>78%</b>
<b>Central Misdemeanor Team without Domestic Violence</b>	<b>10.1</b>	<b>14,697</b>	<b>1,461</b>

Source: District Attorney Attorney's Office, Organizational Charts and Case Records Information Management and Exchange System (CRIMES)

\* Staffing figures were calculated based on organizational charts that were provided by the District Attorney's Office for 2006. Since multiple charts were produced in some months due to staffing changes, the staffing level associated with each chart was weighted based on the number of days that it existed. This excludes supervisors, who provide assistance in misdemeanor matters and are available as an additional misdemeanor prosecution resource, and includes the portion of attorneys in each location that perform the issuing function.

\*\* Case counts include new cases that were assigned to each location in 2006 as a result of a complaint or citation being issued. This excludes a small number of felony cases that were assigned to each unit or team to give less experienced attorneys experience in prosecuting felonies.

Additionally, while an average of 12.4 full-time equivalent (FTE) attorney positions were assigned to the Central Misdemeanor Team in 2006, three of these attorneys were assigned pre-trial and trial calendars for domestic violence cases from March through December of that year.<sup>2</sup> Prosecuting these cases vertically, rather than horizontally, increased the amount of time for calendar preparation, case analysis and follow-up. Then, on December 11, 2006, two of the three attorneys and their caseloads were

<sup>2</sup> Two attorneys were assigned in March 2006, and the third attorney was assigned in June 2006.

transferred from the Central Misdemeanor Team to the Family Violence Division. The third attorney was re-directed to another area of the office due to staffing concerns. By removing the 2.3 FTE attorney positions and approximately 2,034 domestic violence cases that are no longer associated with the Central Misdemeanor Team, the misdemeanor caseload in San Jose increases from approximately 1,345 to 1,461 cases per attorney.

We then compared the adjusted case count for the Central Misdemeanor Team with its current level of attorney staffing. As shown in Table 3.4, based on current staffing, the average caseload for the Central Misdemeanor Team increases even further to approximately 1,633 cases per attorney, which is still less than in North and South County. However, with this change, the misdemeanor attorney in South County has a caseload that is now approximately 51 percent larger than the average of all locations.

**Table 3.4**

**Misdemeanor Caseloads Based on Current Staffing and Assigned Cases in Calendar Year 2006**

	<u>Current Attorneys*</u>	<u>Assigned Cases**</u>	<u>Cases per Attorney</u>
Central Misdemeanor Team	9.0	14,697	1,633
North County Unit	2.0	3,817	1,909
South County Unit	1.0	2,673	2,673
<b>Average of All Locations</b>	<b>4.0</b>	<b>7,062</b>	<b>1,766</b>
<b>South County Over (Under) Average</b>	<b>(3.0)</b>	<b>(4,389)</b>	<b>907</b>
<b>Percent Over (Under) Average</b>	<b>(75%)</b>	<b>(62%)</b>	<b>51%</b>

Source: District Attorney Attorney's Office, Organizational Charts and Case Records Information Management and Exchange System (CRIMES)

\* Staffing figures are based on attorney staffing as of December 2007. This excludes supervisors, who provide assistance in misdemeanor matters and are available as an additional misdemeanor prosecution resource, and includes the portion of attorneys in each location that perform the issuing function.

\*\* Case counts include new misdemeanor cases that were assigned to each location in 2006 as a result of a complaint or citation being issued. This excludes domestic violence cases that were assigned to the Central Misdemeanor Team and a small number of felony cases that were assigned to each unit or team.

Although the primary, but not exclusive, issuing responsibilities for the Central Misdemeanor Unit are assigned to one of the nine attorneys included in Table 3.4, the issuing attorney has no further responsibility for those cases post-issuing. For example, the issuing attorney is not involved in pre-trial reviews, does not evaluate the cases for pre-trial offers, does not appear at pre-trial hearings, does not respond to or argue

motions, does not set-up the cases for trial, and does not try the unresolved cases. Therefore, dividing the assigned caseload for the Central Misdemeanor Team by nine attorneys is not a completely accurate comparison. However, since the misdemeanor attorney in South County does most of his own issuing, removing the issuing attorney from the attorney count for the Central Misdemeanor Team is also inaccurate. The same would be true if we were to compare individual components of case prosecution, such as the number of cases set for pre-trial hearings or trials, to the number of attorneys in each location. Ideally, attorney figures would be adjusted to include only the portion of attorneys who are responsible for the cases or components being analyzed. However, because accomplishing this adjustment would be unwieldy, it has not been incorporated in our analysis.

## **Case Types**

For certain types of cases, such as those involving domestic violence, District Attorney staff have been instructed to flag them in the Case Records Information Management and Exchange System (CRIMES). Consequently, we were also able to compare some of the types of cases being prosecuted by the Central Misdemeanor Team, North County Unit and South County Unit.

As discussed, the Central Misdemeanor Team is no longer responsible for prosecuting domestic violence cases. However, in 2006, these cases represented approximately 12 percent of the team's caseload. Similarly, domestic violence cases comprised approximately 12 percent and 8 percent of the misdemeanor caseload in North and South County, respectively. Furthermore, while approximately 11 percent of misdemeanor cases in North County and 9 percent of misdemeanor cases in South County dealt with narcotics, less than 1 percent of cases assigned to the Central Misdemeanor Team fell into this category.

## **South County Misdemeanor Staffing**

Due to the amount of work (both in terms of components of prosecution and volume of cases) that the South County attorney is assigned, he is not always able to review complaints for issuing or prepare cases for trial during normal business hours. In order to lighten the attorney's workload, the Management Audit Division came up with the two options that follow.

### *Trial Calendar*

The first option would be to make the Central Misdemeanor Team responsible for misdemeanor trials that occur in South County. If this were to happen, a trial attorney (either a staff attorney or volunteer attorney) on the Central Misdemeanor Team would need to appear at the South County Courthouse on Mondays for the misdemeanor trial calendar. Since there are five trial attorneys in San Jose and only three departments with trial calendars each week, at least one trial attorney should be available to go to South County that day. We recognize that the trial attorneys who are not in court on Mondays are responsible for serving as a back up for felony pleas and covering the bond calendar at the present. However, as will be discussed, if the Central Misdemeanor Team were to

handle South County misdemeanor trials, responsibility for the bond calendar could be transferred to the County Counsel's Office.

While attorneys prefer not to be handed off cases, the misdemeanor attorney who is preparing cases in South County is an Attorney IV at the highest step, and has more than 20 years of experience as a prosecutor. Attorneys on the Central Misdemeanor Team should also be somewhat comfortable with taking over cases, since case prosecution follows a horizontal structure in San Jose.

Furthermore, similar to the misdemeanor attorney in South County, the issuing and pre-trial attorneys on the Central Misdemeanor Team are Attorney IVs at the highest step, with years of experience as prosecutors. The first assignment of most entry-level attorneys is misdemeanors, so one would expect to find more lower-level attorneys currently assigned to the Central Misdemeanor Team. According to District Attorney staff, the former District Attorney decided to staff misdemeanor pre-trials with more senior attorneys to help in preparing cases, as well as dismissing or settling them when appropriate. Since this staffing practice remains in effect today, it helps to strengthen and minimize the misdemeanor cases that go to trial in San Jose.

District Attorney staff also reported that most misdemeanor cases settle before they go to trial, which court appearance data from the Criminal Justice Information Control System (CJIC) confirms. Based on the data, during the 10-month period from February through November 2007, 79 misdemeanor cases were calendared for jury trials in South County, and juries were impaneled for only four of them. At this rate, only about five cases go to trial in South County every year. This is consistent with the estimate provided by staff in the District Attorney's Office.

#### *Law Clerk*

Alternatively, the District Attorney's Office could assign a Bar Certified law clerk to the South County Unit. Misdemeanor attorneys in both San Jose and North County stated that law clerks are invaluable to their office. Without the law clerks, the attorneys would be responsible for handling traffic court each week, which would make it more difficult to keep on top of their misdemeanor caseload.

The South County law clerk would be responsible for traffic court and could assist both misdemeanor and felony attorneys with legal research for motions and logistics for trial preparation, which already occurs to some extent in North County. This would afford the sole misdemeanor attorney greater time for the issuing and pre-trial functions, which appear to be the areas in which he spends the majority of his time. In 2007, the South County Unit lost a half-time attorney position that prosecuted felonies, so the law clerk would help to offset that loss as well.

## **Additional Work in San Jose**

As mentioned, the Central Misdemeanor Team in San Jose handles felony pleas and bond calendar matters in addition to misdemeanor cases and traffic court. Even though neither calendar is a huge time commitment, they generate additional work for the team that is not being handled by attorneys in North or South County, as follows:

- **Felony Pleas** – In San Jose, various units rotate the responsibility of backing up the Preliminary Hearings Team in Department 23 where felony pleas are taken each day in the morning and afternoon. This responsibility falls on the Central Misdemeanor Team on Mondays, though the team may not be needed each week; it depends on the Preliminary Hearings Team’s caseload and staff availability.
- **Bond Calendar** – The Central Misdemeanor Team is also responsible for the bond calendar at which bail bondsmen appear to make motions to exonerate or reinstate bonds or extend bond forfeiture waiting periods. The bond calendar thus requires that an attorney be in court each Monday for about two hours. District Attorney staff indicated that it’s better to have the same person handle the calendar each week, but that’s not always possible, so the calendar is handled by whomever is not in trial.

Because District Attorney staff mentioned that County Counsels or City Attorneys in other jurisdictions typically handle the bond calendar, we asked other District Attorney offices how the function is handled in their county. Of the counties that responded to our survey, we learned that the County Counsel in Contra Costa County handles bond forfeitures; the District Attorney in San Bernardino County only gets involved with bond forfeitures when the court orders the forfeiture and the bail bondsman files for relief; and the District Attorney in San Diego County is involved in matters of posting a bond as part of a case, but not forfeitures. Additionally, an Internet search revealed that County Counsels around the nation are responsible for bond forfeitures, since their role is to protect the County’s interest, including any revenue that may be due to the County from bond forfeitures.

The District Attorney’s Office in Santa Clara County should therefore confer with the County Counsel’s Office to transfer responsibility for the bond calendar in San Jose to that office if the Central Misdemeanor Team were to handle misdemeanor trials in South County. This would have a minimal impact on the County Counsel’s Office, since an attorney would need to appear in court for bond calendar matters on Mondays for about two hours, in addition to time spent preparing for the calendar.

## **Population Growth in South County**

Between 2000 and 2006, cities in South County experienced a growth rate of 10.5 percent, according to figures provided by the U.S. Census Bureau. Furthermore, in May of 2007, the California Department of Finance reported that Morgan Hill was the fastest growing city in Santa Clara County at 3.1 percent. In one year, Morgan Hill added 1,162 residents. The average growth rate for South County cities was 2.5 percent, compared to



a County-wide growth rate of 1.6 percent. The City of Gilroy had the 5<sup>th</sup> highest growth rate of all the cities in the County, and crime is following suit. According to a recent article in the *Gilroy Dispatch*, Gilroy has the highest crime rate in the County.<sup>3</sup>

In light of these changes, and the fact that South County misdemeanor staffing has remained the same over the years, the District Attorney's Office should continue to monitor misdemeanor caseload levels in the outlying offices in comparison to the Central Misdemeanor Team to ensure that staffing levels remain appropriate. In addition, staffing for the entire South County Unit should be more fully evaluated with the opening of the new courthouse in Morgan Hill. Particular attention should be paid to the available facility, likely adjustments in court calendars, and possible staffing changes.

## CONCLUSION

The volume of cases assigned to each unit or team that prosecutes misdemeanor cases and the distribution of work within each of these units or teams indicates workloads that are inequitable. In particular, it appears that the misdemeanor attorney in South County is assigned more work than his counterparts in San Jose or North County. This makes it difficult for the South County attorney to keep up with case issuing or prepare for trials during normal business hours. In order to make his workload more equal to misdemeanor attorneys in San Jose and North County, misdemeanor staffing in South County should be augmented with the help of either the Misdemeanor Team or a Bar Certified law clerk. Misdemeanor caseloads in the outlying offices should also continue to be monitored in comparison to the Central Misdemeanor Team.

## RECOMMENDATIONS

It is recommended that the District Attorney's Office:

- 3.1 Augment misdemeanor staffing in South County through one of the following two options:
  - A. Assign responsibility for the misdemeanor trial calendar in South County to the trial attorneys on the Central Misdemeanor Team. This would require a trial attorney (either a staff attorney or volunteer attorney) to appear at the South County Courthouse each Monday; or
  - B. Assign a Bar Certified law clerk to the South County Unit whose primary responsibilities would include traffic court, legal research and logistics support. This would include assisting misdemeanor and felony attorneys with motions and trial preparation. (Priority 2)
- 3.2 Confer with the County Counsel's Office about transferring responsibility for the bond calendar in San Jose to that office if the Central Misdemeanor Team were to handle misdemeanor trials in South County. (Priority 2)

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<sup>3</sup> E. Alpert. (2006). Gilroy: Highest Crime Rate, Most Parolees. *The Gilroy Dispatch*.

- 3.3 Continue to monitor misdemeanor caseload levels in the outlying offices in comparison to the Central Misdemeanor Team, and more fully evaluate staffing for the entire South County Unit with the opening of the new courthouse in Morgan Hill. (Priority 3)

### **SAVINGS, BENEFITS AND COSTS**

Implementing the recommendations above would require minimal costs. If a staff attorney or volunteer attorney needed to use a personal vehicle to travel between the offices for the Central Misdemeanor Team and South County Unit during the workday, the District Attorney's Office would be responsible for reimbursing them for their mileage at the Internal Revenue Service's standard rate of 50.5 cents per mile in 2008. With approximately 28.5 miles separating the two offices, the cost to the Department would amount to approximately \$14.39 each way, or \$28.79 round trip.

The benefit of augmenting South County misdemeanor staffing would be to provide the sole misdemeanor attorney greater time to perform issuing and pre-trial functions, which appear to demand the most of his time, thereby increasing case processing efficiency and improving workload manageability. The law clerk would also help to offset the loss of a half-time attorney position for felony prosecution in South County.

Transferring responsibility for the bond calendar in San Jose would have a minimal impact on the County Counsel's Office, since an attorney would need to appear in court for bond calendar matters on Mondays for about two hours, in addition to time spent preparing for the calendar. The benefit of this change to the District Attorney's Office would be to provide trial attorneys on the Central Misdemeanor Team with more time to prepare for trials, including those in South County, and perform other duties. It would also help in continuing to protect the County's interest in the financial outcome of the issues addressed on that calendar.

Finally, continuing to monitor misdemeanor caseload levels in the outlying offices in comparison to the Central Misdemeanor Team would ensure that staffing levels remain appropriate.

## Section 4. Prosecutorial Staff Organization

- **Prosecutorial services in the District Attorney's Office are organized into approximately 40 different teams to carry out specific functions. The District Attorney, a Chief Assistant District Attorney and five Assistant District Attorneys serve as executive managers, while working-level Supervising Deputy District Attorneys and team leaders oversee teams and key functions. Santa Clara County's District Attorney's Office differs from other counties in the way certain functions are combined, in how executive managers are classified, and in its mix of attorneys by experience level.**
- **As a result of these differences, Santa Clara County does not have the same flexibility of other counties of moving attorneys among similar types of assignments. It also faces potential executive management functioning problems when there is a change of administration, and has a staffing that is dominated by attorneys paid at the highest job classification and pay levels.**
- **The District Attorney's Office should also follow other counties in promoting staff to executive management at the discretion of the District Attorney, rather than having a dedicated job classification. It should attempt to fill vacancies with entry level staff where feasible, to provide a better mix of prosecutors at various experience and pay levels. It should also follow other counties in providing periodic formal job evaluations for attorneys. Lastly, it should combine selected prosecutorial teams as recommended in this section to improve flexibility in using staff. These steps would provide more flexibility to the District Attorney's Office in carrying out prosecutorial functions.**

Prosecutorial functions in the Santa Clara County District Attorney's Office are organized into approximately 40 teams or programs. Examples of these teams include the Motions, Writs and Appeals Team; the Juvenile Dependency Team; the Burglary, Assault, Theft Team; the Sexual Assault Team; and the Narcotics Team.

A number of these teams include subunits within them carrying out very specific functions. For example, the Sexual Assault Team includes a two-unit Child Sexual Assault Vertical Prosecution program funded by a grant, prosecutes a specific type of sexual assault case, as well as an attorney solely assigned to prosecute sex offenders who have been released from custody, move to Santa Clara County, and fail to register with local law enforcement agencies as required by law.

The major teams in the District Attorney's Office are supervised by a Supervising Deputy District Attorney, normally an Attorney IV staff member, the most experienced working classification, who receives a 5 percent salary differential under the County's salary ordinance for taking on the supervisory function. The executive management structure in turn consists of five Assistant District Attorney positions, each of whom supervises groups of several teams responsible for related subject areas, a Chief Assistant District Attorney who is responsible for day-to-day management of the office,

and the District Attorney. The five Assistants report to the Chief Assistant, who reports to the District Attorney.

### **Assistant District Attorney Status**

The Chief Assistant District Attorney serves in that position as an unclassified employee at the pleasure of the District Attorney, under County Charter Section 701(a)(5), which includes in the definition of unclassified positions: "One confidential secretary and one administrative position to each elected county officer. . . ." The appointee to this position retains the right to return to their former classification if removed as Chief Assistant.

By contrast, the five Assistant District Attorney positions are considered part of the classified service, and have a formal description of their duties and qualifications developed by the Employee Services Agency.

As classified employees, these positions are also covered by provisions of the County's Merit System Rules, Section A25-34 to Section A25-517, which address how classifications are developed, how staff is appointed to classifications, including appointment and examination procedures, and disciplinary procedures, as well as provisions of the Charter applying to classified employees. Among these provisions, Charter Section 708 permits classified employees to receive a hearing before the County Personnel Board in the event the employee is suspended, demoted or removed from the position. The Assistant District Attorney positions are not unionized, but are included as part of the County's Executive Management, with their salaries established by the Board of Supervisors.

The classified status of the five Assistant District Attorney positions may create problems for the District Attorney when there is a change of administration, because it precludes the District Attorney from choosing his or her own executive staff. This problem may occur in any County department, but can be particularly acute for departments headed by elected officials, because the election can result in members of the existing department staff running against each other, potentially creating divisions in the department, including in the executive staff, or because the election may bring a department head from completely outside the existing organization.

However, a change in the classification status of the Assistant District Attorney position would prevent this problem from recurring. It also would follow common practice in other jurisdictions, according to information obtained from 10 of the 11 largest counties, other than Santa Clara County, via a written survey and review of their Internet sites for their practices.

Of the 10 counties for whom this information could be ascertained, six counties, Contra Costa, Fresno, San Diego, Riverside, San Francisco and Ventura, reported that executive management team members are selected from the ranks of senior staff attorneys, and serve at the District Attorney's discretion, receiving a pay differential as managers. By

contrast, four counties, Los Angeles, Orange, Sacramento and San Bernardino, follow Santa Clara County's existing practice of establishing a formal classification for these positions.

In order to follow the prevailing practice, the District Attorney could take two different approaches. First, the District Attorney could eliminate the Assistant District Attorney positions by attrition, and instead follow a practice of appointing members of the next most senior classification, Attorney IV, to executive management positions at the District Attorney's discretion, and provide a pay differential under the County's salary ordinance reflecting the increased responsibility. Attorney IV positions so elevated would not be represented by the Government Attorneys Association during the time they were part of executive management, but would have the right to return to the former position if they were subsequently demoted.

This is the practice followed with the Supervising Deputy District Attorney positions that oversee the prosecution teams, who receive a 5 percent salary differential under the County's salary ordinance, but remain part of the union. Furthermore, the salary ordinance also provides a 10 percent differential for an Attorney IV position designated as Chief Trial Attorney, a differential that is not currently being utilized.

Alternatively, an at-will status for Assistant District Attorneys could also be achieved by amending Section 701(a) of the County Charter, which currently defines unclassified employees, and includes 15 different categories of employees in the definition. The Assistant District Attorney position could be added to that list specifically.

By changing the status of Assistant District Attorneys as discussed here, the District Attorney will be better able to appoint the executive management team desired, without being restricted by the County's job classification system.

## **Hiring Mix**

According to information provided by the District Attorney's Office for this audit, of 172 line attorney positions currently employed by the Office, 160, or 93 percent, are serving as Attorney IV, the highest line-level classification available. This figure does not include Attorney IV positions now serving as Supervising Deputy District Attorneys, but only line staff. These prosecutors have at least five years of experience with the County of Santa Clara, or six years experience with another government agency or in private practice, before they achieve the classification.

This preponderance of highly-experienced attorneys in the District Attorney's Office comes from two primary causes. First, the County's budget problems have provided limited opportunity for hiring of new staff by the Office into new entry-level positions. Second, in some cases the Office has chosen to hire prosecutors laterally from other counties or other sources, rather than hiring entry-level attorneys and promote them through the job classification system.

Having a preponderance of staff at the Attorney IV classification has the advantage of providing a very experienced workforce. It has the disadvantage of increasing the personnel costs for the District Attorney’s Office, since most prosecutors are at or near the top of the salary scale. To the extent there are many prosecutors with similar levels of experience, it also exposes the Office to a potential sudden loss of experience and institutional memory, as large cohorts of prosecutors retire in short periods of time. This “brain drain” was cited as a concern during a number of the interviews conducted for this audit, which noted that the County’s decision to offer early retirement incentives for budgetary reasons exacerbated that process.

Santa Clara County’s preponderance of top-classification prosecutors differs from the status of other counties for whom this information was collected, as shown in the following table:

**Table 4.1**

**Attorney IV and Lower Level Attorney Positions  
In Santa Clara County and Other Major California Counties**

<b>County</b>	<b>Attorney I-III positions</b>	<b>Attorney IV positions</b>	<b>% Attorney IV</b>
San Diego	287	15	5.0%
Ventura	43	42	50.5%
Contra Costa	34	46	57.5%
Riverside	69	169	71.0%
Santa Clara	12	160	93.0%

As the table shows, four other counties surveyed, had lower percentages of top classification staff than did Santa Clara County. Other counties surveyed either did not provide this information, or do not have different classifications for attorneys of different experience levels. San Francisco County, for example, has a single “deep class” classification for attorneys, with prosecutors assigned to various levels of responsibility and pay under that classification at the District Attorney’s discretion.

In order to provide a range of prosecutors at varying levels of experience, and to prevent a future “brain drain” of a highly-experienced cohort of prosecutors, the District Attorneys Office should focus on filling future vacancies with entry-level Attorney I staff, reconfiguring assignments as vacancies occur in order to provide the new staff with service initially prosecution misdemeanors or other duties appropriate for entry-level staff. Since a Step 1 Attorney I position earns \$88,056 annually in salary, while an Attorney IV position at Step5 earns \$186,685, each replacement of a retiree with an entry level attorney would provide savings starting at about \$100,000 per year, dropping to zero savings after 9.5 years, assuming the hired prosecutor is promoted to Attorney IV as quickly as possible under current qualifications standards, and then reaches the top Attorney IV salary step.

To provide additional flexibility in the hiring process, the District Attorney should also consider a step that two other counties have taken, providing only limited term

appointments for entry-level staff. In Contra Costa County, entry-level prosecutors are initially hired for only a 36-month term. After that term is completed, a determination is made whether to offer them a longer-term position. Similarly, in Orange County, Attorney I and Attorney II positions are filled for 12-month terms. At the end of those periods, a determination is made whether to move staff to the next classification level. In both cases, staff who are not offered positions beyond the limited term then leave the Department. This system, if used in Santa Clara County, would give the District Attorney's Office greater flexibility in managing promotion of entry-level staff based on performance and available budget resources.

## **Require Job Evaluations**

Sections A25-696 through A25-709 of the County Ordinance Code address a requirement for performance monitoring of employees in the classified service, which includes prosecutors in the District Attorney's Office. The sections establish that the County personnel director should establish and maintain a plan for performance evaluations, and that evaluations of staff shall be made periodically by an employee's immediate supervisor on approved forms, and be approved by the employee's appointing authority, which would be the District Attorney for the District Attorney's Office. The sections also provide provisions for employees to appeal evaluations they disagree with.

Section A25-600 of the Ordinance Code states that the evaluation requirements and other requirements of the Code do not apply to employees covered by a labor agreement, when the agreement contains a provision relating to the same subject matter. Whereas selected labor agreements, such as the County's agreement with Service Employees International Union Local 521, have specific language addressing pilot programs or other implementation of performance agreements, the existing agreement with the Government Attorneys Association has no language on this subject. Therefore, it appears the Ordinance Code applies to the District Attorney's Office.

Despite the existence of the Ordinance Code requirements, the District Attorney's Office does not have a system of formal written evaluations for attorneys or for its investigator staff. As just stated, the current collective bargaining agreement with the Government Attorneys Association does not include a provision for formal evaluations, and the District Attorney's overall procedures manual, and the manuals reviewed for individual prosecutorial teams do not include provisions for formal written evaluations. Furthermore, interviews with prosecutorial staff did not reveal that formal written evaluations occur.

A review of other collective bargaining agreements maintained by Santa Clara County, and information obtained by surveys and interviews with District Attorney offices in other counties indicated that formal evaluations are common elsewhere. In Santa Clara County, labor agreements for park rangers, probation officers, sheriff's deputies and correctional officers, all of whom work in the criminal justice system, as do District Attorney staff, include requirements for written job evaluations.

Furthermore, information obtained from the 11 largest counties, other than Santa Clara County, revealed that nine counties, Contra Costa, Fresno, Los Angeles, Riverside, Sacramento, San Bernardino, San Diego, San Francisco and Ventura, have formal performance evaluation requirements for District Attorney staff.

As discussed in more detail in Section 5 of this report, the lack of formal performance evaluations is a particular concern in the Bureau of Investigation, which has developed a pattern of hiring staff as late-career transfers from other law enforcement agencies, who thus serve in the Bureau for relatively few years, making job evaluations a key tool to provide accountability for job performance.

This is not an issue for prosecutors, most of whom have served for extended periods in the District Attorney's Office, allowing their work to be informally evaluated over time. However, from an equity standpoint, all types of employees in the District Attorney's Office should receive formal written evaluations. Therefore, we recommend that the District Attorney's Office develop an evaluation system, as required by County Ordinance, and submit it to the Employee Services Agency for approval.

### **Reorganization of Selected Prosecutorial Teams**

As stated earlier in this section, the District Attorney's Office is organized into about 40 different teams or units, each specializing in prosecuting certain types of cases or carrying out certain specific functions within the prosecutorial process. Although this system of subject specialization allows prosecutors to develop expertise in prosecuting certain types of crimes, our review of the Office organization, in comparison to other counties, identified two areas where functions could reasonably be combined in order to provide more flexibility in using staff. These areas are reported below.

#### *Consumer Protection and Environmental Crimes*

The Santa Clara County District Attorney currently has separate units that prosecute cases involving consumer protection or environmental crimes. Although the units are separate, staffs in the two units communicate with each other to ensure they are prosecuting their cases in a consistent manner. Cases in both areas involve enforcement issues, are very document intensive, rely primarily on civil litigation, and require attorneys to interact with regulatory agencies from the local to federal level.

In comparison, other District Attorneys around the State have combined the prosecution of these types of cases into one unit. Of the four other counties that responded to our survey, the District Attorney in Contra Costa County has a combined unit, and the District Attorney in San Diego County has one division dealing with all economic crimes, including those that affect consumers and the environment, while the District Attorney in the County of San Bernardino and the City and County of San Francisco have separate units. The District Attorney's Office in Fresno County did not respond to this question on our survey.

Staff in the Santa Clara County District Attorney's Office reported that the Consumer Protection and Environmental Crimes Units were once combined. We believe this



makes sense since attorneys in these units perform similar work. It also allows attorneys who carry a consumer protection or environmental crimes caseload to assist each other when needed, thereby facilitating cross training. Because of these advantages, the District Attorney should re-combine the Consumer Protection and Environmental Crimes Units.

*Real Estate, Elder and Major Fraud*

The Major Fraud Unit was separated from some of the other fraud units in 2007, so that the supervisor of the unit could focus on a large case being brought against the former mayor of San Jose, the City's budget director, and the City's former contract trash disposal firm. However, subsequent to the reorganization and a court decision dismissing all charges in the case, the District Attorney decided not to appeal or seek a new indictment, and the Supervising Deputy District Attorney of the unit announced his retirement. During the exit conference for this audit, the District Attorney's Office reported that the position was not yet vacated as of mid-February 2008, but that the attorney was in the process of closing out its caseload.

Because of the increase in the number of real estate fraud cases resulting from the collapse of the sub-prime market, rise in foreclosures and predatory lending, and the overlap between real estate, elder and major fraud, the District Attorney should move the Major Fraud Unit under the Supervising Deputy District Attorney that oversees the other fraud units, and eliminate the retiring supervisor's position for an annual savings of \$248,730 in salary and benefits. This change would allow the supervisor to balance the workload of the three units by assigning real estate fraud cases to elder fraud or major fraud attorneys when an overlap exists. This includes real estate scams that target the elderly and large investment scams involving real estate. Attorneys in the Elder Fraud and Major Fraud Units have already been helping with cases that cross into their unit, so the reorganization would help to formalize the current practice. During the exit conference for this audit, the District Attorney's Office reported that it had planned to shift the Major Fraud supervision duties to another existing supervisor in April 2008, and to use the vacated position to fill in advance a non-supervisory position expected to be vacated by a retirement in the Consumer Protection Unit. Handling the two retirements in this manner would provide a transition period for the new hire into the Consumer Protection Unit, but would still ultimately free up a position for elimination, or shifting to other duties.

It should be noted that at least three of the other counties that responded to our survey group the fraud units under the same supervisor for special units or economic crimes. The other two counties either provided an organizational chart that did not identify in which units various types of fraud are prosecuted or did not provide an organizational chart.

## CONCLUSION

The Santa Clara County District Attorney's Office has less flexibility than peers in other counties in several areas of prosecutorial organization. First, Santa Clara County has a dedicated classification for Assistant District Attorneys who serve as executive management, versus other counties where this position serves at the discretion of the District Attorney. Second, Santa Clara County's Office has a high percentage of attorneys at the highest job classification and pay schedule, versus other counties that have a more varied mix. Third, the District Attorney's Office does not have formal written job evaluations for attorneys, as exist for other law enforcement jobs within the County, and for District Attorney staff in other counties. Lastly, the District Attorney's Office separates selected economic crime and fraud units that are combined in other counties to provide better flexibility in using staff.

## RECOMMENDATIONS

It is recommended that the District Attorney's Office:

- 4.1 Eliminate the existing dedicated job classification for Assistant District Attorneys, replacing it either with a system that would temporarily promote Attorney IVs to executive management at the District Attorney's discretion, or with a County Charter change that would define Assistant District Attorneys specifically as unclassified positions, serving at the discretion of the District Attorney. (Priority 3)
- 4.2 Fill future job vacancies with entry-level staff, reallocating staff as necessary to assign the new staff to misdemeanor prosecution or other duties appropriate to entry-level staff. (Priority 2)
- 4.3 Consider establishing a limited-term hiring system for entry-level staff, similar to that provided in Contra Costa County and Orange County. (Priority 1)
- 4.4 Establish a system of formal written evaluations for attorney staff, as called for by the County Ordinance Code. (Priority 2)
- 4.5 Combine the Consumer Protection and Environmental Crimes units, and place the existing Major Fraud, Real Estate Fraud and Elder Fraud units under the same Supervising Deputy District Attorney position, eliminating one of the two vacant positions created by pending retirements in the Major Fraud and Consumer Protection units. (Priority 1)

## SAVINGS, BENEFITS AND COSTS

The recommendations of this section will provide greater flexibility in the allocation of attorney staff, and will avoid future problems in organizing executive management when there is a change of administration in the District Attorney's Office. Furthermore, each replacement of a Step 5 Attorney IV position with a Step 1 Attorney I position

would generate savings of approximately \$100,000 per year initially, diminishing to zero over 9.5 years as entry-level attorneys progress to the top of the classification and salary scale. Furthermore, placing the Major Fraud, Real Estate Fraud and Elder Fraud units under the same Supervising Deputy District Attorney, and eliminating one of the two positions expected to be vacated by this retirement and a separate retirement in the Consumer Protection Unit, would save up to \$248,730 in salary and benefits annually.

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## Section 5. Bureau of Investigation: Operations

- The Investigation Bureau supports the District Attorney's Office with an authorized staff of 91 sworn positions, including three management positions, eight division supervisors, 15 team-lead criminal investigators, and 65 criminal investigators. Although the job description for Criminal Investigator III (division supervisors) specifies that these positions are working supervisors, the two supervisors over public assistance fraud units do not carry current caseloads, despite the fact that the public assistance fraud units have a backlog of more than 500 open, but unassigned cases, and cases are regularly closed without having been investigated or prosecuted due to the expiration of the four-year statute of limitations.<sup>1</sup>

In addition, the Investigation Bureau's case management system, CRIMES, would provide the capability for management and supervisors to monitor caseload, timeliness, productivity, and backlogs, if CRIMES was diligently used by investigators. However, a review of the data in CRIMES as of November 2007, showed that approximately 42 investigators in the system with open cases and/or tasks no longer work for the District Attorney's Office, other staff who are current employees are not using the system, and staff in some special units use alternative systems and do not use CRIMES at all. Consequently, monitoring and reporting of individual and unit caseload and productivity is inconsistent and based on unreliable data.

- As a result, the public assistance fraud case backlog is exacerbated, and the reliability and value of the CRIMES case management system as a management tool has been diminished.
- By adhering to the requirement that all Criminal Investigator III positions carry a caseload as working supervisors, and ensuring the diligent usage of CRIMES by all investigative staff as described in this section, operational efficiency, investigator and investigation unit productivity could be improved.

### Background

The District Attorney's Office is currently organized into approximately 43 operating and support units that account for the full range of law enforcement functions and programs provided by the Office. The Bureau of Investigation supports the operating units with an authorized staff of 91 sworn and 13 civilian positions, as shown on the following page:

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<sup>1</sup> One of the two supervisors investigates approximately six departmental personnel matters annually.

Sworn Positions

- 3 Managers (1 Chief, 2 Cr. Inv. III)
- 8 Division Supervisor-Criminal Investigator III (1 vacant)
- 15 Team Lead Criminal Investigator II
- 65 Criminal Investigators I/II (1 Vacant)

Civilian Positions

- 1 Administrative Secretary
- 1 Administrative Assistant
- 1 Public Information Officer
- 1 Management Analyst
- 2 Investigator Assistant (1 filled alternate staffing)
- 1 Property Evidence Technician
- 5 Legal Process Officer
- 1 Forensic Accountant (contract)

The FY 2007-08 total cost of the Bureau of Investigation amounts to more than \$15 million, which is financed approximately 41 percent by the General Fund and 59 percent by State and federal grant funds and program reimbursements.

The support function provided by the Bureau is critical to the law enforcement mission of the District Attorney's Office. The Bureau conducts the investigation activities that are necessary to supplement the work done by local police law enforcement agencies in order to facilitate the prosecution efforts of the Office. In addition, the Bureau does original investigation work required to document cases for prosecution in connections with several State and federally funded programs targeting public assistance fraud, high tech crimes, auto theft, insurance fraud and other illegal activities. The Bureau also ensures the appearance of witnesses through service of subpoenas and other legal process.

**Supervising Criminal Investigator III Without Current Active Cases**

Pursuant to the current Employee Services Agency classification specifications for the Criminal Investigator III job classification, these positions are working supervisors (Attachment 5.1). Therefore, in addition to their supervisory duties, Criminal Investigator III positions who are assigned as unit managers are expected to carry a caseload and perform some amount of casework as a working supervisor in addition to their supervisory duties. In order to determine compliance with this job requirement, a snapshot of the entire Bureau of Investigation caseload for all sworn positions and units, as of November 17, 2007, was analyzed by examining all pertinent Bureau of Investigation case data in the CRIMES case management system. Of the seven Criminal Investigator III Division Supervisor positions, five had current active caseloads and two

positions did not. However, one of the two supervisors is responsible for investigating and reporting on certain personnel matters related to equal opportunity and internal affairs. That supervisor reports doing about six cases per year.

The two Division Supervisor positions without a current active caseload supervise Public Assistance Fraud Divisions. One Public Assistance Fraud Division has only two units and a total of 13 employees, while the other has only one unit and eight employees. Both of these supervisors should carry Public Assistance Fraud caseloads, to the extent that their supervisory and non-Public Assistance Fraud responsibilities permit. By comparison, the other five Bureau of Investigation divisions with case carrying supervisors have an average of 15 employees and more than four operating units or functions. By not carrying an active caseload, the productivity of these divisions is diminished. Because of significant staffing reductions to public assistance fraud investigation in recent years, the failure of division supervisors to carry caseloads exacerbates an inadequately staffed investigative function, and increases the level of public assistance fraud that is not investigated or prosecuted in the County of Santa Clara.

### **Public Assistance Fraud Cases Reported, but Not Investigated or Prosecuted**

Although in recent years the County of Santa Clara Civil Grand Jury twice concluded that the level of investigation and prosecution of public assistance fraud in the County was inadequate, their assertions were rejected and the allocation of resources to public assistance fraud reduced. However, an analysis of the status of public assistance fraud workload as of November 2007 determined that approximately 522 cases of suspected fraud had been reported to the District Attorney Bureau of Investigation, but were not assigned to an investigator due to lack of available investigative staff. Further, the Public Assistance Fraud Divisions of the Bureau of Investigation regularly close cases without investigation or prosecution due to the expiration of the four-year statute of limitations on such crimes. At the same time, there is ample evidence that significant public assistance fraud is occurring, based on the actual cash recoveries and grant reductions that have been achieved by the investigative efforts that are being made. For the month of May 2007 these savings for the CalWORKS (AFDC), Food Stamps, and General Assistance programs totaled \$282,681 (Attachment 5.2). In addition, restitution agreements ordered by the court in May amounted to \$62,503.

### **Improving Oversight and Management of Caseload, Backlogs and Productivity**

The District Attorney's case management system, CRIMES is designed to enable District Attorney managers and staff to efficiently manage their day-to-day workloads and oversee both detail and broad caseload issues, including timeliness and productivity. However, based on our review of data in CRIMES, as well as interviews with

investigative, supervisory and managerial staff, the accuracy and comprehensiveness of the data in the CRIMES system is not reliable due to the following problems:

- Some investigators and investigative units do not use CRIMES.
- Some investigators do not maintain and update their assigned cases in the CRIMES system on a timely basis
- Some investigators or supervisors do not close cases in the CRIMES system on a timely basis

As a result, as of November 2007, the CRIMES database included open cases and/or uncompleted case tasks for 42 investigators who no longer work for the District Attorney's Office. Fifteen investigators no longer working for the Bureau of Investigation had a total of 32 open cases and 180 uncompleted tasks as of November 27, 2007. An additional 27 investigators, who no longer work for the Bureau of Investigation, had no open cases in the system, but had a total of 500 uncompleted tasks in CRIMES. In order for Bureau of Investigation managers and supervisors to be able to monitor individual and unit caseload, backlogs, productivity, and timeliness, it is essential that all staff fully utilize the CRIMES system and maintain case data on a timely basis. Until Bureau of Investigation staff comply with this requirement, monitoring of individual and unit performance is impaired, and the value of the CRIMES case management system as a management tool has been diminished.

## CONCLUSION

Some Bureau of Investigation division supervisors do not carry current active caseloads and perform as working supervisors as required by the County Criminal Investigator III job specifications. This exacerbates the public assistance fraud prosecution case backlog and increases the number of public assistance cases that are not investigated or prosecuted. In addition, due to the lack of diligent use of the CRIMES case management system by investigation staff, monitoring and reporting of individual and unit caseload and productivity is inconsistent and based on unreliable data.

## RECOMMENDATIONS

It is recommended that the District Attorney's Office:

- 5.1 Require all Criminal Investigator III division supervisors to perform as working supervisors in accordance with County job specifications. (Priority 1)
- 5.2 Implement procedures to ensure that all investigative staff diligently use the CRIMES case management system so that management and supervisory



monitoring and reporting of individual and unit caseload and productivity is consistent throughout the Bureau and based on reliable data. (Priority 1)

## **SAVINGS, BENEFITS AND COSTS**

The implementation of these recommendations would improve operational efficiency, and investigator and investigation unit productivity, and would make some reduction in the current level of reported public assistance fraud that is not investigated or prosecuted.



## CRIMINAL INVESTIGATOR III

Class Code:  
V75

COUNTY OF SANTA CLARA  
Established Date: Sep 20, 1965  
Revision Date: May 25, 2005

### SALARY RANGE

\$43.38 - \$52.73 Hourly  
\$7,518.68 - \$9,140.56 Monthly  
\$90,224.16 - \$109,686.72 Annually

### DEFINITION:

Under direction, to perform skilled criminal investigation work for the Office of the District Attorney's, to direct activities of a unit engaged in investigating all cases involving suspected or known criminal activities; to assist in planning the more difficult and specialized investigations.

### DISTINGUISHING CHARACTERISTICS:

Criminal Investigator III is distinguished from the next lower class of Criminal Investigator II in that the work involves the application of skilled investigative methods and practices to the more difficult or complex field investigations and involves management of an entire unit of investigators.

### TYPICAL TASKS:

- Conducts or may supervise the more difficult criminal or confidential field investigations;
- Manages a group of lower level criminal investigators;
- Instructs, advises and works with the group in performing investigations of suspected violations of laws, rules and regulations;
- Locates and interviews persons, takes statements and depositions, and evaluates evidence;
- Makes arrests and performs custodial detentions;
- Examines records, collects data, and reports facts;
- Appears as a witness in court or at administrative hearings;
- Works closely with and secures the cooperation of Federal, State and local law enforcement agencies;
- Develops contacts so that information may be obtained concerning crimes;
- Assists Deputy District Attorneys in preparation of cases for prosecution;
- Assists in planning and directing a major investigation program;
- Prepares reports and correspondence;
- Conducts research and assists in implementation of new policies and programs;
- Performs related work as required.

### EMPLOYMENT STANDARDS:

The completion of 60 college semester (90 quarter) units from an accredited college, and two years of experience comparable to a Criminal Investigator II with the County of Santa Clara. Possession of a Basic Peace Officers Standard Training (P.O.S.T.) Certificate.

Must meet all current hiring standards of P.O.S.T., including passing a P.O.S.T. background investigation, and a psychological and physical examination before appointment.

**County of Santa Clara**  
**Social Services Agency**  
**Recovery and Legal Division**  
 333 West Julian St  
 San Jose, CA 95110  
 Phone: (408) 491-6464  
 Fax: (408) 975-4512



Date: 10/04/07  
 To: Ron Truhitte-Deputy Chief, Bureau of Investigations Office of the District Attorney  
 From: Ki Hong -Supervising Account Clerk II  
 Subject: DPA 266 Part E Collections  
 State Report Information Repayment Summary  
 For the month of July 2007

	CalWorks (AFDC)	Food Stamps	General Relief	Other Aid
<b>Cash Payments*</b>	\$ 66,908.53	\$ 25,802.19	\$ 90.00	0
<b>Grant Adjustments</b>	\$ 27,674.00	\$ 23,972.63	\$ -	0
<b>TOTAL</b>	\$ 94,582.53	\$ 49,774.82	\$ 90.00	\$ -
<b>GRAND TOTAL:</b>	\$ 144,447.35			

(Note: Payments reported in this summary are for non-administrative error debt-type)

(\*Cash payments for CalWorks (AFDC) & Food Stamps include intercepted tax refunds)  
 If you have any questions, please call me at 491-6445.

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## Section 6. Bureau of Investigation: Organization and Staffing

- The organizational structure of the Bureau of Investigation includes approximately 30 separate units divided among eight divisions. Bureau staffing includes a total of 104 positions. Twenty-three senior level positions have day-to-day supervisory duties, resulting in a span-of-control ratio of approximately 1:2.96 (one supervisor for each 2.96 investigative staff). In addition, 79 of the 80 Criminal Investigator positions are staffed at the higher Criminal Investigator II level, qualifying persons in this classification to work at a fully qualified journey level with minimal supervision.

Further, the disproportionate weighting of the current staffing mix with Criminal Investigator II positions (79) versus Criminal Investigator I positions (1), is not consistent with prevailing practices in many comparable counties that utilize a substantially greater proportion of entry level sworn and civilian investigative assistants. This practice also deviates from previous investigator staffing models of the Bureau of Investigation that included approximately 40 percent Criminal Investigator I and Investigative Assistant positions.

Lastly, a review of investigator hiring practices in recent years indicated that vacancies were often filled by late-career transfers from other law enforcement agencies. While this practice brings in staff with long years of investigative experience, a mixture of entry-level, mid-career and late-career staff would better balance the goal of having experienced day-to-day investigators with other goals, such as developing a cadre of staff as potential future managers within the Bureau who have direct experience in many Bureau assignments.

- Due to these organizational and staffing issues, the Investigation Bureau is more costly than necessary, operates with a span-of-control ratio that is inconsistent with its highly experienced journey level investigative staff, and lacks a continuing base of investigative staff hired and trained by the District Attorney's Office with broad experience in its many units and functional specialties.
- By reorganizing the Bureau as described in this Section, and increasing the usage of Criminal Investigator I and Investigative Assistant staffing in the future, the Bureau can achieve a supervisory span of control more consistent with its staffing mix, improve cost effectiveness and reduce total County, State and federal costs by an estimated \$434,000 annually.

### Background

The Bureau of Investigation includes 104 authorized positions, comprised of 91 sworn investigative positions and 13 administrative and support positions, and

operates with a FY 2007-08 budget of approximately \$15.0 million. The Bureau is organized into eight divisions that include approximately 30 specialized units. Managerial positions include one Chief Investigator, one Criminal Investigator III who acts as the Assistant Chief Investigator, and one Criminal Investigator III who acts as the Deputy Chief Investigator. Each of the eight divisions is staffed with a Criminal Investigator III who serves as the division supervisor in a working supervisor capacity. Because one of the eight Criminal Investigator III positions is currently vacant, the Deputy Chief temporarily oversees and supervises the High Tech/Environmental Crimes Unit. The eight divisions range in size from eight to 16 positions, with from one to three Team Lead Criminal Investigator II positions per division, with responsibility for two to eight units or functions. In addition, two division supervisors oversee staff from other law enforcement agencies who are participating in focused grant funded projects.

### **Assessment of Current Bureau of Investigation Span-of-Control**

Based on the staffing described above, the Bureau has a total of 23 senior level positions with day-to-day supervisory responsibilities directing work activities. These positions include eight Criminal Investigator III positions and 15 Lead Criminal Investigator II positions. The remaining sworn investigative staff includes 64 Criminal Investigator II positions and one Criminal Investigator I position. Consequently, the supervisory span-of-control in the Bureau equates to a ratio of one supervisory position to every 2.96 investigators. However, the Bureau reports that it cannot count the 15 Lead Criminal Investigator II positions as supervisors, due to certain ambiguous language in the collective bargaining agreement between the County and the District Attorney Investigator's Association. This language states a team leader's duties to be as follows:

"Under supervision and direction, in addition to his/her regular investigative duties, the team leader will **in the absence of his/her unit supervisor** coordinate and direct the activities of a team of investigators. This direction and coordination may involve training, case assignment, case review and review of the work of team members. The team leader may also have additional duties and responsibilities as required by the unit function and activities of his/her assigned team."

The 15 Lead Criminal Investigator II positions assist the eight Criminal Investigator III Division Supervisors by assigning, and/or reviewing, and/or directing, day-to-day team activities for which they are paid a 5.0 percent salary differential as compensation for these lead responsibilities. The performance of these limited supervisory duties facilitate day-to-day operations, and are, by design, intended to fulfill the routine daily supervisory functions in accordance with Ordinance Code Section A25-504, which defines the term "immediate supervisor" to mean "the individual who assigns, reviews or directs the work of an employee." Therefore, it is our conclusion that the Lead Investigator II positions that are performing the duties as described above on a day-to-day basis, and are being compensated for such duties, are performing in a supervisory

capacity, and appropriately should be included in the analysis of span-of-control within the Bureau of Investigation staffing plan and organizational structure.

A review of the County Charter, the County Ordinance Code and several collective bargaining agreements between the County and specific employee groups, as well as discussions with County Counsel, the Employee Services Agency Director and the County Budget Director determined that very few formal written policy guidelines and definitions exist to provide clarity and direction to departments and employees regarding the duties and responsibilities of Lead positions. Therefore, in order to clarify the duties and responsibilities of Lead positions in the Office of the District Attorney and on a County-wide basis, the Employee Services Agency (ESA) and the Office of the County Counsel should prepare an amendment to the Personnel Section of the County Ordinance Code to provide a generic, but thorough definition of the duties, responsibilities, and other issues pertaining to the use of Lead positions in County service. In addition, ESA should review the job descriptions of the Criminal Investigative series to determine if changes and/or an expanded description should be prepared for Lead-Criminal Investigator II positions.

The organizational structure, reporting relationships and span-of-control of the Bureau of Investigation have been in a state of frequent change during recent years, and continue to be in flux as of the time of this audit. Nevertheless, there are certain organizational and staffing policies that should be accounted for in future reorganizations and staffing modifications. Under current policies, the Bureau is staffed and organized as follows:

**Table 6.1**

**Bureau of Investigation Span-of-Control**

<u>Division</u>	<u>Total Positions</u>	<u>Sup</u>	<u>Leads</u>	<u>Span of Control: Sup &amp; Lead to Invest</u>
1-Work Comp/ Auto	16	1	3	1:3
2-Felony Tr/Legal Proc	13	1	2	1:3.3
3-R. E. Frd/Econ Cr/Chld Abd	12	1	2	1:3
4-Hom/Sex Aslt/Dom Vio	11.5	1	2	1:2.8
5-Hi Tec/RCFL/Env Cr**	10.5**	1	3	1:4.4**
6-REACT*		6*	1	0 1:4.6*
7-Pub Asst Frd IEVS/FRED	14	1	2	1:3.7
8-Pub Asst Frd FREDS/Warrants	8	1	1	1:3
<b>Total/Average</b>	<b>91***</b>	<b>8</b>	<b>15</b>	<b>2.96</b>

\* In addition to the six County staff, the REACT Unit includes 22 staff from other agencies, including four police Sergeants.

\*\* The RCFL Unit includes 11 crime lab positions not shown above.

\*\*\* Excludes seven management, administrative and special assignment staff.

The current span-of-control ratio of approximately one supervisor to each 2.96 investigative staff as shown above, is a low ratio of supervised staff to supervisors when compared to common standards of one supervisor to every eight to 10 staff, depending on the governmental function and the skill level of the staff being supervised. In the case of the Bureau of Investigation, which is staffed with 79 Criminal Investigator II positions and only one Criminal Investigator I, the need for close supervision is significantly reduced. In addition, the requirements for the Criminal Investigator II position include a minimum of two years of college and two years of criminal investigation experience with the County, and possession of a Peace Officers Standards Training certificate. Further, many of the Criminal Investigator II staff have substantial law enforcement experience with other police agencies. Given these factors, the Bureau's criminal investigation staff are highly professional, well qualified, full performance, journey level investigators for which general, not close supervision, is appropriate.

Consequently, there are some immediate opportunities to increase the span-of-control by reclassifying one of the two Criminal Investigator III positions in the two Public Assistant Fraud Divisions to a Criminal Investigator II, consolidating these two divisions, and reorganizing reporting responsibilities as shown in Exhibit 1-Proposed Organization Chart. On a longer-term basis, a more balanced mix of investigative staffing, including more Criminal Investigator I and civilian assistant positions, as discussed below, would achieve a more efficient balance of supervisory staff to investigative staff. It should be noted that this revised organizational structure and more balanced use of Criminal Investigator I and Investigative Assistant positions was previously used by the Bureau of Investigation (Exhibit 2), and very closely mirrors the proposed reorganization shown in Exhibit 1.

The proposed organizational modifications shown in Exhibit 1 include the following changes:

- (1) The existing eight divisions would be consolidated into seven divisions, by placing all public assistance fraud activities into a single division. This consolidation would result in the elimination of one Criminal Investigator III position and the addition of one Criminal Investigator II position, increasing the productivity of the Division by adding an additional case carrying investigator.
- (2) The Deputy Chief is physically located at the Public Assistance Fraud Division offices for which he has primary responsibility, but he is also currently assigned oversight responsibility for two other divisions in separate geographic locations. Due to the understaffing of the Public Assistance Fraud Division and the large backlog of unassigned cases, permitting the Deputy Chief to devote full time to the Public Assistance Fraud Division, combined with an additional investigator, would make a positive impact on the 522 case backlog discussed in Section 5, and would generally increase accountability and productivity of the Division. Furthermore, the Public Assistance Fraud Program is the largest single



investigative program in the Bureau with an annual budget of nearly \$5.0 million and approximately one-quarter of the Bureau's employees. The assignment of a full-time manager is justified, would improve program performance, and would demonstrate to the Social Services Agency that the Bureau of Investigation is committed to providing the highest quality services possible within the resources available to it.

- (3) The staff person occupying the Public Assistance Fraud Division Criminal Investigator III position that would be eliminated in (1) above, would be able to move to the currently vacant Criminal Investigator III position responsible to supervise the High Tech Crimes Division. Due to the vacancy in the Criminal Investigator III position in the High Tech Crimes Division, the current organization structure temporarily assigns direct supervision of this division to the Deputy Chief, in addition to his responsibility to oversee both Public Assistance Fraud Divisions.

Given that the division supervisors in the Public Assistance Fraud Divisions currently do not carry caseloads, consolidation of these two divisions, with the deletion of one Criminal Investigator III position and the addition of one Criminal Investigator II position, would result in an increase in public assistance fraud productivity of more than 5.0 percent, and cost savings of approximately \$12,000 annually.

### **Imbalanced Investigator Staffing Mix and Recruitment of Criminal Investigators**

The FY 2007-08 County Salary Ordinance NS-5.08A authorizes 91 sworn staff and 13 civilian staff in the Bureau of Investigation of the District Attorney's Office. The 91 sworn staff include 10 Criminal Investigator III, 2 Criminal Investigator II and 79 Criminal Investigator I/II positions. Based on the November 18, 2007 payroll, 77 of the 79 authorized Criminal Investigator II positions were filled at the higher level of Criminal Investigator II, one position was filled as a Criminal Investigator I and one position was vacant.

In addition, the Bureau makes very minimal use of civilian support staff, such as Investigator Assistant or Technician job classifications, and has a total of only 10 civilian investigative support positions, or 9.6 percent of the 104 positions in the Bureau when the Chief is included. By comparison, a survey of the 10 most populous counties determined that the prevailing practice is to make substantially greater use of both lower level sworn and civilian job classifications. The use of Investigative Assistants, Technicians and lower level sworn classifications, such as Investigator I in the comparison counties, ranged from approximately 9.7 percent in the County of Los Angeles (all sworn positions), to 57.9 percent in the County of Ventura (both sworn and civilian positions). The average usage amounted to 27.0 percent, or nearly three times the level utilized in the County of Santa Clara. At the 27 percent level, the Bureau

would have approximately 17 fewer Criminal Investigator II positions filled and approximately 17 more Criminal Investigator I and/or civilian support positions.

Based on the FY 2007-08 Salary Ordinance, the cost differential per position at the top step amounts to about \$24,837, or more than \$422,000 for 17 positions. Based on the current mix of Bureau funding, approximately 41 percent of any savings would be a General Fund benefit, while 59 percent would result in reduced costs or increased services to State and federal programs. Consequently, the Bureau should make an assessment of the investigative responsibilities throughout its units to identify those positions that could be filled with lower level sworn or civilian support staff, based on the duties and responsibilities of the positions. It should be noted that the Bureau was staffed with approximately 40 percent Criminal Investigator I and Investigative Assistant positions in 1994 as shown in Exhibit 2.

In order to increase the mix of lower level sworn and civilian support staff, the Bureau will need to refocus its recruitment efforts by proactively soliciting applications from city and county law enforcement agencies, and colleges and universities with criminal justice programs throughout the greater Bay Area and the State. A review of Criminal Investigator applications and examinations over the past six years showed that the proportion of qualified applications from individuals not working for or retired from the City of San Jose had diminished from approximately 73 percent in the FY 2000-01 period to 29 percent by FY 2005-06, excluding one recruitment for one Criminal Investigator I position. In addition, during the six-year period, 20 of 30 Criminal Investigator positions, or 67 percent were filled by former or retired police officers from the City of San Jose<sup>1</sup>.

Relying substantially on a single potential category of new criminal investigators can have advantages and disadvantages. In the case of retired police officers or sheriff's deputies, the Bureau obtains individuals who are knowledgeable of law enforcement operations, and in many cases of investigative procedures based on experience. Consequently, these employees will require less time, effort and cost to train in order to get them to be fully productive investigators.

The disadvantages include:

- (1) The limited time such employees will work for the District Attorney's Office due to their age at entry compared with employees hired at entry level or mid-career. Presently, 17 investigators, or 19 percent are at retirement age, but have less than five years of service within the County. These investigators average 56 years of age and 2.0 years of County service.

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<sup>1</sup> Figures are based on data available from the Employee Services Agency. There was no data for at least one recruitment.

- (2) The lack of substantial knowledge such personnel will develop during their short tenure with the Bureau, of many of the 30 different units and functions performed by the Bureau. This lack of a broad in-depth knowledge of the Bureau's operations obtained from first hand experience makes such persons less of a natural candidate for the eight division supervisor positions and the three management positions.
- (3) Impairment of the Bureau's ability to develop highly qualified management and supervisory staff if the organization is disproportionately staffed with older employees who may only work five years in order to qualify for a second retirement. Currently, the Bureau reports that about one-third of its staff is comprised of "late career investigators." This proportion will rise if recent hiring patterns discussed earlier in this section continue.
- (4) Substantial additional cost to the Bureau of filling all its Criminal Investigator positions at the highest level, irrespective of the level justified by the duties and responsibilities of each position. As shown in Exhibit 2, the Bureau previously assigned 15 Criminal Investigator I positions and five Investigative Assistant positions to the Public Assistance Fraud Division, which is now staffed 100 percent by Criminal Investigator II positions.

## CONCLUSION

Implementation of some organizational consolidation would improve the span-of-control in the Bureau of Investigation and help reduce unassigned cases in the Public Assistance Fraud Division. Currently, the Bureau is disproportionately staffed with senior investigative staff, Investigator II positions paid at the highest salary step, and virtually no entry-level investigative staff, contrary to prevailing practice in most of the major counties, and contrary to prior practices of the Bureau. The imbalanced staffing mix reduces the cost effectiveness of the Bureau of Investigation, and limits the Bureau's ability to develop a continuing base of investigative staff hired and trained by the District Attorney's Office with broad experience in its many units and functional specialties.

## RECOMMENDATIONS

It is recommended that the Bureau of Investigation:

- 6.1 Reorganize Bureau reporting responsibilities as shown in Exhibit 1 and consolidate the two Public Assistance Fraud Divisions to improve span-of-control ratios in the Bureau, including the deletion of one Criminal Investigator III position and the addition of one Criminal Investigator II position as described in this section. (Priority 2)

- 6.2 Make an assessment of the investigative responsibilities throughout its units to identify those positions that could be filled with lower level sworn or civilian support staff, based on the duties and responsibilities of the positions, and fill positions as they become vacant with appropriate lower level sworn or civilian staff. (Priority 1)
- 6.3 Establish an investigative recruitment policy that will result in a more balanced workforce of entry, mid and senior level sworn investigative and civilian support staff on an ongoing basis. (Priority 1)

It is recommended that the Employee Services Agency and County Counsel:

- 6.4 Prepare an amendment to the Personnel Section of the County Ordinance Code to provide a generic, but thorough definition of the duties, responsibilities, and other issues pertaining to the use of Lead positions in County service. In addition, ESA should review the job descriptions of the Criminal Investigator series to determine if changes and/or an expanded description should be prepared for Lead-Criminal Investigator II positions, and if any changes are needed in the Criminal Investigator III job description, to clarify the working supervisor responsibilities of the position. (Priority 2)

## **SAVINGS, BENEFITS AND COSTS**

The implementation of these recommendations would improve organizational efficiency, and increase cost effectiveness. Operational savings are estimated to amount to approximately \$434,000 annually, including \$178,000 General Fund savings and \$256,000 State and federal savings or increased State and federal program services.

**REACT FUNCTIONAL TIME SHEET**

Agent/Contractor DA, Santa Clara County

PAY PERIOD: June, 08

DATE	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	TOTAL HOURS
On-Grant Work																														
Work Off-Grant																														
TOTAL HOURS WORKED																														
VACATION																														
HOLIDAY																														
BICK LEAVE																														
TOTAL ON-GRANT																														
TOTAL OFF-GRANT HOURS																														

**CERTIFICATION**

Attendance, absences and overtime recorded are accurate, verified and/or authorized in accordance with legal requirements and prescribed directives.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Employee Signature: \_\_\_\_\_  
 Supervisor Signature: \_\_\_\_\_

**RECONCILIATION**

Notes: \_\_\_\_\_

Hours worked \_\_\_\_\_

Leave hours \_\_\_\_\_

Total \_\_\_\_\_

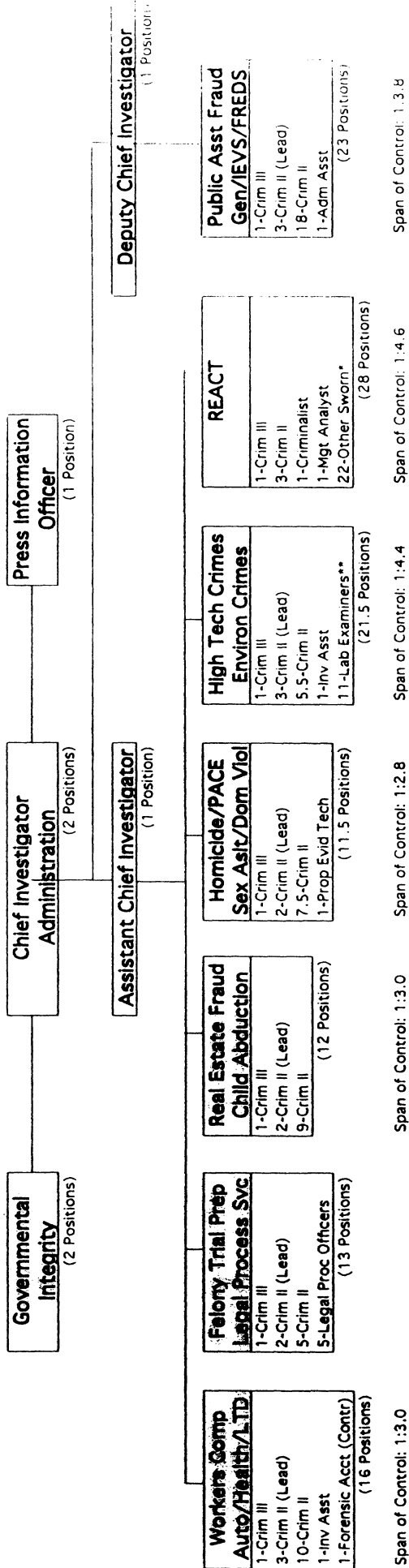
Less overtime hours \_\_\_\_\_

Net Hours \_\_\_\_\_

# Proposed Organization Chart

## Office of the District Attorney

### Bureau of Investigation



Span of Control: 1:3.0

Span of Control: 1:3.3

Span of Control: 1:3.0

Span of Control: 1:2.8

Span of Control: 1:4.4

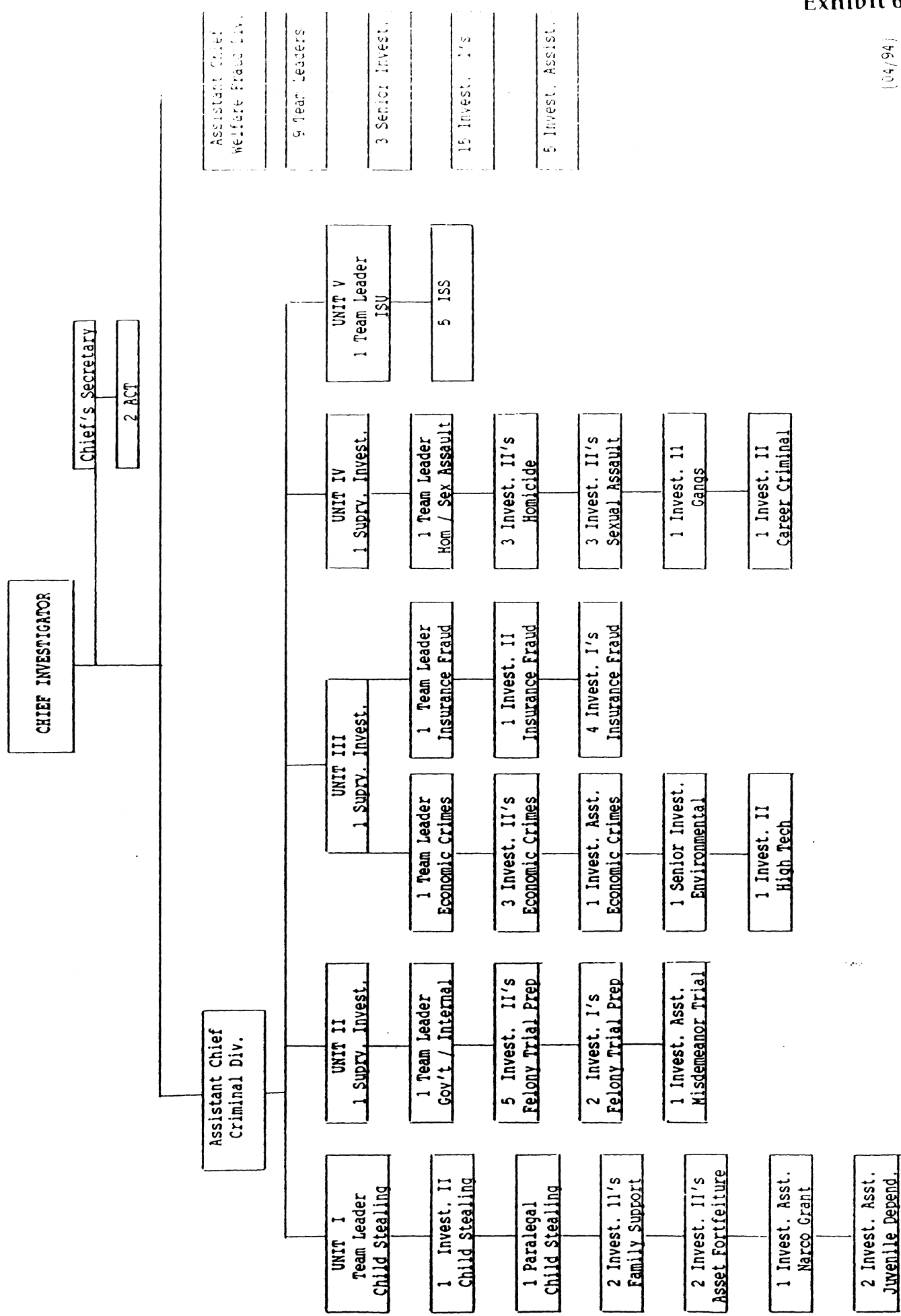
Span of Control: 1:4.6

Span of Control: 1:3.8

\* Includes 22 positions from other law enforcement agencies, including four Sergeants.

\*\* Includes 11 positions from other law enforcement agencies.

(04/94)



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## Section 7. Bureau of Investigation: Staff Accountability and Organizational Policies and Procedures

- The Bureau of Investigation of the Office of the District Attorney is the only County law enforcement agency that does not conduct annual performance evaluations of sworn staff.

In addition, most investigative staff of the Bureau are not required to submit detailed periodic timesheets, nor are they required to account for their time on a daily activity log. Although Bureau supervisors prepare divisional status reports every four months, these reports compare division goals and prior year workload and statistics to the current period. Individual investigator caseloads and productivity are not consistently monitored and evaluated by supervisors on a monthly basis, and supervisors do not receive monthly management reports pertaining to individual investigator caseloads, productivity or other performance indicators.

The Bureau of Investigation policy and procedure manual was written about 13 years ago and was substantially updated approximately eight years ago. Although six of the 74 policies and procedures were rewritten in the past two years, the manual is no longer comprehensive or fully current and should be updated.

- Due to these personnel and internal control issues, the level of accountability is inadequate for highly compensated professional staff on whom the taxpayers rely to perform a vital law enforcement function, and incomplete or dated policies and procedures can diminish the consistency and quality of investigative performance.
- By developing and implementing organizational, accountability and performance policies and procedures as described in this section, investigation quality, timeliness, productivity, and cost effectiveness can be improved.

### Background

The Bureau of Investigation includes 104 authorized positions and accounts for approximately \$15.0 million, or 16.4 percent of the District Attorney's \$91.3 million FY 2007-08 budget. The Bureau is organized into eight divisions, which include approximately 30 specialized units that support the broad prosecutorial functions of the District Attorney's Office. The Bureau is substantially funded from non-General Fund sources through State and federal grants and program reimbursements. For FY 2007-08, the General Fund accounts for approximately 41 percent of the Bureau of Investigation budget, while non-General Fund sources fund the remaining 59 percent.

Because the Office of the District Attorney is responsible for a vital law enforcement function on behalf of the 1.8 million citizens of the County of Santa Clara, it is staffed with high level professional, attorneys, investigative personnel and support staff. The average annual cost per position for FY 2007-08 amounts to \$146,000. Consequently, because of the importance of the mission and the taxpayer cost devoted to this function, it is essential that the Office of the District Attorney set and maintain high standards of performance expectations and accountability for the Office, each division or unit, and each employee.

An important prerequisite to achievement of performance standards is the need to measure performance. Although Section A25-696 to A25-700 of the County Ordinance Code adopted by the Board of Supervisors in 19XX requires all County employees in the classified service to receive periodic performance evaluations, the collective bargaining agreement with the District Attorney Investigators Association, Inc. does not provide for performance evaluations. District Attorney Criminal Investigators are the only law enforcement personnel in the County for whom no performance evaluation process has been implemented.

In addition to the absence of employee performance evaluation, how employees use their time is also not accounted for in most units of the Bureau of Investigation and throughout the Office of the District Attorney. This information is essential for obtaining grant reimbursement as well as evaluating employee time management and productivity.

Another component that is important in achieving high performance standards in an organization is the existence and maintenance of comprehensive and current policies and procedures. The policy and procedure manual is the tool by which employees are informed of expectations, trained and held accountable for performance. The larger an organization, the more important this tool becomes. With more than 500 employees in the Office, and more than 100 in the Bureau of Investigation operating out of numerous locations throughout the County, employee performance can only meet expectations if the employees are all informed of policies and procedures in a consistent and timely manner.

## **Increasing Unit and Individual Accountability in the Bureau of Investigation**

### *Performance Evaluation of Investigative Staff*

Within the group of law and justice departments in the County of Santa Clara, several conduct regular performance evaluations as a routine part of personnel administration in order to provide employee and employer feedback, to ensure employees are performing at a satisfactory level, and to be considered when approving various personnel actions such as promotions, salary increases, transfers, demotions, discharges

and other actions. Evaluations are performed periodically by an employee's immediate supervisor and become a part of an employee's personnel file. Performance evaluations are also used to assist employees to identify and achieve goals for improvement.

Except for the District Attorney's Office, performance evaluations of sworn personnel are used in every County department with badge personnel, including the Sheriff's Department, Department of Correction, Probation Department, and Park Rangers. In addition, performance evaluation of investigative staff in other county district attorney offices is common practice. County district attorney offices that reported conducting performance evaluations of investigative staff include Ventura, San Francisco, San Bernardino, Sacramento, Riverside, Los Angeles, and Fresno counties. Because of the high cost to the taxpayers of sworn personnel in general (Criminal Investigator II positions currently cost \$180,000 annually), and the vital law enforcement function performed by District Attorney criminal investigators, a corresponding level of accountability is also appropriate to ensure high quality services. Performance evaluations are an important part of the accountability process. In order to initiate such a process in the Bureau of Investigation, the District Attorney should request the Employee Services Agency begin a meet and confer process with the District Attorney Investigators Association, Inc.

#### *Use of Monthly Activity Sheets to Record Hours Daily*

A second element of increased accountability pertains to the use of activity sheets in order to record hours worked by program, function or case on a daily basis. The use of monthly activity sheets is an administrative improvement that should be implemented Office-wide for all classifications, particularly since approximately 55 percent of the Office-wide budget of the District Attorney is funded from State and federal grants and program reimbursements. It is essential to diligently complete such time records so that accounting staff can fully capture all reimbursable costs. In addition, both State and federal auditors require physical evidence to document costs claimed on reimbursement forms. The Audit Division of the State of California Controller's Office regularly audits SB 90 and other claims submitted by the County and has rejected millions of dollars of claimed costs in recent years by various County Departments, including the Office of the District Attorney, due to the absence of original employee time sheets. Although some investigative and other staff currently keep daily activity sheets for the purposes cited, such as the REACT Investigative Unit (Attachment 6.1), no standardized forms or procedures exist, and no system is used throughout the Office.

In addition to ensuring that the District Attorney's Office is able to withstand any State or federal audit, the management information provided by detailed accounting for time spent by all staff, in all units is invaluable, particularly during times of budget reduction, such as have occurred in recent years. In order for the District Attorney to defend the Office's budget before the County Executive and the Board of Supervisors, she must have the specific caseload, staffing and cost information readily available for

every unit in the Office. Accurate employee caseload and cost information is necessary to justify existing staffing levels, and to make a compelling case for increases that are warranted. This source of information would also enhance the ability of managers and unit supervisors to monitor workload and productivity, which is currently limited to analysis of CRIMES information. Consequently, the District Attorney should implement an Office-wide monthly time reporting system for all staff. This information should be used to create monthly management reports for all managers and supervisors and for accounting documentation purposes.

## **Bureau of Investigation Policy and Procedure Manual Needs to be Updated**

The general policy and procedure manual of the Bureau of Investigation includes 74 separate policies and procedures. Most of these were written more than 10 years ago, and the last substantial update occurred eight years ago in 2000 when 28 percent of the procedures were written or rewritten. Most recently, two procedures were rewritten in 2006 and four procedures in 2007. Examples of policies that need to be updated or added include:

- Performance evaluation
- On-call duty
- Use of vehicle radios
- Responsibilities of investigation staff and supervisors for timely maintenance of CRIMES case management system
- Recruitment, testing and hiring investigative personnel
- Management reports (preparation, distribution and use)
- Periodic review of the Policy and Procedure Manual, adding new procedures and amending existing procedures

The policy manual needs to be continuously updated to ensure that policies defining employee responsibilities and Bureau procedures conform to job specifications, the County Ordinance Code, Merritt System rules, Board of Supervisors Policies, and changes in State and federal law.

In addition to the general office policy and procedure manual, it is important that each division of the Bureau maintain its operating policy and procedure manual on a current basis so that these manuals are useful for both training of new staff and day-to-day operations. This is especially important in an organization that is potentially subject to a high rate of staff turnover due to retirements. Presently, 36 of the 90 sworn

investigative staff, or 40 percent are eligible for retirement, an additional 17 investigators, or 19 percent are at retirement age, but have less than five years of County service, and an additional 15 investigators, or 17 percent will become eligible for retirement during the next five years. In total, approximately 76 percent of the investigative staff is currently eligible, or will become eligible for retirement in the next five years.

## **CONCLUSION**

Although the County Ordinance Code requires employee performance evaluation of all employees in the classified service, no performance evaluation program exists for District Attorney Investigators. In addition, there is no Office-wide time reporting system for employees of the Office of the District Attorney, and Bureau of Investigation policy and procedure manuals also need updating. By correcting these organizational weaknesses, employee performance and accountability would be substantially increased and improved accounting documentation would ensure full State and federal reimbursements of grant claims and program expenses.

## **RECOMMENDATIONS**

It is recommended that the District Attorney's Office:

- 7.1 Request the Employee Services Agency begin a meet and confer process with the District Attorney Investigators Association, Inc. to develop and implement a performance evaluation system for its investigative staff. (Priority 1)
- 7.2 Develop and implement a Department-wide monthly time reporting system for all staff. This information should be used to create monthly management reports for all managers and supervisors. (Priority 2)

It is recommended that the Bureau of Investigation:

- 7.3 Review and update its general policy and procedure manual as well as its operational policy and procedure manuals in each division, and amend Bureau policies to ensure that all Bureau policy and procedure manuals are continuously reviewed and updated. (Priority 2)

## **SAVINGS, BENEFITS AND COSTS**

The implementation of these recommendations would improve organizational, division, unit and individual efficiency, productivity, cost effectiveness, and accountability. The cost associated with the development and/or acquisition of a time reporting system has not been estimated.

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## **Section 8. Bureau of Investigation: Interdepartmental Services**

- **The Investigation Bureau provides interdepartmental security services to the Department of Child Support Services (DCSS), based on its prior relationship to the Department when Child Support Services was administered by the Office of the District Attorney. Although the co-location of the Department of Child Support Services and the District Attorney's Public Assistance Fraud Investigation Unit is an advantage for the District Attorney's Office to provide these services, the high cost of the Criminal Investigator II position exceeds the cost of a typical public agency security guard by approximately \$94,000 per year, making it an inappropriate choice.**
- **As a result, the cost of security services provided to the Department of Child Support Services is excessive.**
- **By obtaining building security services through an appropriate job classification, the Department of Child Support Services could improve cost effectiveness and save up to \$94,133 annually. The District Attorney's Investigation Bureau could redirect professional investigation resources to the intended purposes immediately upon the vacancy of another investigator position within the Bureau.**

Effective July 1, 2002, the Department of Child Support Services was created to assume responsibility for the administration and enforcement of child support, establishment of paternity and other child support services from the Office of the District Attorney. While this function was operated by the District Attorney, facility security for the more than 300 employees and 60,000 clients who visit the child support offices was provided by District Attorney Investigators. The Investigation Bureau of the Office of the District Attorney continues to provide facility security for the Department of Child Support Services, even though it has been more than five years since responsibility for child support services was transferred to the Department of Child Support Services by State law.

The Department of Child Support Services is currently co-located at 2851 Junction Avenue in San Jose with the Office of the Public Administrator-Guardian and the Public Assistance Fraud Investigation Unit of the District Attorney, which is under contract to the Social Services Agency to investigate public assistance fraud. Although co-location with the Public Assistance Fraud DA Investigation Unit is an efficiency advantage, the high cost of a Criminal Investigator II, which is estimated to amount to \$176,060 in FY 2008-09, cannot be justified in relation to the cost of other available security options. As an example, both the Social Security Agency, with six positions, and the Health and Hospital system, with 53.5 positions, utilize full-time County staff in the classification of Public Protection Officer to provide facility security services for their staff and clients at an FY 2008-09 annual cost of approximately \$81,927 per position. Because the Protective Services Officer does not have peace officer status under State law and does

not carry a firearm, the cost of the Protective Services Officer is less than that of a Deputy Sheriff, which is the other widely used classification to provide facility security in County buildings. Deputy Sheriffs provide security for the Board of Supervisors and the Office of the Tax Collector at 70 West Hedding Street, and for the Superior Court at many court facilities throughout the County. The annual cost of a Deputy Sheriff in FY 2008-09 is approximately \$137,151.

A third option would be for DCSS to contract with the Sheriff's Department for security services utilizing a position of Sheriff's Security Guard explicitly authorized by State law for security of county facilities. In 1996, the State legislature enacted an amendment to the Penal Code creating Section 831.4 for the express purpose of establishing a new job classification of Security Officer available to sheriff's departments throughout the State. Section 834.4 (a) provides that:

"A sheriff's security officer is a public officer, employed by the sheriff of a county, whose primary duty is the security of locations or facilities as directed by the sheriff. The duties of a sheriff's security officer may include physical security and protection of properties owned, operated, or administered by the county...or necessary duties with respect to the patrons, employees, and properties of the employing county..."

Contracting with the Sheriff would make available the full range of law enforcement support of the Sheriff's organization, including training, policies and procedures, supervision, command staffing, and other organizational support. In addition, employees in this classification could be rotated to other comparable sheriff security positions, such as courthouse security, since many of the duties of the Security Guard position would be comparable to those of a Sheriff's Technician position used to provide security in court facilities. Since the Sheriff has not previously implemented the classification of Sheriff's Security Guard, the job specifications, qualifications and requirements could be developed specifically for the security requirements of the Department of Child Support Services.

Any of these three staffing options would provide the Department of Child Support Services with facility security services in a far more cost effective manner, and would utilize security staff for purposes consistent with their job descriptions. Criminal Investigator II positions are primarily required to conduct investigations, prepare detailed investigation reports, assist Deputy District Attorneys in the preparation of cases, file complaints and testify in court. Because these skills require more and specialized professional training and experience, in addition to that required of a Deputy Sheriff or Protective Services Officer, the cost of a Criminal Investigator II is substantially greater. Consequently, by utilizing any of the three alternative classifications, the Department of Child Support Services could save from \$38,909 to \$94,133 annually.



## **CONCLUSION**

The Department of Child Support Services uses the Investigation Bureau of the Office of the District Attorney to provide building security services for its staff and clients. Use of a Criminal Investigator II position for building security is inconsistent with the duties of this job classification and excessively costly. The use of a Deputy Sheriff, Sheriff's Security Guard or Protective Services Officer would be a more appropriate, less costly choice of classifications to provide the required security services.

## **RECOMMENDATIONS**

It is recommended that the Department of Child Support Services:

- 8.1 Purchase the services of a Protective Services Officer from the Social Services Agency, or a Deputy Sheriff or Sheriff's Security Guard from the Sheriff's Department, or request a position of Protective Services Officer in the FY 2008-09 budget and reduce or delete the object two funds currently used to purchase security services from the Office of the District Attorney. (Priority 3)

It is recommended that the District Attorney's Office:

- 8.2 Delete one Criminal Investigator II position from the FY 2008-09 budget and reassign the criminal investigation staff who are currently providing DCSS facility security to appropriate criminal investigation functions through attrition. (Priority 3)

## **SAVINGS, BENEFITS AND COSTS**

The implementation of these recommendations would result in savings for the Department of Child Support Services ranging from \$38,909 to \$94,133 annually. The Office of the District Attorney would be able to immediately fill a Criminal Investigator II position when a vacancy occurs with an experienced investigator, who is fully knowledgeable of the policies and procedures of the Bureau of Investigation.

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## Section 9. Crime Laboratory Photography Services

- The Crime Laboratory for Santa Clara County provides photography services to local law enforcement agencies. Its main photographic service is to develop film taken by local law enforcement agencies at crime scenes. In very rare instances, the photographer is sent to photograph crime scene locations for evidentiary purposes.
- However, with the advent of digital technology, local law enforcement agencies, the District Attorney and the Sheriff's Department are using less film and thus rely less on the services of the Crime Lab's photography unit. Also as a result of new technology, the Crime Laboratory's picture-taking workload for its core functions is decreasing. To offset the decrease in Crime Laboratory work, the Crime Laboratory's photographer is providing photography services to County non-criminal justice agencies. However, with the decrease in workload there is insufficient work to warrant a 1.0 full time equivalent photographer at the Crime Lab.
- By charging the non-General Fund agencies for services related to photography services, the County could increase revenue. However, the non-Crime Laboratory work would not generate enough revenue to make the position cost neutral, or even generate enough revenue to make the position less costly for the County.
- Deleting the Crime Laboratory's Photographer position through attrition would reduce the District Attorney's salary costs by approximately \$83,000 annually. Elimination of this position should be offset by a contract photographer or cross-training of existing staff for non-Crime Laboratory work and the remaining Crime Laboratory work, should any exist, should be carried out by a part-time position.

### Background

The Crime Laboratory in Santa Clara County provides Criminalist and scientific services to local law enforcement agencies, the Santa Clara County Sheriff's Department, the District Attorney, and other organizations in the criminal justice system. The Santa Clara Crime Laboratory is a full-service crime laboratory that provides a broad array of Criminalist services, including DNA analysis, firearm testing, toxicology services, and latent fingerprint analysis. In addition to these areas, the crime lab also provides photography services to local law enforcement agencies.

The services performed by the Crime Laboratory Photographer are as follows<sup>1</sup>:

- Takes still pictures in black-and-white or color of crime scenes, medical subjects, evidence, fingerprints, special events, personnel, accidents, publicity or marketing features, construction projects, and other photographic requirements of County departments;

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<sup>1</sup> Source: Interviews with Crime Laboratory staff and the Photographer (J39) job description.

- Performs black and white and color dark room work, including mixing chemicals, processing and printing negatives, processing and duplicating slides, and enlarging, reducing, mounting, sorting and labeling prints and slides;
- Cleans and maintains photographic and laboratory equipment and supplies, and makes minor repairs to equipment;
- Maintains film files and keeps accurate records;
- Maintains supplies and orders stock when necessary;
- May be required to have knowledge of use and characteristics of various types of film, including specialty films such as infrared; and,
- Performs routine clerical and administrative duties and other related work as required.

The Photographer is supervised by an Administrative Support Officer, as part of the Laboratory's Office and Lab Support Unit. However, the photographer is responsible for operation of the photo lab, which includes procurement of photography materials, and oversees all aspects of the photography operation for the Crime Laboratory. In addition to the specific work performed by the Photographer, the position performed some evidence intake, processing and scanning of negatives, creating discs with digital photos, and work with photograph matting and presentation. Finally, the photographer will assist some Criminalists with photography of crime scenes.

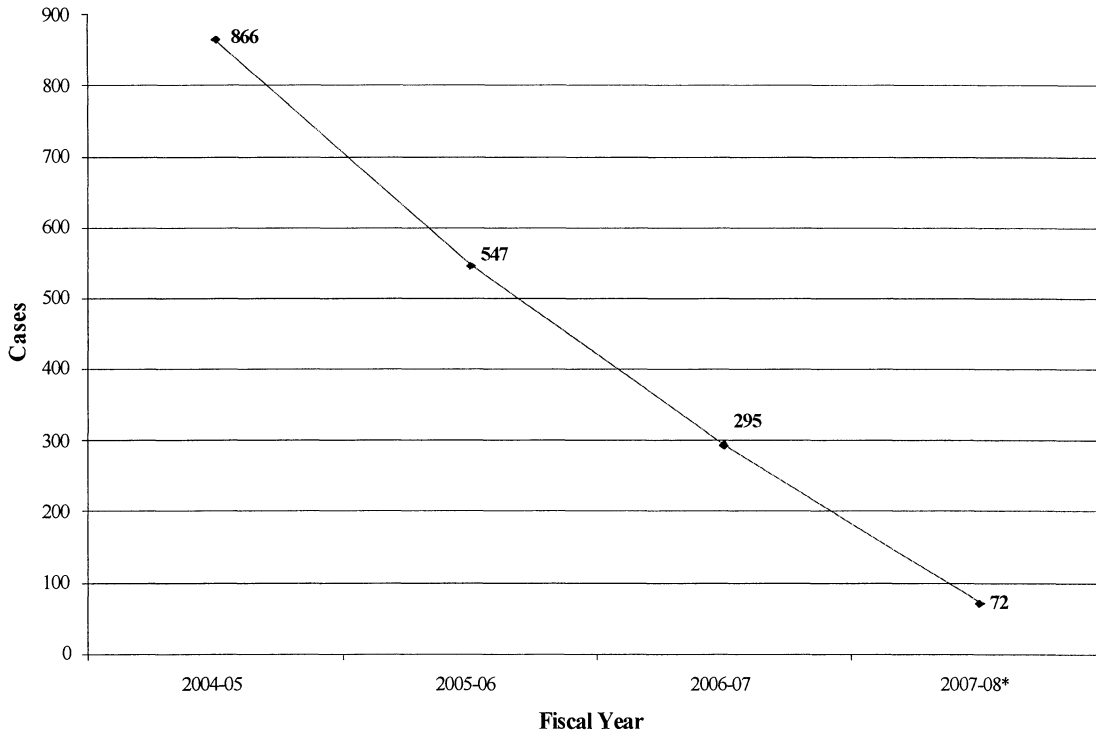
### **Photography Work Load**

The workload for the Crime Laboratory's Photography unit is decreasing. With the increase of technology and the low cost of photography services, the role of the Crime Laboratory photography services has decreased significantly over the previous several fiscal years. Essentially, the advent of digital photography permits city and other non-County law enforcement agencies, as well as the Sheriff's Department, to photograph and process their own crime scene photos, without the assistance of the Crime Lab. The reduction in case submissions by local law enforcement agencies has decreased such that only one or two law enforcement agencies even submit photography work to the Crime Laboratory for processing.

The decrease in photography work is shown in the figure on the following page.

Figure 9.1

**Photography Case Submission**



\* Projected. The actual number of photography case submission, through December 10, 2007, is 32.

As shown in the figure above, the Crime Laboratory photography case submissions have decreased precipitously from FY 2004-05 to FY 2007-08 from 866 to 72. This is a direct result from the increased use of digital technology and the ease at which local law enforcement officials can maintain and process photography work from crime scenes for use in investigations.

The decrease is primarily from three agencies—the Sheriff’s Department, the Campbell Police Department and the Valley Medical Center Sexual Assault Recovery Team—which were primary users of the Crime Lab photography unit, but now less frequently use its services. These three agencies comprised approximately 90 percent of all case submissions in FY 2004-05 and FY 2005-06. As their submissions began to decrease, their corresponding percentage of overall case submissions began to decrease, to 57 percent in FY 2007-08. The table on the following page shows the decrease in usage from these three agencies.

**Table 9.1**

**Photography Case Submission  
Three Largest User Agencies**

<b>Agency</b>	<b>FY 2004-05</b>	<b>FY 2005-06</b>	<b>FY 2006-07</b>	<b>FY 2007-08*</b>
Campbell Police Department	198	188	75	16
Sheriff's Department	470	175	34	25
Valley Medical Center – Sexual Assault Recovery Team	104	137	128	0
<b>Subtotal</b>	<b>772</b>	<b>500</b>	<b>237</b>	<b>41</b>
<i>Percent of Total Submissions</i>	<i>89.1%</i>	<i>91.4%</i>	<i>80.3%</i>	<i>56.9%</i>

\* Projected. Through December 10, 2007 the actual case submissions are as follows: Campbell Police Department (7) and Sheriff's Department (11).

The remaining case submissions are from various agencies that have remained very consistent over the previous four fiscal years, primarily the Alternate Public Defender, the County Medical Examiner, the District Attorney and the Morgan Hill Police Department. Submissions from these four agencies have varied from a total of 39 photography cases submissions in FY 2004-05, to 35 submissions in FY 2005-06, 47 in FY 2006-07, and a total projection of 32 in FY 2007-08.

As a result of the decrease in Crime Laboratory photography case submissions, there is not a sufficient workload for 1.0 full-time equivalent (FTE) photography staff. The decrease is such that without an increase in case submissions, the Crime Laboratory photography staff workload does not justify the position remaining a full time 1.0 FTE.

**Non-Crime Laboratory Photography Work**

The Crime Laboratory photography staff has recognized that its criminal justice workload is not sufficient to warrant a full-time position. Therefore, the Crime Laboratory photography staff have increased work generated from non-crime related agencies. In fact, this effort to increase work from these agencies has been a focus of the staff. Staff reported that use of its services has increased as a result of word of mouth by County staff, as well as efforts by the Crime Laboratory staff to increase workload.

The increase in non-Crime Laboratory photography has slightly offset the decline in workload related to the position's core function. However, this offset is insufficient to offset the significant reduction in case submissions by County criminal justice agencies. When the entire workload of the Crime Laboratory photographer is analyzed, there is not adequate work to warrant a 1.0 FTE position.

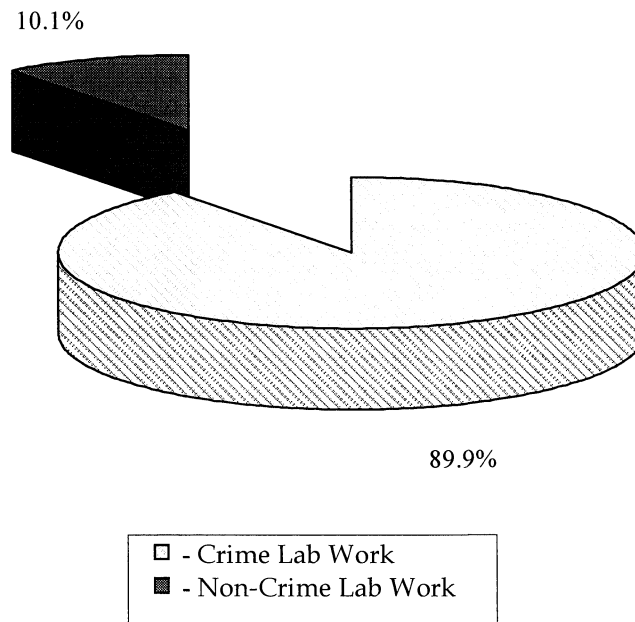
As part of this audit, the Crime Laboratory photographer tracked the total number of hours worked for non-Crime Lab agencies in the County. This information provided was for almost all of calendar year 2007. The data, from January 1, 2007 to December 4, 2007, indicate that the photographer worked on 70 events for County non-criminal justice agencies during 2007. The primary user of photographer services was the Board of Supervisors, while other agencies such as the Social Services Agency and the Employee Services Agency occasionally used the service.

In calendar year 2007, the Crime Lab photographer reported a total of 169 hours of work related to these services, which projects to approximately 179 hours for the entire calendar year. This is equivalent to approximately 0.1 full-time equivalent (FTE) position. The bulk of the non-criminal justice work, 128 hours, or 75.7 percent of all non-Crime Laboratory related photography work, was performed for the Board of Supervisors for such services as Employee of the Month photos and other events as needed.

The figure below shows the distribution of work between non-criminal justice agencies and traditional Crime Laboratory photography work. As the figure below highlights, only 10.1 percent of work is from non-criminal justice agencies. Thus, the photographer position still relies primarily on the core criminal justice type work for an 89.9 percent of their work. As noted earlier, the volume of this work has fallen substantially, and does not justify a full-time position.

Figure 9.2

**Photography Work Distribution**



## Cost Recovery

As part of the audit, potential implementation of fees was examined to determine if the costs associated with the photographer could be recovered, in order to make the position cost neutral. Based on the analysis of work submitted by criminal justice agencies and other County departments, very little revenue could be generated that would not impact the County's General Fund.

As shown above in Table 8.1 above, a majority of the criminal justice cases are from County Departments funded by the General Fund, such as the Sheriff's Department. The Crime Lab could implement charges to County departments that receive funding sources other than the General Fund, such as the Valley Medical Center – Sexual Assault Recovery Team, or to local law enforcement agencies. Analysis of the FY 2006-07 and the projected FY 2007-08 caseload shows that the County would receive minimal funds if a full cost recovery fee was implemented. The estimated cost for services from non-County General Fund sources is estimated at \$14,342 for FY 2006-07 and a projected total of \$1,206 in FY 2007-08. These amounts include an estimated overhead charge of 12.5 percent, as well as the full salary, including mandatory fringe benefits, of the photographer.

The Department also could choose to charge all its customers, both General Fund and non-General Fund, for its services. However, we believe any assessment of fees would likely further reduce case submissions by law enforcement agencies and other customers, thus reducing revenue. This would also not significantly reduce the impact on the General Fund, since analysis of the non-criminal justice workload suggests that only about five percent of the total workload is from funding sources other than the General Fund. Using an estimated overhead rate of 12.5 percent and direct charges for service, based on work performed in calendar year 2007 the County would receive only \$134, an amount not worth the costs to bill.

Since the criminal-justice workload is not sufficient for a full-time photography position with the Crime Lab and increased revenue from non-criminal justice work is not sufficient to make the position cost neutral, the District Attorney should eliminate the photography position through attrition. By eliminating this position through attrition, the Board of Supervisors and the County Executive will have time to determine, whether through a contractor or a part-time position, how the County will be able to continue receiving photography services, should it desire to do so. The deletion of this position will achieve \$82,611 in salary savings. Further, by no longer providing Crime Lab photography work, the District Attorney will achieve further savings by reductions to materials and supplies and other non-salary expenses, estimated at approximately \$10,000 annually.

Before the incumbent photographer leaves the current Crime Laboratory position, the District Attorney should assess the quality of the photographic evidence it is currently receiving from criminal justice agencies that no longer use the Crime Lab's photographic services. If necessary, the crime laboratory photographer should work with County agencies and law enforcement agencies to train the use of digital photographers, so these agencies can take on this responsibility. By training County staff on use of digital camera photography, the County will still receive non-crime



laboratory photography services, which is a majority of this type of work. For instance, many of the non-crime laboratory related work is employee of the month award photos. If County staff is sufficiently trained, staff from the awarding department could be responsible for the photography of the award winner. Further, the County Executive Office has Public Communication Specialist positions that “to assist with public and news media relations and marketing promotional efforts.”<sup>2</sup> These positions could assist in photography needs unrelated to crime laboratory work. The estimated savings will be offset by some expenditure increases to either hire a photographer part-time.

## CONCLUSION

The workload of the Crime Laboratory photographer work has decreased significantly over the previous few fiscal years. This workload decrease is a result of improved photography technology which allows criminal justice agencies’ staff to take photographs much easier than in earlier years. With these agencies handling their own photography work, the work of the Crime Laboratory photographer has decreased. Even the addition of non-criminal justice photography duties have proven to generate an insufficient amount of work for a full-time position. Further, efforts to implement fees and recover the costs of this position would not generate sufficient non-General Fund revenue to offset the costs of the position, and would be likely to reduce its use by General Fund agencies, because of the cost.

## RECOMMENDATIONS

It is recommended that the District Attorney’s Office:

- 9.1 Delete the Photographer (J39) position from the Crime Laboratory through attrition and delete non-salary expenditures when the position becomes vacant. (Priority 2)
- 9.2 Assess the quality of photographic evidence it is receiving from law enforcement agencies, particularly those that are doing all the photography and photo processing themselves. If necessary, the Office should require the Crime Laboratory photographer to provide training to County and non-County law enforcement agencies on digital camera photography and other work that these agencies could provide in lieu of the Crime Laboratory providing these services. (Priority 3)
- 9.3 Develop a plan for replacement of this position by a contractor, training of existing staff, or a part-time position if necessary for non-Crime Laboratory photography work. (Priority 3)

## SAVINGS, BENEFITS AND COSTS

Implementation of these recommendations would result in savings of approximately \$75,000 in salary and non-salary savings, the reduction of the position minus replacement costs for a part-time position or a contractor.

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<sup>2</sup> Public Communications Specialist job specification.

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## Section 10.

## Break Periods for Clerical Staff

- Pursuant to the labor agreement between the County of Santa Clara and SEIU Local 715 (now 521), County departments must grant workers covered by this agreement a fifteen minute rest period during each four hours of work. As of August 20, 2007, there were 90 filled non-supervisory clerical FTEs in the Legal Support Operations Division of the District Attorney's Office, with an average cost around \$79,000 per position. Interviews with staff and limited survey responses from applicable support personnel indicate that the large majority of these clerical staff are taking two 30-minute breaks each day.
- Clerical staff that take an additional 30 minutes of non-productive break time daily are operating in a manner that is inconsistent with the labor agreement, resulting in a large number of non-productive work hours each year over and above the amount permitted by the labor agreement. The value of this time is estimated to be at least \$281,000, and could be more than \$500,000 per year.
- By limiting the length of each break to 15 minutes, the equivalent of approximately four to six additional clerical staff positions would be available each year. This would effectively expand the filled clerical support positions by four to seven percent, improving the availability of support staff to fulfill the Department's mission. A small amount of additional paralegal support might also be available.

### Background

As of August 20, 2007, there were 104.5 line staff positions in the Legal Support Operations Division of the District Attorney's Office. These positions consist primarily of Office Specialists, Legal Clerks, Justice System Clerks, and Legal Secretaries. Of these, 14.5 FTEs were vacant, leaving 90 FTE positions filled. Excluding two Messenger Drivers and four Legal Secretary IIs serving the administration, the total annual cost of the remaining 84 positions is approximately \$6.5 million, for an average of approximately \$79,000 per position. In addition, there were 20 non-supervisory Senior Paralegal FTEs.

All of these positions are covered under the Local 715 (now 521) Memorandum of Understanding (MOU). Section 8.5 of that MOU specifies 15-minute rest periods during each four hours of work, for a total of 30 minutes of break time per work day. However, based on interviews with staff and a survey of clerical and paralegal staff, most of these employees take two 30-minute breaks, for a total of one hour of break time per day. These breaks are in addition to the lunch period of 30 to 60 minutes permitted by the MOU. Selected employees appear not to take 30-minute break periods, and some – primarily Paralegals – have reported not taking any breaks.

## Basis for Practice

Personnel that have been with the District Attorney's Office for many years recount that the 30-minute break practice, which is not office policy, began when the office relocated in the 1970s to the current West Hedding Street location. According to current accounts, employees at the time said that they could not get from their West Wing offices to the East Wing cafeteria, purchase and consume a drink or snack, and get back to their desks in 15 minutes. Current employees recount that the District Attorney at that time agreed to allow staff to take 20-minute breaks, which gradually became 25-minute breaks, which evolved into 30-minute breaks for many staff. Some personnel have indicated that the breaks in some instances are extending into 35- or 40-minute rest periods. There is a coffee room and vending machines on the seventh floor of the main offices at 70 West Hedding Street, and outlying offices have available break facilities and/or nearby coffee shops. Some employees say that some personnel use the break times to exercise, rather than to obtain refreshments.

## Extent of Practice

On September 19, 2007 we provided a brief survey to the majority of clerical and paralegal support staff. The questionnaire included a question regarding break time. We initially received several responses, but on Sept. 21, an SEIU organizer who is not a county employee sent a notice to the membership urging that members not respond, and erroneously suggested that survey responses might be used as the basis for staffing cuts. Subsequent to this notice, we received few survey responses. As a consequence, we are unable to determine with precision the extent to which staff regularly take 30-minute breaks. However, based on a dozen interviews and survey responses we received, we believe that the actual percentage of clerical staff taking lengthy breaks on a daily basis ranges from at least 50 percent to as high 90 percent. Table 10.1 illustrates the estimated lost work hours and estimated cost associated with clerical breaks, depending on the extent to which staff engage in this practice. We have less information about paralegal breaks, and reports of the instances of long breaks for these staff are much less consistent. Therefore, we have not estimated lost hours and costs for paralegal breaks, but it is possible that a limited amount of savings would be available from reduction of breaks for paralegal staff.

**Table 10.1**

**Estimated Annual Cost of Extended Break Times for Clerical Staff, Depending on Percentage of Partaking Staff**

Percentage of Partaking Staff	90%	75%	50%
Productive Hours Lost	10,874	9,061	6,041
Estimated Salaries and Benefits	\$506,276	\$421,897	\$281,264

## Effects of Longer Break Periods

### *Time and Expense*

For those employees who take an hour of break time per day, more than 11 percent of the nine-hour day is devoted to breaks. If the additional half-hour per day of break time were not taken, between 6,041 and 10,874 estimated hours of additional productive clerical staff time, and an undetermined amount of additional paralegal support time would be available each year to devote to meeting the demands of the Office. This is equivalent to four to six full-time staff, or more.

### *Morale*

The longer break periods may improve morale by facilitating exercise or enabling employees to take care of errands during the day. Conversely, because the break time may increase each employee's workload, there could be negative effects on morale, particularly for those employees who may be too busy to take breaks.

### *Equity*

The practice of providing lengthy break time to some employees within the Office, while others may take no breaks or few breaks, and providing lengthy breaks for many District Attorney clerical employees, but not to similarly situated employees in other departments, raises questions of fairness and consistency among employees. For example, following the recent management audit of the Probation Department, clerical staff there were restricted to 15 minutes of break time in each four-hour work period.

We recommend that this matter be referred to the Administration of the Employee Services Agency (ESA) to enforce the break times of 15 minutes per each four hours of work, as specified in the current labor agreement. Given that lengthy break times have recently been identified as commonplace in two large departments, we recommend that ESA determine whether there are other departments in which a majority of personnel take breaks in excess of that specified by the applicable MOU, and enforce the negotiated break time.

## CONCLUSION

Clerical and Paralegal staff that take an additional 30 minutes of non-productive break time daily are operating in a manner that is inconsistent with the provisions of the labor agreement, which results in thousands of non-productive work hours each year over and above the amount permitted by the MOU. The value of this time is estimated to be at least \$281,000 and up to \$500,000 per year.

By limiting the length of each break to 15 minutes, the equivalent of approximately four to six additional clerical staff positions would be available to the Office of the District Attorney, as well as an undetermined but probably small amount of paralegal time. This would effectively expand the filled clerical support positions by four percent to seven percent, improving the availability of support staff to fulfill the Office of the

District Attorney's mission. A small amount of additional paralegal support might also be available, depending on the extent of break time taken by paralegal staff.

## **RECOMMENDATIONS**

It is recommend that this matter be referred to the Administration of the Employee Services Agency:

- 10.1 To enforce the break times authorized for clerical and paralegal staff in the District Attorney's Office to 15 minutes for each four hours worked. (Priority 1)
- 10.2 To determine whether there are other County departments in which a majority of personnel take breaks in excess of that specified by the applicable MOU, and enforcing the negotiated break time. (Priority 3)

## **SAVINGS, BENEFITS AND COSTS**

The implementation of these recommendations would better ensure that clerical and Paralegal employees are operating in a manner that is consistent with the Local 715 (521) labor agreement. This would result in the availability of several thousand hours of additional staff time each year to devote to unmet workload demands. These unproductive hours cost County taxpayers at least \$281,000 to as much as \$500,000 per year, and reduce the efficiency of the Department.

## Section 11. Inefficient Allocation of Support Duties

- As a result of the poor ratio of paralegal staff to attorneys in the District Attorney's Office, lawyers are spending up to half of their time engaged in duties such as coordinating witnesses' court appearances and associated travel arrangements, preparing information that must be released to the defense, creating visual depictions of evidence, compiling and summarizing evidence, typing letters, transcribing tapes, and similar activities. We estimate that more than two dozen attorneys spend between 40 and 50 percent of their time on such paralegal tasks.
- The average prosecutor costs more than double that of a Senior Paralegal; therefore, the office pays at least \$3.34 million more per year than necessary to carry out many paralegal tasks, while simultaneously depleting the time and energy attorneys have to prepare for trials. Lack of sufficient paralegal staff sometimes causes prosecution delays, results in overwork of some paralegals, reduces "counts" filed, and curtails assistance to victims and witnesses. In at least one case, insufficient paralegal staff resulted in the prosecutor having the crime victim compile evidence for trial.
- Paralegal positions should be increased by as much as a level equivalent to the number of hours attorneys are spending on paralegal duties, with this expense offset by a reduction in attorney positions equivalent to as much as the number of hours that attorneys engage in paralegal duties. Consolidating attorney functions among fewer prosecutors while increasing the total work hours would enable the District Attorney's Office to substantially improve its service level and efficiency, and generate an undetermined but potentially significant amount of savings as a result of more timely prosecution.

### Background

The attorney-to-paralegal staff ratio in the District Attorney's office is poor, particularly compared to the County's other legal departments, as shown in Table 11.1 below.

Table 11.1

#### Number of Attorneys per Support Position in Santa Clara County Legal Departments

	District Attorney	County Counsel	Public Defender
<i>Senior Paralegals</i>	8.40	3.56	3.74
Legal Secretaries	7.00	2.85	25.25
Justice/Legal Clerks	3.57	N/A	101.00
Other	8.84	7.13	2.89
Overall	1.53	1.30	1.51

As of late 2007, the Department had 19 full-time Senior Paralegals, two half-time Senior Paralegals and one Supervising Paralegal. As shown in Table 11.1, attorneys in the County’s other legal departments have more than twice the level of paralegal support as that provided to prosecutors, indicating greater concentration of legal tasks among attorneys in those departments. This table is not meant to suggest that the functions of these departments are similar, but rather to illustrate the relative degree to which attorney duties are efficiently concentrated or inefficiently dispersed among similarly costly attorney positions. A certain amount of additional attorney staff in the District Attorney’s Office is required by the fact that multiple courts operate at the same time, which requires a separate attorney for each courtroom.

Furthermore, the distribution of paralegal staff within the District Attorney’s Office results in the South County and Misdemeanor units having no paralegal assistance. In 2006, each Misdemeanor Unit attorney prosecuted, on average, an estimated 30 misdemeanor cases each work week without paralegal support; South County attorneys prosecuted, on average, an estimated 16 misdemeanor and felony cases each work week without paralegal support. Even where paralegals are assigned, ratios are often high in light of the volume and complexity of cases. For example, in 2006, the Major Cases unit was assigned to prosecute approximately 20 complex cases involving an average of 2.8 defendants per case, with each defendant facing an average of more than 12 charges. The attorney-to-paralegal ratio in the unit is nearly 14 to 1.

Our research indicates that ratios of Legal Assistants or Paralegals in the Santa Clara County District Attorney’s Office – while better than in a number of large counties – are poor relative to District Attorney offices in at least three other large counties, as illustrated in Table 11.2 below.

**Table 11.2**

**Attorney to Paralegal Ratios  
in Selected Large Counties**

County	Ratio
Santa Clara	8.4
San Francisco	4.5*
San Diego	2.8**
Riverside	5.95
*Includes assistants who may assist either Investigators or Attorneys. **Budgeted positions; excludes Paralegal Supervisors.	



## Inefficient Use of Attorneys

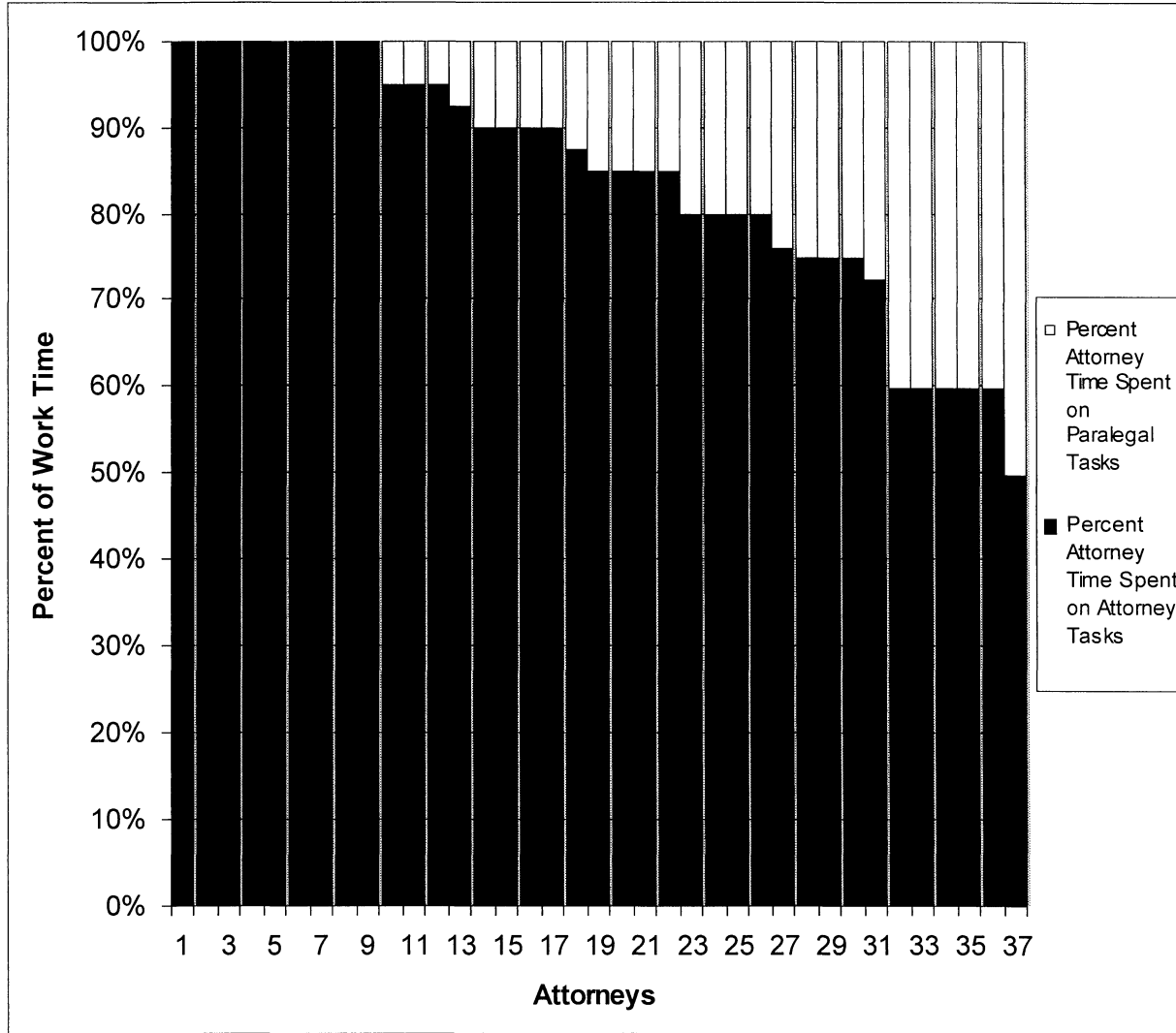
On this topic specifically, we interviewed by telephone 37 attorneys, selected from 18 different units, representing 22 percent of the Department's 168 full-time, filled, non-administrative attorney positions. The attorneys were drawn from the organization chart. We asked the attorneys to describe tasks that do not require a law license that could reasonably be delegated, and to estimate the amount of time they spend on these duties each week.

### *Most Attorneys Are Handling Paralegal Tasks*

A significant minority (24 percent) indicated that they never engage in any duties they could delegate, or that all such duties are already being handled by existing non-attorney staff. However, the majority of attorneys said that they routinely carry out paralegal duties, particularly witness coordination, preparation of evidence, preparation of materials that must be released to the defense (discovery), and similar tasks. With regard to witness contact, there is a distinction between contact that is properly carried out by the attorney – such as is necessary to enhance the attorney's ability to successfully prosecute the case – versus contact that is for logistical purposes, such as informing witnesses of new court dates, and making travel arrangements and providing for parking passes. We asked attorneys to estimate, where the distinction is evident, only those hours spent on witness activities that could be properly and reasonably delegated to paralegal staff. Chart 11.1 on the next page shows the proportion of time estimated by each attorney. Each bar of the chart reflects a surveyed attorney. The black portion of each bar represents the totality of time that each attorney reported spending on attorney tasks. The white portion of each bar represents the percentage of time each attorney said they spend on tasks that they could delegate. The "white" portion of the chart, therefore, illustrates inefficient use of attorney time.

Chart 11.1

**Proportion of Time Attorneys Report Spending on Attorney Versus Paralegal Duties**



As the chart shows, nearly a quarter of attorneys (9 of 37) said they never spend time on duties that could be delegated to paralegal staff if additional staff were available. Almost one quarter more reported spending from five to 14 percent of their time on paralegal tasks. Twenty-two percent reported engaging in paralegal work for 15 to 20 percent of their time. About 14 percent said they spend about a quarter of their time on paralegal tasks. Another 16 percent indicated that they devote 40 percent to 50 percent of their time to paralegal activities. This means that 30 percent of prosecutors - which equates to an estimated 50 attorneys throughout the District Attorney's Office - indicated that they spend between 24 and 50 percent of their time on tasks that are not cost effective. The average of all the responding attorneys, including those who said they never engage in duties that could be carried out by a non-attorney, was 6.4 hours per week. Attorneys in units that are especially paper- or witness-intensive, and

attorneys with private-sector experience, were generally more likely to indicate that they could delegate tasks to paralegals. It should be noted that the vast majority of attorneys interviewed volunteered that the quality of the existing paralegal support they receive is excellent.

Attorneys also indicated that they often type letters, photocopy documents, and prepare files, binders, spreadsheets, photographs, and other materials. Some of these duties could be managed by paralegals. Based on interviews with attorneys, a relatively modest amount of these tasks could be carried out by secretaries or clerks. The additional time necessary to have these duties carried out by secretaries or clerks could be absorbed by reducing break times for clerical staff to two 15-minute periods, as recommended in Section 10. The small amount of time that attorneys said they would delegate to clerical staff if more were available is not reflected in Chart 11.1. It is included in the "attorney" portion of time in the chart.

**Effects of Inefficient Allocation of Tasks**

*Unnecessary Costs/ Reduced Available Work Hours*

Using 2006 payroll data, we determined that the surveyed attorneys averaged 1,746 hours of productive work time. These attorneys reported spending an average of 6.4 hours per work week on paralegal tasks, which equates to 279 hours per year per attorney. Applying this average to the Department's filled, full-time non-administrative attorney positions results in an estimated 46,900 hours per year that attorneys spend on paralegal tasks. The average non-administrative attorney's total compensation is 2.14 times that of the average Senior Paralegal (\$233,578 and \$109,122, respectively). The Department therefore spends at least an additional \$3.34 million per year to have attorneys rather than paralegals carry out many paralegal tasks. This estimate is detailed in Table 11.3 below.

**Table 11.3**

**Estimated Annual Cost to Have Attorneys Rather than Paralegals Perform Paralegal Tasks**

Estimated Total Cost per Paid Productive Hour		Hourly Cost Difference	Estimated Annual Hours Attorneys Spend on Paralegal Tasks	Full-Time Filled Attorney Positions	Total Annual Cost
Attorney	Paralegal	"A"	"B"	"C"	(A*B*C)
\$133.76	\$62.50	\$71.25	279	168	\$3,339,630

Another way to view this is as reduced work hours available for the same costs. For the same amount of money, the District Attorney could increase its net total available work hours by at least 21,500 per year.

*Effects on Prosecution and Customer Service*

The cost analysis does not reflect the costs or effects of duties that are simply put off for lack of available staff. Several attorneys said that, in addition to the time they spend each week on paralegal tasks, there are other tasks that are either neglected or delayed as a consequence of insufficient paralegal staff. Multiple attorneys said that some cases are not filed as timely as they would like, or that they must curtail prosecution to fewer “counts” than they would otherwise file. For example, a criminal who has stolen the identities of 30 people should face 30 counts of theft charges, but may only be charged with a few counts due to lack of available staff time to compile the evidence needed to prosecute all known instances of the crime. Others said they must ask judges to postpone hearings on cases as a consequence of not having case materials ready for release to the defense. Some attorneys said that they were unable to return calls to witnesses and victims in a timely way, or that their overall service to these individuals is poor. In at least one case, a prosecutor described having insufficient paralegal staff to prepare materials necessary to prosecute the case; therefore, those tasks were delegated to the crime victim.

In the South County office, the staff require deliveries from San Jose regularly, but there is no assigned Messenger Driver. Therefore, due to this lack of support staff, they sometimes must wait for a District Attorney Criminal Investigator to be traveling that direction in order to obtain essential materials. In one instance, an Investigator kept critical materials necessary for the prosecution of a case in his trunk while he was off duty for days before clerical staff finally located him. In order to provide for regular delivery service to South County, and to augment existing delivery service to and from the Crime Lab and other existing routes, we recommend the addition of one Messenger Driver position. We recommend supplying a vehicle for the driver by re-assigning a vehicle from the Investigations Unit, as discussed in Section 13. We recommend paying for the position through the savings described later in this section. If the District Attorney does not implement the changes necessary to generate savings to pay for a Messenger Driver, the District Attorney should attempt to provide for this service if and when other funds become available.

*Inability to Carry Out Essential Paralegal Functions*

Some attorneys also expressed concern that the Department’s paralegals are overworked. We spoke with and/or electronically surveyed paralegal staff and the Supervising Paralegal. We also reviewed an internal report on paralegal staffing and usage. These sources fairly consistently reflected frustration with the workload, and the fact that – due to time pressure – paralegals are unable to assist attorneys to the extent envisioned in their job description. Per their job description they:

“...are primarily involved with the administrative coordination of cases and witnesses. A high volume of cases and a high degree of trial preparation, investigation, and independence characterize these activities.”

Paralegal shortages mean that many are unable to fulfill such duties, thereby reducing the assistance available to attorneys as they prepare for court and while they are in trial. Several Senior Paralegals have reported that they do not perform much coordination of witnesses or other duties directly related to trial preparation. Several Senior Paralegals have indicated that much of their time is devoted to preparation of materials, called “discovery,” that prosecutors are legally obligated to provide to the defense. Such materials typically include witness and/or victim statements, video and audio tapes, and other evidence that may be used against a defendant. For example, paralegal staff assigned to the Gangs Unit must review all written, video and audio materials that are required to be provided to the defense, and redact identifying information of both victims and witnesses associated with a crime. The Senior Paralegal staff in the Career Criminal Unit is devoted primarily to preparation of discovery, as well as obtaining the prior histories of individuals who may be eligible for prosecution under the State’s “Three Strikes” law. In addition, several paralegals indicated that they are performing duties that could be carried out by clerical staff, such as photocopying, which would free them to create trial exhibits, contact witnesses, compile evidence, conduct legal research, prepare motions, and assist during trials.

#### *Overworked/Under-prepared Attorneys*

In interviews, some attorneys used terms such as “winging it” to describe their level of preparation for trials, as a consequence of having to coordinate witnesses and perform other non-attorney functions, and with most having little or no paralegal assistance in the courtroom. Although no attorneys expressed complaints about their workload, several described extremely long days, and the requirement to carry out duties that conflict with their ability to prepare for trials. Specifically, several attorneys mentioned calling witnesses at 9 p.m., when they would rather have been able to use the nighttime hours to prepare for trial.

### **Efficiency Gains from Shifting Paralegal Duties to Paralegals**

As previously illustrated and shown again below, some attorneys spend a significant portion of each week engaged in duties that are not cost effective for them to perform. On a department-wide basis, this inefficient use of attorney time is estimated to equate to nearly 47,000 hours. This estimate is conservative, as surveyed attorneys probably underestimated the proportion of time spent on non-attorney tasks. If the District Attorney were to cease the existing inefficient practice of having attorneys spend time on paralegal tasks, by instead hiring paralegals to do the work and consolidating the legal tasks among a modestly smaller attorney staff, the same amount of legal work would be carried out, by attorneys with far greater support. By consolidating legal work so that each attorney is devoted solely to legal activities, the District Attorney would not need as many attorneys to carry out its existing volume of legal work. A detailed description of the mechanics of such an exchange is presented below.

As previously shown in Chart 11.1 attorneys “28,” “29,” “30,” and “31” each spend approximately 25 percent of their time on paralegal tasks. If these four attorneys rearranged duties such that attorneys 28, 29, and 30 performed legal tasks almost exclusively, and attorney 31 spent 100 percent of his workday on paralegal work for the other three attorneys, the same amount of work would be done by the same number of

persons. However, since it would not be cost effective to have attorney 31 doing 100 percent paralegal work at twice the cost of a paralegal, the District Attorney could, through attrition, hire a paralegal instead of replacing attorney 31. The result of this would be:

- 100 percent of the existing work now being done by an attorney would be done by an attorney, and no attorney would have additional work;
- 100 percent of existing paralegal tasks would be done by a paralegal, and no paralegal would have additional work;
- The District Attorney would have one fewer attorney positions;
- A savings equal to approximately half of attorney 31's total compensation would be generated.

The savings could either be used to reduce the budget, to avert further budget cuts, or could be used to hire *another* paralegal to provide an entirely new level of service not currently available. This would effectively double the level of paralegal support available to attorneys 28, 29, and 30 (or other attorneys), at no additional cost.

We recommend that the District Attorney pursue such efficiency improvements, where feasible. Feasibility would depend on the extent to which legal duties could be arranged within and, potentially, across similar legal units to facilitate consolidation of legal tasks. It would require examining certain District Attorney procedures, such as how attorneys are assigned to courtrooms. An example of how assignments could be done more efficiently is provided in Section 2 of this report, which regards scheduling of hearings in the drug courts. As indicated previously, a certain amount of dispersion of legal tasks is inevitable.

We recommend reducing attorney positions by as many as 12, and replacing these positions with up to 25 Senior Paralegals. Note again that this recommendation would not reduce any attorney *time* or tasks, only the number of attorney *positions*. It would require the District Attorney to conduct operations differently than it does today.

If fully implemented, this change would result in a net savings of almost \$75,000, and an estimated net increase in total work hours of more than 21,500. We recommend allocating the majority of the savings to fund a Messenger Driver to provide daily service to the South County staff and to provide additional service to and from the Crime Lab and other existing routes. Funding the 25 Senior Paralegals and one Messenger Driver with a reduction of 12 attorneys would result in net General Fund savings of approximately \$5,400 per year. If fully implemented, this would create a ratio of approximately one paralegal for every 3.5 attorneys, which is similar to the ratio that exists in the County's other legal departments and consistent with anecdotal reports of support in private law firms. At the Department's discretion, it could choose to hire slightly fewer Senior Paralegals and allocate the balance of funds to provide for a second Supervising Paralegal position or establish several "Team Lead" Senior Paralegal positions.

### *District Attorney Concerns*

The District Attorney's management has expressed the belief that it would be impossible to re-allocate any of the paralegal tasks carried out by attorneys, which appear as white space in Chart 10.1, to legal tasks. Administrators have expressed concern that such consolidation would result in an inability to provide attorneys to existing and future courts. We suggest that the District Attorney consolidate legal functions gradually and in such a manner that would ensure preservation of necessary coverage. We have indicated that the District Attorney could reduce as many as 12 positions, but the actual number that could be implemented and the timeline of such changes would depend on a variety of factors, including staffing of courtrooms, the capacity of administrators to re-organize personnel and units for efficiency, the extent to which rank-and-file attorneys who have historically had little or no access to paralegal support could adopt more efficient day-to-day practices, and the productivity of new paralegals.

Some in the administration have suggested that consolidating attorney functions is not possible because it would require paralegals to practice law, which is illegal. Nothing in this audit report or these recommendations suggests that paralegals should be given attorney tasks or that they should practice law. The recommendations set forth in this section do not propose or necessitate the assignment of attorney tasks to non-attorneys.

Some of the managers in the District Attorney's Office have voiced concerns that the total amount of attorney time would be reduced by implementation of recommendations in this section. On the contrary, these recommendations specifically would not result in the loss of attorney time. These recommendations would reduce the number of attorneys carrying out the existing amount of legal work, but would not reduce the number of attorney work hours. In addition, implementation of these recommendations would greatly increase the total volume of the District Attorney's professional work hours by funding a substantial number of new paralegals at no additional cost.

Some in the District Attorney's Office have expressed the belief that the District Attorney's Office should simply receive new funding for new paralegal staff, without reducing any of the current inefficiencies in task allocation. Adding staff in the absence of efficiency gains would improve operations. However, such an increase would reduce cost effectiveness, and, as a consequence of the County's current and expected future budget constraints, probably is not feasible in the foreseeable future. In addition, as described in the Introduction section of this report, there is extreme understaffing of supervision of clerical staff. Funding that may become available in the future should be directed there first.

### *Maximizing Use of Existing and Future Paralegal Resources*

A substantial minority of attorneys surveyed indicated that they are unsure how to use a paralegal; specifically, they are unused to and uncomfortable with the notion of delegating work for which they are ultimately responsible, and they aren't sure which tasks are appropriate to assign to a paralegal. This information is consistent with comments from paralegals. We note that the San Jose Misdemeanor Unit, which is the

training ground for the Department's "rookie" attorneys, does not have a paralegal. As such, new attorneys have few opportunities to learn how to use paralegal staff efficiently as part of their daily routines, and this program could include provision of a paralegal to the Misdemeanor Unit. Therefore, we recommend that the Office develop a training program specifically to assist attorneys in learning to make maximum efficient use of paralegal assistance.

## CONCLUSION

The ratio of clerical and paralegal staff to attorneys in the District Attorney's office is poor relative to the Public Defender and County Counsel's offices, and District Attorney offices in at least three other large counties.

Due to an attorney-to-paralegal ratio that is 8.4:1 department-wide, an estimated 50 attorneys throughout the District Attorney's Office spend between a quarter and half of their time engaged in duties such as coordinating witnesses' travel arrangements and parking passes, preparing information that must be released to the defense, typing letters, entering data into the District Attorney's computer system, transcribing tapes, proofreading, photocopying, and compiling binders. Other attorneys lack support staff to deliver necessary materials in a timely way. According to prosecutors, insufficient support staff delays prosecution of some cases, reduces "counts" filed in some cases, reduces attorney time to prepare for trials, and results in less-than-optimal assistance to victims and witnesses, as well as excessive workloads among some support staff. These problems increase costs, and result in inefficient use of both attorney and paralegal expertise, and ultimately reduce the District Attorney's service to the public.

We recommend that the District Attorney reduce attorney staffing by up to 12 positions and re-direct the savings to add up to 25 Senior Paralegal positions, plus one Messenger Driver. Although this would reduce attorney positions, there would be no loss of attorney work hours, and the Office would gain a large net increase in professional work hours at no additional cost.

A substantial minority of attorneys surveyed indicated that they are unsure how to use a paralegal. Therefore, we recommend that the Department develop a training program specifically to assist attorneys in learning to make maximum efficient use of paralegal assistance.

These cost-neutral changes would substantially improve the Office's efficiency and service level, save the General Fund a small amount per year in personnel costs, and result in undetermined but potentially significant savings as a result of improved timeliness of prosecution.

## RECOMMENDATIONS

It is recommended that the District Attorney's Office:

- 11.1 Reduce attorney staffing through attrition by up to 12 positions – the number of positions equal to the conservatively estimated number of work hours that



attorneys now spend on non-attorney duties – and use most of the savings to gradually increase the paralegal staff by up to 25 positions. (Priority 1)

- 11.2 Implement a training program to assist attorneys in learning to delegate to and maximize use of paralegal staff. (Priority 1)
- 11.3 Use a portion of the additional savings from implementation of Recommendation 11.1 to add a Messenger Driver whose route includes daily service to the South County. If Recommendation 11.1 is not implemented, the District Attorney should attempt to provide for a Driver through other funding sources, if and when they become available. (Priority 2)

## **SAVINGS, BENEFITS AND COSTS**

Implementation of Recommendation 11.1 would substantially improve the Department's efficiency and internal and external service levels by re-allocating up to \$3.34 million worth of tasks that are currently carried out at more than twice the necessary rate. The extent of benefits would depend on the extent to which the recommendation is fully implemented. If fully implemented, this would save the General Fund an estimated \$75,000 per year in personnel costs, and result in undetermined savings as a result of improved timeliness of prosecution, while adding as many as 21,500 net new professional staff hours. It would also potentially improve the effectiveness of prosecution, due to the filing of additional counts in some cases, and improvements in the level of preparation that attorneys would be able to complete in advance of trial. Implementation of 11.2 would assist attorneys in learning to use paralegal support, and ensure that duties are delegated where appropriate. There would be modest costs associated with this recommendation, which would be offset by savings as a consequence of improved timeliness of prosecution. Implementation of Recommendation 11.3 would improve the timeliness of prosecution of South County cases. This recommendation could be paid for entirely from the net savings from Recommendation 11.1, leaving approximately \$5,400 in additional direct personnel savings, plus an undetermined amount of savings resulting from efficiency gains.

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## Section 12. Payroll Inefficiencies and Control Concerns

- The administration of payroll in the District Attorney's office is inefficient, as there are approximately 24 individuals performing time tracking and data inputting duties at some time during the year. Of the 15 persons who regularly devote several hours per pay period to these duties, more than half are in classifications that do not specify payroll as part of their duties.
- Some staff who are carrying out payroll tasks have had limited training in payroll procedures and are uncomfortable preparing payroll and resolving intricate payroll questions and problems. In addition, assignment of payroll duties to the clerical manager and clerical supervisors diverts time from the supervision and management responsibilities of individuals who have large spans of control.
- Furthermore, because there are no timecards and most employees have their payroll administered by someone other than their supervisor, the possibility exists that some staff could take vacation or sick leave without ever having it recorded, resulting in possible double payments. In addition, the lack of adequate documentation of time worked has resulted in the State's denial, currently under appeal, of more than \$1 million of the District Attorney's SB 90 reimbursement claims.
- We recommend that the District Attorney implement supervisor-approved timecards for all employees, and hire an Associate Management Analyst-B to process and manage payroll each period. This would improve the accuracy, efficiency and internal controls in the District Attorney's payroll process, and ensure the recovery of all eligible reimbursements and grants.

### Background

The administration of payroll in the District Attorney's Office is carried out by at least 24 separate primary timekeepers, back-up timekeepers and administrative personnel. Of these, at least 15 who are not part of the Administrative Services Unit, which has administrative responsibility for payroll, are engaged in payroll administration as part of their regular, day-to-day duties. Of these, eight – more than half – are in positions with job descriptions that have no payroll tasks, as shown in Table 12.1 on the following page.

**Table 12.1**

**Non-Administrative Services Personnel  
Regularly Engaged in Payroll Tasks**

<b>Job Titles</b>	<b>Payroll Tasks in Job Description?</b>
Account Clerk II	Yes
Legal Secretary II A	Yes
Legal Secretary II B	Yes
Legal Secretary II C	Yes
Lead Legal Secretary II A	Yes
Lead Legal Secretary II B	Yes
Administrative Services Officer II (Crime Lab)	Yes
Supervising Legal Clerk A	<b>No</b>
Supervising Legal Clerk B	<b>No</b>
Supervising Legal Clerk C	<b>No</b>
Sup. Legal Secretary A	<b>No</b>
Sup. Legal Secretary B	<b>No</b>
Operations Manager	<b>No</b>
Lead Legal Clerk	<b>No</b>
Secretary	<b>No</b>

*Inefficient Process Increases Potential for Errors, Omissions, and Duplicate Payments*

In interviews, some staff responsible for payroll tasks indicated that they are poorly trained, and are unsure that time is accurately captured and paid. Others said they must spend time researching complicated payroll problems, or responding to staff inquiries regarding payroll and benefits. Many of the above positions complete payroll for employees who do not report to them. For example, there are no attorneys or investigators who report to any personnel involved in payroll processing. Since the District Attorney’s Office does not have regular timecards that are tied to payroll, supervisors of all attorneys and investigators do not affirm the time these employees have worked. In some instances, personnel working on grant-funded or reimbursable tasks track their time separately for the purpose of obtaining funding.

Time off information is usually captured through formal “time off” slips that are signed by supervisors. However, some timekeepers have reported receipt of such information through informal means, such as -paper notes, emails, or telephone calls, as well as through the proper process. Timekeepers report that leave information is sometimes not reported until after the deadline to make changes to the correct pay period. Various personnel have indicated that there is no mechanism to ensure that time off is recorded for staff whose payroll processing is handled by someone other than their supervisor. Furthermore, the electronic timekeeping system defaults to “straight time” pay,

meaning that unless a person responsible for processing payroll for another individual is notified of leave time, vacation and sick leave taken will not be captured. This process increases the possibility that individuals whose work time for payroll is recorded by persons to whom they do not report could intentionally or unintentionally neglect to report their vacation or sick leave time. Since upon these individuals' separation from County employment, records would erroneously indicate that they are owed payment for leave time that in fact was already used, this practice could result in effective "double payments" for leave time.

*This Process Results in Lost Revenue*

As a consequence of the lack of timekeeping records detailing the precise amount of time staff worked on mandated Child Abduction activities from July 1999 to June 2002, the State Controller in 2006 denied more than \$1 million worth of the Office's SB 90 claims with regard to these reimbursable activities. The Office attempted to remedy the problem with an after-the-fact "time study," but the State has not found this evidence sufficient. The Office is still appealing the State's denial. The State- recommended that the County "develop and implement an adequate recording and reporting system which will identify mandate-related and non-mandate-related activities." This specific problem has been addressed by the Office. Staff have indicated that current time tracking for SB 90 claims will eliminate the potential for disputed claims in the future.

Despite this improvement, it is likely that implementation of a formal timecard system would facilitate recovery of additional grant funds. At present, individuals whose primary duties relate to a grant are claimed for grant purposes, but personnel performing ancillary duties may not have time captured and charged to the grant.

*This Process Diverts Resources*

It is an inefficient use of time and expertise to have the Legal Support Operations Manager, who is responsible for management of a unit of approximately 112 positions, manually entering time data into the computer every pay period. Processing payroll also diverts substantial supervisory time from the Supervising Legal Clerks and Supervising Legal Secretaries, all of whom have an average of approximately 16 direct reports and substantial management responsibilities, yet collectively spend at least 40 hours a month on data entry and other payroll duties that are inconsistent with their other responsibilities.

*Implementation of a Timecard System and Central Administrator*

Due to the inefficiencies of having the payroll processing managed by a large number of persons whose primary duties and training are unrelated to payroll, as well as the potential for abuse of leave time, the potential for payroll errors, and --probable lost revenue as a consequence of past insufficient documentation of time worked, we recommend that the District Attorney implement a timecard system, with time worked and leave time taken approved by each employee's supervisor, and --processed by a central payroll position. Payroll should be based on each employee's timecard.

Such a process has been in place for many years in the Santa Clara County Counsel's Office. In that office, each employee fills in a paper timecard, which is submitted to the employee's supervisor for approval, and then forwarded to that Department's Accounting Unit for processing into the electronic payroll system. In that Department, no supervisors, secretaries, or clerks are involved in the inputting of payroll information, aside from preparing or approving timecards. We recommend that the District Attorney hire an Associate Management Analyst-B position, at a cost of approximately \$97,888, to assume management of the District Attorney's payroll services, and serve as the point-person for payroll inquiries and corrections. We recommend that this position report to the Management Analyst in the Administrative Services Division, who is currently responsible for releasing payroll. We recommend that the Management Analyst or another party in the Administrative Services Division serve as "back up" when the Associate Management Analyst is on leave. We note that payroll duties are not identified specifically as part of the Management Analyst job description; however, such positions are broadly oriented around problem solving and management of financial and personnel data, which is consistent with the duties of payroll management.

## **CONCLUSION**

The administration of payroll in the District Attorney's Office is inefficient, as there are approximately 24 individuals performing time tracking and data inputting duties at some time during the year. Of the 15 persons who regularly devote several hours per pay period to these duties, more than half are in classifications that do not specify payroll as part of their duties.

We estimate that clerical supervisors alone are spending collectively at least 40 hours per month – approximately 6 percent of all clerical supervisory time – logging other employees' hours onto paper and electronic forms. These duties are inconsistent with their primary responsibilities.

Further, because there are no timecards and most employees have their payroll administered by someone other than their supervisor, the possibility exists that some staff could take vacation or sick leave without ever having it recorded, resulting in possible double payments. In addition, the lack of timecards has resulted in the State's denial of some of the District Attorney's SB 90 reimbursement claims, resulting in potential revenue losses of at least \$1 million.

Implementation of supervisor-approved timecards for all employees, with payroll administered centrally by an Associate Management Analyst, would improve the accuracy, efficiency and internal controls in the Office's payroll process, ensure the recovery of all eligible reimbursements, and result in a small but material increase in the amount of time that staff currently engaged in payroll administration would have to devote to their primary duties.

## **RECOMMENDATIONS**

It is recommended that the District Attorney's Office:

- 12.1 Implement a timecard system, with time worked and leave time approved by each employee's supervisor, and which clearly delineates time spent on reimbursable activities, and which is submitted to a central payroll processing position. (Priority 2)
- 12.2 Hire an Associate Management Analyst-B position to manage the Office's payroll processes and inquiries and ensure that the Office accounts for and charges the maximum amount of eligible work time to grant-funded and reimbursable activities. (Priority 1)

## **SAVINGS, BENEFITS AND COSTS**

Implementation of Recommendation 12.1 would result in negligible costs to produce, complete, sign and deliver timecards. Implementation of Recommendation 12.2 would result in additional personnel costs. The top-step cost, including all benefits, for an Associate Management Analyst-B in the FY 2007-08 budget is \$97,888. The costs for both of these changes would be partially or entirely offset by improved efficiencies resulting from having existing staff focus on their area of expertise instead of payroll, ensuring that leave time is not double paid, reducing payroll errors and corrections, ensuring that the Office obtains all -grants and reimbursements to which it is entitled.

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## Section 13. Vehicle Assignment and Use

- The District Attorney's Office has approximately 116 assigned vehicles, 29 of which are self-reported (and authorized by management) to be used for commute purposes. Through this process, approximately 25 percent of the Bureau of Investigations staff is commuting in County-owned vehicles, some of which are grant funded. The rationale for the assignment of commuter vehicles to most commuting Bureau staff is that employees are "frequently required to perform County business before or after normal working hours and/or on-call 24 hours."
- However, none of the Bureau's staff are ever placed "on call." Of the 15 vehicles assigned to staff for which we were able to assess usage based on available records, documented after-hours calls for service in 2006 were infrequent. Included among the staff whose vehicle use appears inconsistent with the assignment rationale are persons whose round-trip commutes from home to the District Attorney's main office span nearly 100 miles, and one individual with a recent history of multiple at-fault accidents in a County vehicle.
- Bureau administrators have said that the practice of providing numerous vehicles is a more cost-effective means of ensuring staff are available to respond to after-hours calls than paying a few individuals "on-call" pay. However, our estimates indicate that providing on-call pay and temporary vehicles to limited staff would be less expensive than the current vehicle assignments, saving as much as \$94,500 per year. In addition, providing "on-call" pay and temporary commute vehicles would reduce the potential for accidents in County vehicles and associated costs.
- The County should therefore develop and implement a County-wide policy governing the criteria for assignment of commuter vehicles, and the District Attorney should restrict use of commuter vehicles to individuals whose positions and actual work demands clearly necessitate such vehicle use. The District Attorney should improve records to enable upper management to better monitor vehicle needs and uses, and the Bureau should provide staff with "on-call" pay and temporary "on-call" vehicles when necessary.

### Background

When warranted by employees' positions or job duties, the County sometimes assigns vehicles to employees. In some cases, individuals with assigned vehicles are authorized by their department and the County Executive's office to take their assigned vehicles home. Although the County has limited vehicle use policies, the practice of assigning vehicles for take-home use is not governed by a written County-wide policy. Such use is self-reported through the department to Fleet Services and, ultimately, to the County Executive's Office, which maintains a list of authorized users. Authorization is granted for one or more of three specific reasons, as detailed in writing on the list of authorized users. These reasons are as follows:

- 1) The authorized person is an "Agency/Department Head/Executive Manager."

- 2) The “employee is frequently required to perform County Business before or after normal working hours and/or on-call 24 hours.”
- 3) The use is authorized by the “Deputy Sheriff’s or Correctional Officer’s labor agreement.”

#### *Commuter Vehicle Policies*

As there is no County-wide written policy governing commuter use of vehicles, such use is subject to limited governance. For example, the District Attorney’s Bureau of Investigations Policy and Procedure Number 340 restricts commute vehicle use to “official business only,” but it does not specify criteria for an investigator to qualify for a commute vehicle, nor assign responsibilities to the user. County policies 706 and 706.2 specify that County vehicles may only be used for County business, and that drivers must have valid licenses and permits, wear seat belts and buckle young children into safety seats, among other general provisions.

In contrast, some other counties have detailed policies governing assignment of take-home vehicles. For example, Monterey County’s policy, the relevant portion of which is provided as Appendix 13.1, has specific criteria for assignment of such vehicles, and mandates that drivers comply with certain requirements. The County Executive’s Office, Fleet Management and Risk Management should develop and implement a County-wide policy governing the criteria for assignment of commuter vehicles and the assigned party’s responsibilities associated with use of the vehicle.

#### *Vehicle Assignments Generally*

As of late 2007, the District Attorney’s Office had approximately 116 assigned vehicles, utilized by staff throughout the Office, plus access to a separate group of unassigned County “pool” vehicles. The pool fleet includes 35 vehicles that are suitable for undercover work, as well as about 120 additional vehicles, including sedans, that could be used by District Attorney staff on a temporary basis. These pool vehicles are available for use by other County departments as well.

Of the persons with assigned vehicles, 29 were authorized to take the vehicles home. These 29 include the District Attorney, the Crime Laboratory Director, and the Chief Investigator, all of whom fall into the “executive management” category. There were four attorneys with assigned “take-home” vehicles, as a consequence of “on-call/call-out” duties. Due to records limitations, we were unable to determine the extent of on-call/call out usage by attorneys. However, the number of vehicles assigned to attorneys that are authorized for commute purposes is a very small percentage of the attorney staff, and records indicate call out activity for attorneys, although it cannot be determined whether responding individuals are the same attorneys who have assigned vehicles.

*Potential Taxable Use*

According to the County's payroll office, since the District Attorney staff who have commuter vehicles are generally exempt from taxable use under Internal Revenue Service rules, which exempts, among others, law-enforcement officers, the County has historically assumed that no District Attorney vehicle use is taxable. Because of the possibility that some commuters could be subject to the tax, County payroll personnel should determine whether the tax applies to any current and future commuters in the District Attorney's office, and adjust W-2 forms if necessary. This change was apparently implemented in late 2007.

**Take-Home Vehicles in the Bureau of Investigation**

The remaining take-home vehicles are assigned to 22 of the 90 criminal investigators, lieutenants and the Deputy Chief and the Assistant Chief, as a consequence of their "on-call/call-out" status or their need to work unusual hours as a consequence of their service on a law enforcement task force. Therefore, including the executive management of the Bureau of Investigation, more than 25 percent of its personnel have an assigned vehicle with commute authorization. The Bureau's administration has said that costs are not borne by the County for 10 of the 22 vehicles, as a consequence of grant funding for those autos. However, records indicate that four of the grant-funded vehicles (vehicle numbers 04501, 04502, 04503 and 04504) are assigned to investigators serving on the grant-funded inter-agency "Rapid Enforcement Allied Computer Team" (REACT) task force and are not in fact used for commute purposes; rather, staff that could be using those vehicles are instead commuting in County-funded vehicles. That is, there are four grant-funded vehicles assigned to the task force, as well as four additional County-funded vehicles that are being used by the task force's four investigators, resulting in two vehicles for each investigator. Bureau management has indicated that this arrangement is required under the October 3, 2007 REACT Task Force Memorandum of Understanding (MOU). Section VIII-B of the agreement relates to vehicles, and states, in relevant part:

"Each agency shall supply its assigned investigator(s) to REACT a suitably equipped unmarked emergency vehicle."

While this section clearly necessitates provision of the grant-funded vehicles (enumerated above), it does not specify that each investigator will have multiple vehicles, or that a separate assigned vehicle is required for commute purposes for task force personnel. Vehicles are already provided to the associated staff through the REACT grant, and, in these four County-funded vehicles, the total number of responses provided in Calendar 2006 was three. Of these three responses, one is documented to have occurred during non-business hours.

The Bureau has staff on additional task forces. There are no findings or recommendations regarding the use or assignment of vehicles associated with these other task forces, as these vehicles are entirely grant funded, and County Communications data indicates that several of the assigned investigators are in fact utilizing these vehicles to respond during non-business hours. Therefore, the remaining

portion of this analysis concerns only those vehicles that are assigned for the purpose of meeting the needs of personnel who monitor specific types of investigations carried out by other law enforcement agencies.

#### *Lack of On-Call Status*

According to interviews with members of the line and administrative staff of the Bureau, investigators with “take home” vehicles may be contacted to provide an after-hours response, but may decline to respond to any given event. An investigator may decline by providing a reason, such as that he or she has consumed alcohol. In the event that the first investigator declines, another investigator is called, in a process that continues until an investigator elects to respond. If an investigator were to consistently decline to respond, administrators say that person would no longer be eligible for a commute vehicle. Since investigators are not required to respond at a specific time, they are not “on call” as defined by the labor agreement between the County and the District Attorney Investigator’s Association. Section 12.4 of that agreement defines “on-call” as “the requirement to remain immediately available to report for duty to perform an essential service when assigned by one in authority.” A review of payroll records and interviews with staff responsible for payroll for the Bureau confirms that investigators do not receive “on call” pay, which, if investigators were placed on call, would be required pursuant to the labor agreement.

#### *Purpose of Call Outs*

The Bureau provided a written explanation of the purposes for which non-task force investigators are called out. Investigators are sent to the scene of:

- 1) An officer-involved fatal incident or in-custody death, or,
- 2) Any child death or any serious injury likely to result in the death of a child.

The purpose of District Attorney investigators at such scenes is to serve as “consultants” regarding the investigations and to “monitor” the investigations. The investigators also act as a resource and liaison among agencies. The investigators do not perform any investigations themselves and they do not provide “first responder” services.

#### *Call-Out Records*

Each of the Bureau’s commute vehicles has radio equipment installed, at an approximate cost of \$2,000 per vehicle. However, the Bureau does not have a policy mandating use of radio equipment when an investigator is called out. As such, some call-outs are reflected in County Communications data and some are not. The fact that investigators may go to crime scenes without notifying dispatchers may increase the time it would take for an investigator to obtain help in the event of an emergency. In addition, it means that there is limited documentation of responses. Such data that would serve to facilitate upper management’s decision-making regarding the need for and use of assigned vehicles for Bureau staff. The District Attorney should either

evaluate implementation of a policy requiring investigators to inform dispatchers when they are on the scene of events to improve officer safety and facilitate the capture of information regarding the time and nature of responses, or should, when the Bureau's vehicles are replaced in the future, cease installing radio equipment. The latter option would save up to \$2,000 per vehicle, based on the cost of the equipment, installation of the equipment, and eventual removal of the equipment.

Some investigators have said in interviews that they believe they are supposed to use the radio equipment to communicate with County Communications when responding to events, but they don't always do so. The Bureau's administrators have said that, due to problems with County Communications, they have instituted a practice in which County Communications will call the Chief Investigator, who then contacts the investigative staff directly via telephone for callouts. Therefore, that portion of call-outs is not represented in the County Communications data. Instead, these calls are tracked by the Assistant Chief, who maintains a list of responses by investigator. However, the list contains no information regarding the date, day or time of the response, so it cannot be determined whether all, some, or none of those responses are provided during non-business hours.

For 2006, we reviewed Fleet Services' records of the District Attorney's assigned vehicles and their mileage, as well as the Bureau of Investigation's lists of persons who may be called to respond, the Assistant Chief's call-out tracking lists, and County Communications dispatch records for attorneys and investigators. We note that the existing records in general do not facilitate an insightful review of vehicle usage, and in several cases, the records are such that we are unable to draw conclusions. For example, in some cases, the employee to whom a vehicle was assigned cannot readily be determined. Despite our inability to definitively assess vehicle usage, we have summarized what could be ascertained from existing records regarding Bureau call-outs and vehicles. The information provided below pertains to 13 Bureau vehicles, none of which are grant funded.

#### *Documented After-Hours Calls*

The number of documented, after-hours call-outs for 13 vehicles for which records are relatively clear totaled 13 for Calendar 2006, for an average of less than one call per car. Eight of these vehicles had no documented after-hours responses. For these 13 vehicles, the Bureau's internal records show-18 callouts for the year- but there is no record of whether these callouts occurred during business hours or not. If every internally tracked callout recorded occurred during non-business hours, the after-hours responses for the 13 vehicles, including calls tracked by County Communications, would total 31, for an average of 2.4 per vehicle for the year. This assumes that none of the responses are counted twice, a possibility that could affect response s provided in two of the vehicles. This review omits another five vehicles for which we were unable to complete a usage profile, due to discrepancies or gaps in some portion of records. This information is summarized in Appendix 13.2.

### *Assignment Rationale*

Given that none of the staff is “on-call,” and some staff with assigned vehicles have relatively few documented calls for service during non-business hours, there is a discrepancy between the documented need for commute vehicles and the assignment rationale for those vehicles for some personnel. Included among the staff whose vehicle use appears inconsistent with the assignment rationale are persons whose round-trip commutes from home to the District Attorney’s main office spans nearly 100 miles, and one individual with a recent history of multiple at-fault accidents in a County vehicle. Commute mileage and recent accident information is presented in Appendix 13.2.

Of the 13 vehicles whose use profile is shown in Appendix 13.2, it appears that all could be taken out of service as permanent commute vehicles. One of these vehicles could be adapted for use by the Messenger Driver identified in Recommendation 11.3 of this report. Taking these vehicles out of service would result in estimated gross annual savings of \$150,000. This estimate is reflected in Appendix 13.2.

However, such a policy change would result in the Bureau having to assign specific individuals to respond to any incident that could occur at a particular time. The Bureau’s administration has indicated that such assignments would require four personnel to be on-call at any given time. This assessment appears inconsistent with actual responses from recent years. There is no evidence that the Bureau ever has four individuals actively engaged in monitoring other agencies’ investigations at the same time. There are rare instances in which two persons participate in monitoring a child death or officer-involved incident, but such duplication is for training purposes. Therefore, our base estimate assumes the need for two investigators to be on call after hours 365 days a year.

Pursuant to the existing labor contract, on-call investigators would be entitled to additional pay in the amount of \$1.88 per hour. These investigators would also need a vehicle for the purpose of temporary commuting during their on call period. In addition, all of the investigators would need temporary access to pool or assigned vehicles for day use. We estimate that the additional costs for these three components would amount to \$55,500 per year. This results in an estimated net savings of about \$94,500 (\$150,000-\$55,500). However, Bureau management has indicated a need for four investigators on call at all times. Under this assumption, the costs would increase to an estimated \$109,000, for a net savings of \$41,000. In addition, the Bureau management has indicated that they would have to amend the current labor contract to increase the on call pay to be consistent with much higher rates they say are paid by other Bay Area agencies. While it is likely that investigators would seek such an increase, any increase would have to be considered as part of the entire compensation package. The actual additional amount that the County would agree to during negotiations, if any, cannot be estimated at this time. However, our estimates indicate that savings would continue to exist up until four investigators would be on call at all times, at an hourly on call rate that is 85 percent higher than the current amount. Under that scenario, the cost would be approximately equal to the estimated current cost of commuter vehicle use for the 13 vehicles identified in Appendix 13.2.

In addition to the potential for direct savings, fewer miles driven by commuters would result in less exposure by the County to potential costs associated with vehicle accidents. Because of these benefits, it is recommended that the District Attorney restrict use of commuter vehicles to individuals whose positions and work demands clearly necessitate such vehicle use. It appears likely that this restriction would facilitate reduction of 13 commute vehicles shown in Appendix 13.2.

### **Vehicles Assigned for Use During Business Hours**

As previously described, in addition to the “take-home” vehicles, the District Attorney also provides additional vehicles to specific individuals throughout the organization for use during normal business hours. Because it is up to individuals to report their “take-home” use of these vehicles to management, which provides the information to Fleet Services and the County Executive’s Office, it is possible that personnel are commuting in County vehicles without formal authorization, a circumstance that was found in a 2007 Management Audit of another County department. Due to the limited policy and procedural controls currently in place, the District Attorney has limited ability to become aware of any such uses. For example, our analysis indicates that there are at least six individuals with assigned, non-take home vehicles whose job duties would not necessarily suggest extensive driving but whose vehicle mileage is more than one or two standard deviations above the average of that of other assigned users. At least another nine assigned vehicles are driven less than 2,000 miles per year. We recommend that the District Attorney monitor vehicles whose mileage is higher or lower than expected or reasonable given the nature of the assigned individual’s job duties to assess whether the vehicle is needed and usage appears appropriate.

### **Records Deficiencies**

This review has been somewhat hampered by the lack of clear, complete, and insightful recordkeeping regarding the need for and use of vehicles for various purposes. This examination has indicated also that management would not have access to clear records to determine who is driving where and when, and for what purpose. The implications of this are significant because it means that some staff may lack vehicle access needed for efficient operation of the Office, while other employees could have assigned vehicles without a need for them, or could utilize vehicles for unauthorized purposes. Therefore, the District Attorney should develop a system of regular reporting and monitoring of the need for vehicles. For example, managers or supervisors could maintain logs of assigned, take-home and pool vehicles, matched with their drivers, and conduct periodic assessments of the nature of travel that personnel are engaged in. Such tracking would facilitate a determination of 1) which personnel need which types of vehicle authorization, and, 2) whether certain vehicles are under-utilized or over-utilized.

### **CONCLUSION**

A review of District Attorney and County records indicates that most of District Attorney personnel who have assigned “take-home” cars on the basis of being subject to frequent “after-hours” calls or 24-hour “on-call” status rarely respond to events

during non-business hours. In some cases, individuals with assigned vehicles due to their "call out" status are not on the Department's "call out" list, and did not respond to any documented after-hours calls in 2006.

Included among the individuals whose vehicle use appears inconsistent with the assignment rationale are persons with lengthy round-trip commutes from the District Attorney's main office and high annual mileage. Given the lack of transparency in available records, management cannot readily monitor the need for and use of take-home vehicles, which are not governed by written County policy and which have limited governance in District Attorney policy. The presence of general policies and convoluted records, in conjunction with the absence of monitoring equipment, increases the chance that an individual could make unauthorized use of County vehicles allocated to the District Attorney.

Even for authorized use, the Office spends an estimated \$94,500 per year that could be saved by reducing commuting. Further, unnecessary vehicle use increases the possibility that a County car could be involved in an accident. Lastly, District Attorney investigators are not consistently communicating with County dispatchers during responses, which calls into question the need for vehicles to be outfitted with emergency radio equipment.

## **RECOMMENDATIONS**

It is recommended that the Board of Supervisors:

- 13.1 Direct the County Executive's Office, Fleet Management and Risk Management to develop and implement a County-wide policy governing the criteria for assignment of commuter vehicles and the assigned party's responsibilities, including payment of any required income taxes, associated with use of such vehicles. (Priority 2)
- 13.2 Direct County payroll personnel to determine whether there are applicable taxes owed by any current and all future commuters in the District Attorney's office, in keeping with its recent practice. (Priority 3)

It is recommended that the District Attorney's Office:

- 13.3 Improve records available to upper management regarding vehicle needs, assignments and usage, and monitor vehicles whose mileage is higher or lower than expected or reasonable given the nature of the assigned individual's job duties to assess whether the vehicle is needed and usage appears appropriate. (Priority 1)
- 13.4 Restrict use of commuter vehicles to individuals whose positions and work demands clearly necessitate such vehicle use. It appears likely that this restriction would facilitate a reduction of the 13 commute vehicles shown in Appendix 13.2. (Priority 2)



- 13.5 Evaluate implementation of a policy requiring investigators to inform dispatchers when they are on the scene of events to improve officer safety and facilitate the capture of information regarding the time and nature of responses, or cease installing emergency radio equipment. (Priority 3)

### **SAVINGS, BENEFITS AND COSTS**

Implementation of Recommendation 13.1 would establish specific criteria for assignment of vehicles and commute authorization, and delineate responsibilities for users. Recommendation 13.2 would ensure that taxes are paid, if and when they are applicable. Implementation of Recommendation 13.3 would facilitate management's ability to ensure that individuals have vehicles necessary to carry out their duties, help ensure that uses are authorized and appropriate, and ensure that commute vehicles are issued on the basis of clear, documented need. An undetermined amount of savings would be generated if the District Attorney were to reduce driving and/or reduce the overall size of its fleet. Implementation of Recommendation 13.4 would save the District Attorney an estimated \$94,500 per year. Implementation would also reduce the chance of staff having a vehicle accident in a County car. If deemed necessary following the evaluation called for in Recommendation 13.5, implementation of a policy requiring investigators to inform dispatchers when they are on the scene of events could improve investigator safety and provide better documentation of investigators' responses and vehicle needs. Conversely, if investigators are not using the equipment, the District Attorney should cease having it installed as vehicles are replaced. For each vehicle in which such equipment is not purchased and installed, the County would save approximately \$2,000.



**County of Monterey**  
**Vehicle Use Policy**  
**Revision 02/02**

**February 5, 2002**

## **B) Assignment of Vehicles**

### **2) Permanent Retention**

A department head or his/her designee may assign an employee permanent (overnight) retention of a County vehicle if the department head deems that: 1) permanent retention is in the best interest of the public; and 2) the task(s) to be performed when called during off-duty hours requires immediate travel to the job location.

Approval for permanent retention is contingent on the employee being (and remaining) on a continuous on-call status during other than normal working hours (i.e., 24-hours on call) and meeting at least one of the following criteria:

- The need to respond to emergencies in the field with a vehicle specially equipped to meet the work needs of the department an average of at least six (6) or more calls per month.
- The employee is required to respond to the field with specially equipped vehicles to meet the seasonal work conditions of the department.
- The employee reports directly to the field at least fifty percent (50%) of his/her scheduled workdays and the employee lives more than ten (10) miles from the office headquarters.
- The employee operates specialized equipment that would be required in the event of an emergency and there is not enough time to retrieve the equipment from a County facility.
- An employee has an irregular work schedule due to required attendance at work related activities an average of at least two (2) weekends per month or two (2) evenings per week.

### **3) Temporary Retention**

The authority granted in this section shall not be used in place of or to circumvent the requirements of making formal requests for permanent retention.

A department head or his/her designee shall be authorized to grant temporary retention of vehicles to employees based on the following criteria:

- When an employee is temporarily scheduled for standby duty outside of normal working hours due to emergency conditions or adverse weather.
- When an employee is leaving before working hours or returning from an authorized County business trip after regular working hours.

### **C) Use of a County Vehicle for Personal Business**

When using a County vehicle, an employee or volunteer shall follow these guidelines:

- When an employee or volunteer is assigned standby duty during week nights or weekends, an assigned County vehicle may be used for limited personal necessities, such as necessary trips to the grocery store or pharmacy, medical/dental needs and religious observances (in emergency situations only when the employee or volunteer has no other vehicles available).
- When the employee or volunteer is not on standby, but has approval from the appointing authority or designee to take a County vehicle home, the vehicle may be used for limited necessities (in emergency situations only). The department head or his/her designee should be informed as soon as possible after such situations arise.
- When a County car is taken home, it should be parked in an appropriate place such as the employee's or volunteer's driveway, garage, or close to the employee's or volunteer's home.
- Notwithstanding the above, a County vehicle shall not be used at all for the above listed exceptions when the employee or volunteer has access to another private vehicle.
- If non-County employees or volunteers (i.e., family members) attend local, regional or state meetings with an employee or volunteer, the employee or volunteer shall use his/her personal transportation, with the prior authorization of the department head or designee. Mileage claims shall be presented in accordance with the applicable provisions of the County's Personnel Policies and Practices Resolution.
- Each County employee or volunteer who is assigned the use of a County vehicle shall be responsible for proper and complete reporting to the County's Auditor-Controller, to the Internal Revenue Service and to the California Franchise Tax Board to the value of the mileage and use of the assigned County vehicle for other than assigned County business.
- Transportation of any person(s) not connected with County business is prohibited in County vehicles unless otherwise expressly permitted by applicable law, or unless the department head or his/her designee gives prior specific authorization.

Appendix 13.2

Portion of Commute Vehicle Use by District Attorney Investigators									
Investigator	Vehicle Number	2006 Mileage	Additional Vehicle Provided by REACT Grant	Number of Non-business hours callouts in 2006 per County Communications	Number of Callouts at unspecified times, per Bureau Records	Round-trip Mileage from D.A. Main Office to Investigator's Home Zip Code	Number of At-Fault Accidents since FY 2006	2006 Operating Costs (including depreciation)	
A	02001	10,393	Yes	0	0	6	0	\$ 12,361.74	
B	97032	12,596	Yes	0	0	18	0	\$ 9,810.89	
C	01070	13,604	Not on a task force	0	5	66	0	\$ 13,291.38	
D	02055	13,160	Not on a task force	0	5	96	2	\$ 15,366.85	
E	01066	8,673	Not on a task force	0	5	48	0	\$ 9,098.12	
F	02037	11,620	Not on a task force	0	1	12	0	\$ 12,916.55	
G	99040	15,880	Yes	1	0	94	0	\$ 11,186.69	
H	94015	14,114	Not on a task force	3	0	86	0	\$ 8,937.75	
I	97003	19,712	Not on a task force	4	1	66	0	\$ 13,617.94	
J	02054	9,327	Yes	1	1	48	1	\$ 12,084.63	
K	00094	9,814	Not on a task force	4	0	19	0	\$ 8,322.52	
L								\$ 11,545.01	
M								\$ 11,545.01	
								\$ 11,545.01	
								\$ 150,085.07	

Note: This chart excludes five vehicles for which there are insufficient records, as well as vehicles used by the Chief and four grant funded vehicles. The costs associated with the vehicles assigned to the Assistant Chief and Deputy Chief are included here at an assumed rate of the average of vehicles A-K.

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## Section 14. Fee Collection for Crime Laboratory Services

- Although the Crime Laboratory has received \$1.9 million in fees in Calendar Year 2006, and anticipates \$2.3 million in Calendar Year 2007, the Crime Lab has implemented a method for charging fees that is inequitable, does not fully recover costs, and does not charge for specific types of analysis.
- Further, the Crime Laboratory and the Sheriff's Department do not assess any Crime Laboratory fees for jurisdictions and agencies where the Sheriff is the municipal police department. The failure to collect revenue from these jurisdictions and agencies has resulted in a current calendar year projection of approximately \$112,000 in lost County revenue.
- As a result, the Crime Laboratory does not recover all costs for which it can legitimately charge, and law enforcement agencies may not utilize its services as efficiently as they would if they were properly charged for services.
- To address these problems, the Crime Lab should revise its agreements with local law enforcement agencies to get a more accurate billing structure that charges for various types' of analysis that are included in the major cases. The Crime Laboratory and County Executive should perform a full cost accounting to determine specific costs of providing crime lab services. In addition, the Crime Laboratory should begin billing jurisdictions and agencies where the Sheriff's Department provides police services, with the County collecting those charges through the law enforcement contracts.

### Background

Crime Laboratory services are an integral component of the criminal jurisprudence process for Santa Clara County. The Crime Laboratory is charged with the analysis of physical evidence collected within the County of Santa Clara and its objective is to provide forensic analysis and interpretation of evidentiary materials for the Santa Clara County criminal justice system. Analyses of evidentiary materials can be requested by numerous agencies, but are primarily requested by the Santa Clara County District Attorney and local law enforcement agencies.

High tech forensic analysis, especially use of forensic biology (DNA), is becoming more critical for local law enforcement agencies, the District Attorney and the Public Defender's Office to ensure a fair criminal justice system. As a result of the increased use of forensic analysis, the Crime Laboratory has increased staff and acquired complex and expensive equipment over the last ten years.

To recoup some of the costs for providing services to local law enforcement agencies and other entities, the Crime Laboratory since 1982 has charged local law enforcement agencies for the costs of providing services. This was in response to a 1981 County

Counsel memo that outlined the legal authority to charge for Crime Laboratory Services. The memo concluded that “it may be worthwhile to bill” for these services<sup>1</sup>.

In a 1998 memo<sup>2</sup>, in response to questions of the legality of billing for Crime Laboratory services, the District Attorney stated that the Crime Laboratory’s ability to charge local law enforcement agencies is in the “public interest” and authorized by the California Government Code. Section 53910 of the California Government Code states:

“In addition to any other provision of law for the issuance and payment of warrants of any county, city and county, city, district, or other political subdivision of the state, the governing body thereof, or, in the case of school districts not issuing their own warrants, the governing body of the appropriate issuing officer, may by resolution authorize practices with respect to form, issuance, delivery, endorsement and payment of warrants it deems convenient, efficient and in the public interest, conforming substantially to those practices specified in Sections 53911, 53912, 53913, or 53915.”

As a result of this memo and interpretation by the County Counsel, the Crime Laboratory continued to impose fees for services to local law enforcement agencies in the County. In addition, the Crime Laboratory assesses fees to agencies from other counties to whom services are provided.

From 1982 to 1995, the Crime Laboratory entered into an informal agreement with the Santa Clara City Managers’ Association and the County Police Chiefs’ Association, to bill law enforcement agencies for work performed by the laboratory. This included all case types, except some controlled substance and driving under the influence cases. By billing on a per-case basis, cities experienced fluctuations in case submissions resulting in varied amounts being billed annually. Further, this system created a disincentive to forensic analysis for all cases.

To rectify these issues, in 1995 the District Attorney and the County Police Chiefs’ Association developed a new method to bill law enforcement agencies and approved a plan for billing. Under the new approach, the average number of cases submitted annually by each agency in the preceding five years is calculated. Then based on the rolling five year average of submissions, calculated annually, each agency is then assessed a proportionate share of a predetermined amount of revenue the Crime Lab estimates is needed during the current fiscal year. The total amount of revenue sought by the Crime Lab from major case billing will increase based on increases in overall case work, and as a way to fund additional staff needed for major case work or to avoid staff reductions that may be required to meet any budget cut requirements.

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<sup>1</sup> Memo from the County Counsel dated December 10, 1981.

<sup>2</sup> Memo from the District Attorney dated April 20, 1998.



## Not all Services are Assessed Fees

The Crime Laboratory assesses fees to local law enforcement agencies for major case submissions only. When a law enforcement agency submits analysis related to a major case, the Crime Laboratory tracks the submission for billing purposes. As stated in the Crime Laboratory's Administrative Directives<sup>3</sup>, a major case is composed of six types of analyses. These analyses are:

- Forensic Biology (DNA);
- Chemistry/Trace Evidence;
- Comparative Evidence;
- IBIS (firearm analysis);
- Computer Forensics; and,
- Audio/Video.

All other analyses performed by the Crime Laboratory are not considered a major case, and thus the Crime Laboratory does not assess a fee for these services to law enforcement agencies. These non-charged services include:

- Toxicology (blood testing)
- Controlled Substances (testing of seized substances)
- Photography
- Breath/Alcohol (additional testing of breathalyzer samples taken in the field)

Many major case submissions include analysis in a wide variety of disciplines, not just the four categories charged above. However, because the Crime Lab does not charge for all services, it is possible, and staff reported that it does occur, that cases submitted for only some types of analysis are not billed by the Crime Laboratory.

This differs substantially from billing practices for work submitted to the Crime Laboratory for non-Santa Clara County jurisdictions. These agencies are billed for all types of analysis performed. The fee table on the following page shows how all aspects of the work associated with a case is charged to non-County agencies.

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<sup>3</sup> Santa Clara County Crime Laboratory Administrative Directives – 1/100.

**Table 14.1**

**Non-Santa Clara County Fee Schedule**

<b>Description</b>	<b>Fee</b>	<b>Charge Rate</b>
DNA Analysis	\$ 200	Hourly
Toxicology	\$ 95	Hourly
Comparative Evidence	\$ 95	Hourly
Questioned Documents	\$ 95	Hourly
Gunshot Residue	\$ 450	Per 2 stub kit
Miscellaneous Examinations	\$ 150	Hourly
Presumptive Toxicology Screen	\$ 40	Per Sample
<b>Staff time for travel, preparation and provision of Court testimony</b>		
Laboratory Director	\$ 90	Hourly
Assistant Laboratory Director	\$ 75	Hourly
Supervising Criminalist	\$ 65	Hourly
Criminalist	\$ 60	Hourly
Toxicologist	\$ 50	Hourly
Property Office	\$ 40	Hourly

Although the Crime Laboratory has seen a reduction in non-Santa Clara County work, the fees assessed to non-County agencies do not recover the costs of providing these services. Nor are the fees reasonably related to the cost to perform the work. The County is not recovering the costs of providing these services and there is a net cost to the County. As a result, the District Attorney’s Office should work with the County Executive to perform an analysis of the fee schedule for non-County agencies to improve cost recovery.

Thus, some Crime Lab customers are assessed for all work performed by the county staff, while others are charged only for certain types of analysis. This is not equitable, and results in the Crime Lab not recouping the costs of services for which it could properly charge. Further, as shown on the table above, DNA work is significantly more expensive than comparative evidence cases. Yet both types of cases are considered “major cases” for billing of law enforcement agencies. Under the current system for charging Crime Lab clients operating within Santa Clara County, a client whose Crime Lab workload includes fewer DNA analyses, and more of other types, could end up unfairly subsidizing another client whose workload was primarily DNA analyses.

## Revenue and Inequitable Charges

The Santa Clara County Crime Laboratory has generated significant revenue from law enforcement agencies. Table 14.2 shows the revenue generated by the Department from law enforcement agencies for crime lab services.

**Table 14.2**

### **Crime Lab Revenues from Local Law Enforcement Agencies**

<b>Agency</b>	<b>CY 2004 Expenditures</b>	<b>CY 2005 Expenditures</b>	<b>CY 2006 Expenditures</b>	<b>CY 2007* Expenditures</b>
Campbell	\$ 38,331	\$ 36,089	\$ 43,416	\$ 51,156
Gilroy	\$ 119,029	\$ 127,082	\$ 116,137	\$ 120,013
Los Altos	\$ 37,296	\$ 32,756	\$ 35,331	\$ 45,738
Los Gatos	\$ 81,806	\$ 93,207	\$ 103,111	\$ 117,398
Milpitas	\$ 137,888	\$ 167,457	\$ 195,831	\$ 244,675
Morgan Hill	\$ 42,704	\$ 58,008	\$ 75,922	\$ 99,656
Mountain View	\$ 60,836	\$ 60,607	\$ 65,685	\$ 74,661
Palo Alto	\$ 26,134	\$ 26,671	\$ 34,909	\$ 59,017
San Jose	\$ 916,054	\$ 956,335	\$ 1,037,836	\$ 1,247,930
Santa Clara	\$ 101,128	\$ 106,982	\$ 104,133	\$ 101,594
Sunnyvale	\$ 114,174	\$ 127,463	\$ 122,295	\$ 133,747
<b>TOTAL</b>	<b>\$ 1,675,380</b>	<b>\$ 1,792,657</b>	<b>\$ 1,934,606</b>	<b>\$ 2,295,585</b>

\* Projected

Based on the actual revenue from Table 14.2 above, we can determine the actual cost per case based on actual major case submissions. These numbers are presented in Table 14.3 on the next page.

**Table 14.3**

**Local Law Enforcement Agencies  
Actual Cost per Case of Major Cases**

<b>Agency</b>	<b>CY 2004</b>	<b>CY 2005</b>	<b>CY 2006</b>
Campbell	\$ 958.29	\$ 859.26	\$ 1,736.63
Gilroy	\$ 1,202.31	\$ 2,269.32	\$ 1,843.45
Los Altos	\$ 1,035.99	\$ 1,637.80	\$ 1,218.30
Los Gatos	\$ 852.15	\$ 1,412.23	\$ 1,288.88
Milpitas	\$ 766.05	\$ 1,154.88	\$ 1,263.42
Morgan Hill	\$ 601.47	\$ 743.70	\$ 1,405.97
Mountain View	\$ 1,559.89	\$ 1,101.94	\$ 1,642.12
Palo Alto	\$ 706.32	\$ 635.01	\$ 537.07
San Jose	\$ 1,103.68	\$ 1,150.82	\$ 1,302.18
Santa Clara	\$ 1,218.41	\$ 2,139.65	\$ 1,795.40
Sunnyvale	\$ 1,359.22	\$ 1,613.45	\$ 1,798.46
<b>Median</b>	<b>\$ 1,035.99</b>	<b>\$ 1,154.88</b>	<b>\$ 1,405.97</b>
<b>Average</b>	<b>\$ 1,033.07</b>	<b>\$ 1,338.01</b>	<b>\$ 1,439.26</b>

As shown in the table above, under the current methodology for billing local law enforcement agencies, the actual expenditures are inequitable. This is because the Crime Laboratory bills on the average number of cases submitted annually by each agency in the preceding five years. If there are fluctuations in one year, especially decreases, the impact may not be fully reflected immediately. The opposite is true if there is an increase in crime laboratory work. As a result, some jurisdictions are paying significantly less based on actual usage when examined annually. While the inequitable nature of these fees may lessen over time, the fact is that some agencies will pay a higher per case cost than others.

As part of this audit, we attempted to determine the actual cost of providing these services. We found that the Crime Laboratory's LIMS (Laboratory Information Management System) was unable to provide us with information pertaining to staff assignments and the amount of time it took to process the case. Without such information, it is difficult to determine whether the current fee schedule recovers all costs.

With the installation of the new LIMS system that will be implemented with the opening of the new Crime Laboratory, a full cost accounting should be performed when the new system is fully operational. According to Crime Lab staff, the new LIMS system can generate the information on staff costs per unit of work that the existing system cannot. By getting the analysis, the County will have a significantly richer understanding of the costs associated with the Crime Laboratory, and can determine potential changes that could enhance revenue and fully recover its costs. Once this analysis is complete, the County Executive, Crime Laboratory staff, and the County

Police Chiefs' Association should work together to determine a more equitable fee schedule and billing methodology. The County Executive and District Attorney should report back to the Board of Supervisors six months after the new LIMS system is implemented.

### **Other County Practices**

Currently, three other counties in the state, Alameda, Contra Costa and San Mateo, assess local law enforcement fees for Crime Laboratory services. Each of these counties has implemented different techniques to collect revenue from local law enforcement agencies. Alameda County and Contra Costa County are discussed below.

- Alameda County has implemented a basic fee schedule for crime laboratory services. The items on the fee schedule include hourly rate of staff, firearm testing costs, and controlled substance tests.
- Contra Costa County has two methods for billing agencies for crime lab services. The County has entered into a formal Memorandum of Understanding that outlines the costs associated with crime laboratory work for agencies that provide a majority of its work. The Contra Costa County Crime Laboratory has also implemented a very detailed fee schedule, utilized with the MOU and other users, for all types of analysis performed by the lab. The overhead associated with the complicated fee schedule has resulted in the county looking into other techniques to determine a more efficient billing method.

While these counties bill for crime lab services, none of the three counties contacted offer a best practice that should be implemented in Santa Clara County. The fee schedule in Contra Costa County is so burdensome that the administrative burden is too great. The fee schedule in Alameda County is such that fees would continue to be assessed inequitably.

### **Sheriff's Department Costs for Crime Lab Services**

The Office of the Sheriff is Santa Clara County's primary public safety agency. The Department is responsible for enforcing laws, maintaining public safety in unincorporated areas of the County, and provides some jail administration for the County. The Office of the Sheriff also serves as the municipal police department for three cities, Cupertino, Los Altos Hills and Saratoga, for which the Sheriff and the jurisdiction have entered into a contract agreement. The Sheriff's Department also provides law enforcement services for the non-County Santa Clara Valley Transit Authority, which operates bus and light rail service, for Stanford University, and for the Superior Court. Additionally, the Office of the Sheriff provides law enforcement services to numerous County agencies, including the County Department of Correction, and the County Parks and Recreation Department.

For the cities in which the Sheriff's Department provides municipal police services, the Department provides a broad array of services, including patrol and investigative services. As part of the investigative services for crimes committed in these

jurisdictions, the Sheriff's Department, if necessary, will rely on analyses provided by the County Crime Laboratory. For crimes that occur on the Santa Clara Valley Transit Authority, the County Parks and Recreation Department, and Stanford University, Sheriff's Department investigative services will also utilize Crime Lab services.

Based on a review of the contracts between the Sheriff's Department and the contract jurisdictions and agencies, there is no mention or cost associated with the use of the Crime Laboratory. We also reviewed the County cost allocation plan and found that Crime Laboratory costs were included for these agencies. The Memorandum of Understanding agreements between the Sheriff's Department and the jurisdictions also do not include costs associated for the services provided by the crime lab. Further, as part of this audit, based on interviews with Crime Lab officials and Sheriff's Department officials, neither Department included costs associated with the services provided by the Crime Laboratory. Sheriff's Department staff indicated that the costs should be billed directly by the Crime Laboratory. However, these services are not currently charged by the Crime Laboratory. The lack of coordination between the Sheriff's Department and the District Attorney have resulted in lost revenue for the County, as the County is not collecting revenue from these agencies.

This lost revenue represents funds that could provide the Crime Laboratory with additional equipment and additional staff that could reduce backlogs and improve turnaround time for services. A policy change to assess fees to these agencies for Crime Laboratory services should be implemented. The District Attorney's Office should immediately work with the County Executive and the Sheriff's Department to implement Crime Laboratory fees to jurisdictions and agencies for whom the Sheriff's Department acts as a municipal law enforcement agency.

There is precedent for such an arrangement in the County Communications Department. This Department charges the Santa Clara County Central Fire Protection District for fire dispatching services, and charges the Sheriff's Department for dispatching services provided to the non-County entities for whom the Sheriff provides patrol services. The fire district and the Sheriff's Department in turn include those dispatching costs as part of their own charges to the non-County entities they serve.

### **Additional Revenue**

Since services for Crime Lab services are based on use, it is difficult to determine the exact potential revenue that could be generated by charging the jurisdictions and other County agencies where the Sheriff's Department provide law enforcement services. However, by comparing the historical crime laboratory submissions with the statistics of other local jurisdictions where the Crime Laboratory charges for services an estimate of revenue is possible.

Using the current methodology of a five year rolling average for case submissions, we estimate that the County is not recouping a projected \$112,000 in CY 2008 annual revenue under the current methodology. This revenue projection for CY 2008 is presented in the following table, and would be paid by various jurisdictions to the

Sheriff's Department as part of their contracts for law enforcement, or to the District Attorney's Office for use of the Crime Laboratory.

**Table 14.4**

**Estimated CY 2008 Crime Lab Revenue from Jurisdictions Where the Sheriff Department Provides Law Enforcement Services Under the Current Billing Methodology**

<b>Agency</b>	<b>Estimated Revenue</b>
Cupertino	\$60,241
Los Altos Hills	\$7,109
Saratoga	\$35,667
Santa Clara Valley Transit Authority	*
Stanford University	\$9,707
<b>Total</b>	<b>\$112,724</b>

Note: The numbers in the table above are based on the current methodology of billing by the Crime Laboratory using a five-year rolling average.

Although not listed in the table for purposes of estimating revenue, the County should also collect revenue from Santa Clara Valley Transit Authority when possible. The Sheriff's Department provides law enforcement services,, but the Crime Laboratory could not identify any cases from the Santa Clara Valley Transit Authority.

## **CONCLUSION**

A fee analysis performed for this audit revealed that fees for major cases are inequitable, and some law enforcement agencies are being charged more on a per case basis. The Crime Lab does not have a specific methodology or the technical capability to determine the actual fee amount to be assessed. Using information that will be available from a soon-to-be-implemented Crime Lab data system, the District Attorney and the County Executive should work on a full cost accounting to determine the level of fees required for services. The District Attorney, County Executive and County Police Chiefs' Association should determine a more equitable fee schedule for Crime Laboratory services. Further, many jurisdictions in the county do not pay fees for crime lab services. These are jurisdictions or agencies where the Sheriff's Department provides police services. If the County assessed fees for major cases submissions to the Crime Laboratory from these agencies served under Sheriff's contracts, the Department could achieve as much as \$112,000 in additional revenue.

## RECOMMENDATIONS

It is recommended that the District Attorney's Office:

- 14.1 Implement staff tracking by case to determine specific staff costs associated with cases when the new LIMS system is implemented and perform a full cost accounting analysis. (Priority 2)
- 14.2 Coordinate with the County Executive and the Sheriff's Department to implement Crime Laboratory fees to jurisdictions and agencies for whom the Sheriff's Department acts as a municipal law enforcement agency. (Priority 1)
- 14.3 Collaborate with the County Executive and the County Police Chiefs' Association to determine a more equitable fee schedule for Crime Laboratory services, which still recoups costs from non-County agencies. (Priority 2)
- 14.4 Report back to the Board of Supervisors in six months on the status of Recommendation 14.2 and 14.3. (Priority 3)
- 14.5 Work with the County Executive to perform an analysis of the fee schedule for non-County agencies to improve cost recovery. (Priority 3)

## SAVINGS, BENEFITS AND COSTS

Implementing new fees charged to jurisdictions in the County in which the Sheriff's Department provides local police services would result in approximately \$112,000 in additional revenues annually and provide a more equitable fee schedule. Developing a new fee schedule for non-County agencies would ensure that these agencies are charged equitably, while also ensuring that fees are properly based on costs, and that costs are recouped where possible.



## Section 15. District Attorney Management Information

- **Supervising Deputy District Attorneys overseeing functional teams, Assistant District Attorneys and the Chief Assistant District Attorney, generate various statistical reports on key functions, as do managers in the Bureau of Investigation, while the Administrative Services Unit generates financial and budget reports. Many of these reports are generated on an ad hoc basis, and in some cases limitations in data systems reduce their utility. Furthermore, there is limited sharing of these reports among executive management of the Office, and relatively little information from these reports is migrated to the District Attorney.**
- **As a result, the District Attorney is not as informed as she could be about the activities going on in the District Attorney's Office, and executive management members miss opportunities to share information that could lead to reconfiguring staff or making other procedural changes based on changing office priorities.**
- **Coincident with the implementation of a pending new data management system in the District Attorney's Office, the Office should develop a set of management reports, as described in this section, to track key performance indicators in the Office, and to provide limited narrative description of key activities in prosecutorial or investigative units. Collection of information for these reports should be coordinated by the Administrative Services Division. These reports will provide a method for information sharing among executive management in the District Attorney's Office, provide more information for the District Attorney on the activities of her staff, and enhance the managerial capabilities of the Office.**

Mid-level supervisors and upper-level managers in the District Attorney's Office generate a variety of management reports, either on their own or via the District Attorney's Case Records Information Management and Exchange System (CRIMES), its key data management system. The District Attorney's Office also has the capability of requesting information from the Countywide Criminal Justice Information and Control system.

Examples of reports generated by District Attorney staff and CRIMES include the following:

- The Chief Assistant District Attorney receives a monthly report showing, for each attorney, the number of cases referred by law enforcement, and of that total, the number for which charges issued and the number for which prosecution is declined. He has used this report to make sure the workload of issuing cases is balanced among various units, and has transferred workload among units in some cases. This report is an Excel spreadsheet developed by the Office's data information staff, from lists of cases generated by CRIMES for issuing attorneys.

- CRIMES generates information, using a coding system, on the reasons why prosecution is declined, in those cases where a referral is made by a law enforcement agency, but the District Attorney's Office chooses not to file charges.
- Supervising Deputy District Attorneys responsible for specific prosecutorial units keep lists, usually via Excel spreadsheets, of the number and status of cases assigned to the attorneys they supervise. These lists are used to keep the workload balanced among staff.
- The District Attorney receives a monthly report of trial statistics, how many cases went to trial in the previous month and what was the result. She also receives a report on pending cases from the environmental and consumer protection units, whose cases tend to result in civil settlements that generate press coverage.
- Each lieutenant in the Bureau of Investigation prepares an operation plan for the coming fiscal year, and then prepares a status report every four months comparing actual performance against the plan, and against the same period in the previous fiscal year. The Assistant Chief of the Bureau prepares executive summary of those plans for the Bureau chief.

The District Attorney and other managers also reported the ability to request additional data on an ad hoc basis, with the assistance of the Office's Information Services Manager. For example, the District Attorney reported requesting information on the number of cases with a charge of spousal battery that were subsequently settled for a lesser charge, in response to a query by domestic violence advocates.

The District Attorney indicated a desire for additional management reporting, beyond the reports already received. Furthermore, other information gathered during field work from this audit revealed situations where the District Attorney was not receiving management information that should routinely be provided. Examples of these management information shortfalls include the following:

- During the audit, the District Attorney specifically asked Management Audit staff to review the work of her office's Truancy Abatement program, indicating she was not aware of the workload and accomplishments of that program, for which the Board of Supervisors had recently agreed to accept funding from local school districts. The attorney responsible for the program has begun keeping statistics on the program's success rate of getting truants back in school after mediation with students and parents. Those statistics are included in literature describing the mediation program.
- Although periodic reports are prepared by each lieutenant in the Bureau of Investigation, and a summary of the reports is prepared by the Assistant Chief for the Bureau Chief, the Assistant Chief reported that the summary and supporting documents are not provided to the District Attorney, to whom the Bureau of Investigation ultimately reports.

- The District Attorney reported that her oversight of the Office primarily occurs through a weekly meeting with her executive management team, which includes the Chief Assistant District Attorney and the Assistant District Attorneys. She said she had also advised the ADAs to have regular meetings with the Supervising Deputy District Attorneys they oversee, and to have those supervisors meet with staff attorneys, but she did not know if that was taking place. Other interviews showed a mixed record, with some supervisors reporting holding regular formal meetings with staff, while others do not.

Some of the management information difficulties of the Office relate to shortcomings of the existing CRIMES database system. That system is primarily capable of providing lists of cases with various characteristics, such as the lists of cases rejected and accepted, but has limited ability to do manual counts or statistical comparisons.

The District Attorney also reported a desire for expanded reporting of timeliness indicators, showing how long it takes various types of cases to move from one step to another in the prosecutorial process. In August 2006, the District Attorney's Office prepared a report with suggested timelines for resolution of various types of cases. However, that report was based primarily on anecdotal assessments by supervisors, and a limited sample of cases, because CRIMES does not calculate elapsed time data, and cannot, because there is no way for a supervisor or staff attorney to close a case in that system when it is concluded by a verdict, plea or dismissal of the charges.

There are also weaknesses in the way the current CRIMES system is being used. For example, CRIMES has the ability to track the number of cases set for trial with the number that actually went to trial, based on a field in one of the database entry screens that needs to be filled out by support staff. Because support staff was not directed to fill in that field, and did not do so, a report on this subject was requested, but could not be produced. Similarly, information on defendants' race, age and sex was not always entered into the system by support staff at the time defendants were referred from law enforcement agencies for potential prosecution, preventing statistical analysis in those areas from being conducted.

The District Attorney's Office is currently planning on installing a new version of CRIMES, which would reside on the Office's computer server system, and be accessed by staff through an office intranet, using a web browser-type interface. As described by the Information Services Manager, individual attorneys, when they access the system, would immediately be presented with a list of the current cases to which they were assigned, and the status of each case.

Supervisors could look at a similar screen showing the cases assigned to each attorney they supervise, the status of each case, and other key information. A system of flags attached to each case would allow the supervisor to look at more detailed information on the case. The new CRIMES system is also expected to have expanded statistical reporting capability.

The implementation of the CRIMES system presents an excellent opportunity for the District Attorney's Office to revise its information management system. To do so, each

of the Assistant District Attorneys should obtain, from Supervisors overseeing prosecution teams, team leaders overseeing selected functions, and attorneys working by themselves on discrete functions, a list of any CRIMES or other reports these staff members generate for their own review or for forwarding to the ADA. The list should provide a description of each report, how often it is generated, and the purpose for which it is generated.

Similar information should be obtained by the Chief, Assistant and Deputy Chief of the Bureau of Investigation from the lieutenants overseeing its operating units.

Using this information, the District Attorney and the executive managers for the attorney and investigative functions, should hold a series of meetings to determine which of the reports should migrate from middle-level supervisors to the executive managers, and which should in turn be forwarded to the District Attorney. These discussions could be held over a period of weeks as part of the regular weekly meetings of the District Attorney with executive managers, or could be conducted in longer half-day or full-day workshops.

As part of these discussions, the District Attorney and executive managers should also determine if there are additional management reports desired that are not currently received, such as the elapsed time measure for attorneys previously discussed.

The Information Services Manager should also participate in these meetings, with the goal of determining how the existing reports will be generated in the new version of CRIMES, and whether the additional reports sought can be developed.

As part of the implementation of the new system, a more complete procedures manual should be developed defining what information needs to be entered into CRIMES for statistical purposes, and how it should be entered. For example, in Section 1 of this report, we noted that statistical information on the reasons for why cases referred by law enforcement are rejected for prosecution is not generated or used. One reason for this is that there is no agreed-upon typology for what features of a referral would lead it to be rejected for insufficient evidence or other enumerated reasons.

Similarly, specific instructions need to be provided to support staff as to the data fields that should be filled out when a case is referred for prosecution, or in subsequent stages.

Once the new CRIMES system is operational, the District Attorney and the executive management for attorneys and investigators should receive monthly and/or quarterly reports. At a minimum, these reports should include:

Current caseloads by unit for attorneys, including the number of cases assigned overall to the unit, and the average caseload per attorney.

Acceptance and rejection data by unit for cases referred for prosecution by law enforcement.

Narrative information on major cases that are scheduled to go trial in each unit, and a brief description of case status anomalies that are affecting the distribution of workload, such as the status of a single major case assigned to a particular attorney.

Other workload indicators maintained by units where prosecution is infrequent, such as mediation sessions conducted by the Truancy Abatement attorney, or the status of settlement discussions in environmental or consumer protection cases. For major units such as narcotics, sexual assault or the burglary/assault/theft team, caseload information should be generated monthly. For single-attorney units, or those with smaller but more complex caseloads, quarterly reports would be permissible.

Financial information provided by the Administrative Services Unit, including revenues and expenditures to date in the current year versus the Office's Budget, the status of job vacancies in the Office and the status of grants maintained by the Office.

All of the information described above should be compiled by the Administrative Services Unit into a quarterly report, working with the Chief Assistant District Attorney, and the Assistant Chief of the Bureau of Investigation. The report should be provided to the District Attorney, the Chief Assistant, the Assistant District Attorneys, and the Chief, Assistant Chief and Deputy Chief of the Bureau of Investigation.

Development of such a report as described in this section would ensure that the District Attorney and other executive management staff have the proper information to track the Office's performance, to identify workload, productivity, financial and other issues, and to proactively address them.

## **CONCLUSION**

While supervisors and managers in the District Attorney's Office generate a variety of statistical reports, mainly on an ad hoc basis, these reports are not shared among the managers, and relatively little management information is migrated to the District Attorney. Limitations of the current data management system in the District Attorney's Office, and underutilization of some of its capabilities, also have meant that some desirable information is not being generated. The adverse effect of these management information system limitations impairs the ability of the District Attorney and other Office managers to effectively manage their \$99.5 million budget, and the law enforcement services it provides.

## **RECOMMENDATIONS**

It is recommended that the District Attorney's Office:

- 15.1 Create a list of all existing reports generated from CRIMES or other sources and used by supervisors and executive managers in the District Attorney's Office. (Priority 2)

- 15.2 Determine, through a series of shorter discussions at regular weekly meetings of executive management or several lengthier workshops, which of the existing reports should be carried over to the new CRIMES system, and which ones the District Attorney desires to receive on a monthly or quarterly basis. Also identify any new reports that are desired from the new system, consulting with the Information Services Manager as to whether they can be created. (Priority 2)
- 15.3 Develop, as described in this section, a more extensive procedures manual for entering information into the new CRIMES system, including defining in greater detail what information should be entered when cases are referred by law enforcement or at other key milestones. (Priority 2)
- 15.4 Provide the District Attorney and all executive managers monthly and/or quarterly management reports as developed through Recommendation 15.2, including statistical information and short narrative explanations of that information and other key topics. Information for these period reports will be collected by the Administrative Services Unit, working in conjunction with the Chief Assistant District Attorney and the Assistant Chief of the Bureau of Investigation. (Priority 2)

## **SAVINGS, BENEFITS AND COSTS**

The process described in this section will result in the District Attorney and executive management having key information needed to monitor the Office's performance. Developing a new system of management reports is timely, because of the expected implementation of a new version of the CRIMES database system in the District Attorney's Office. The development and implementation of a quarterly management report will enhance the ability of District Attorney management to operate in a cost-effective manner, and to maximize the effectiveness of the Office's law enforcement efforts.

# County of Santa Clara

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**Dolores A. Carr**  
District Attorney

DATE: March 14, 2008

TO: Board of Supervisors

FROM: Dolores A. Carr *Dolores A Carr*  
District Attorney

SUBJECT **Management Audit of the Office of the District Attorney**

On behalf of the management and staff of the Office of the District Attorney, I would like to thank the staff of Harvey M. Rose Accountancy Corporation, acting in its role as the Management Audit Division of the Board of Supervisors, for their work on the management audit of this office. As you know, I requested this audit upon taking office as a means of assessing our organization in order to improve its operation. I appreciate your allocating the resources to make this possible.

This audit covered the many facets of the office which range from prosecutorial operations, the Bureau of Investigations, Crime Laboratory, support services, and fiscal management. We agree with many of the recommendations of the auditors and are already initiating actions toward implementation. As you might expect, there are other areas where we partially agree, as well as a few where we disagree with the recommendations. We have provided explanations and alternatives for such areas where we are not in agreement. It should be noted that we have not responded to every point raised in the audit even if we believe there are points not explained to the fullest and most accurate degree possible. Instead we have generally reserved our responses to only those points resulting in formal recommendations from the auditor. Regardless, we have found the audit process useful in challenging ourselves to incorporate best practices through the office.

Allow me to provide a note on the format of our response to the auditor's recommendations. The auditor has assigned a number to each recommendation, and in our response we make reference to that number and restate the recommendation. Additional explanation is provided where appropriate for each response. We have also provided some clarification to points raised in the Introduction. Again, my thanks to the Board of Supervisors and the staff of the Management Audit Division for their diligent and insightful analysis. I look forward to discussing the audit with you.

# Office of the District Attorney

## Response to the Management Audit

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### INTRODUCTION

#### **Clarifications:**

#### **Description of the Office of the District Attorney**

#### **Caseload Compared to Other Counties (Table I.1)**

The management audit's methodology for calculating investigator workload suggests that investigator workload is less than the other comparison counties. However, a more thorough analysis by Harvey Rose done a year ago in the Mandate Study – Phase 2 found investigators had a larger workload than the comparison counties. The failure in the current audit to account for positions funded by grants skews the result. The only notable change in staffing in Investigations since the Mandate Study has been a reduction of five investigator positions as part of our department budget reduction plan, and as a result, fewer investigators absorbed the increased workload.

The Harvey Rose report (FY07-08 Mandate Study Phase – 2) recognized the limitations associated with using raw staffing numbers to indicate workload for general fund purposes. “Although the statistical workload and staffing data provided by the Office of the State Attorney General and the California Judicial Council is useful to get a general indication of relative staffing levels and workload, because the data does not account for Non-General Fund resources and workload, conclusions drawn exclusively from the data can be misleading. As an example, of the 93 budgeted and funded Investigator positions in Santa Clara County, approximately 57 (61 percent) are funded from State and federal social service program monies, grants or other sources. Since the objective of this analysis was to determine how General Fund supported Investigator staffing in the County of Santa Clara compares to similar staffing in the 10 most populous counties, it was necessary to refine the gross data reported by the Attorney General.”

Given this analysis was done so recently, as well as its exhaustive efforts to quantify and validate the data, the results of this analysis should be used here to evaluate investigator workload.

#### **Topics Requiring Additional Review**

#### **Clerical Staff Shortages**

The audit states that “At least four additional supervisors are needed in this division” but does not recommend them solely due to lack of funds. “It is recommended that additional staff be added to the division at the earliest time that funds become available.” We strongly agree with this finding and believe that its significance cannot be overstated when analyzing how to improve efficiency in our organization.



## **Management Audit – District Attorney Response**

### **North County Felony Prosecution: Palo Alto Office**

The terms “horizontal” and “vertical” in describing the felony prosecution models used in the North County branch offices (Sunnyvale and Palo Alto) as compared to the process in the main (San Jose) office are not used accurately.

In fact, the vast majority of felony cases generated in the main office and in the North County branches are not vertically prosecuted in the truest sense of that term. In all three locations, felony cases are typically issued by an attorney who does not have continuing case management responsibility. In the main office, general felony cases are usually issued by the Felony Complaint Team while in the North County branch offices, felony cases are usually issued by one attorney primarily assigned to that function in Palo Alto. In all three locations, the pre-preliminary examination phase of case management (i.e. arraignment, early resolution calendars, entry of plea, and hearings to set a preliminary examination) is assigned to an attorney different from the one who will be assigned to conduct the preliminary examination. In all three locations, the attorney who conducts the preliminary examination will also try the case.

The above-described process is generally the same prosecution model employed in Family Violence matters. Therefore, the recent changes giving greater responsibility for Family Violence cases to outlying court attorneys should be understood to be staffing changes, not process changes.

### **Attorney Ethics**

We agree with the recommendation to develop additional written policies and procedures concerning what an attorney should do when faced with an ethics questions or concern. At the time she was appointed Ethics Advisor, our lawyer was tasked with providing our Assistant District Attorney in charge of training topics that should be addressed based on issues that come to her attention.

### **Crime Laboratory Report Review Process**

We agree with the recommendation to review the process of having multiple layers of review of lab reports to determine the appropriate balance of maintaining quality and consistency while not unduly burdening staff time in unnecessary reviews.

### **Phone Call Routing**

The auditor describes that allowing open public access to employee phone numbers interferes with staff efficiency. We acknowledge this concern. However, we believe that reaching a live person is an important customer service aspect for the many crime victims and witnesses who call us. Navigating a complicated prompt system can discourage contact by the vulnerable people served by our office. It should be noted that one of our

paralegals serves as an ombudsperson for callers seeking assistance in directing their inquiry.

## AUDIT RECOMMENDATIONS AND DEPARTMENT RESPONSES

### Section 1. Felony Case Issuing

#### Clarifications:

The introduction to this section states that Supervising Deputy District Attorneys spend a substantial amount of time reviewing cases in exercise of their charging functions as a result of the centralization of issuing functions and as a result of inconsistent use of formal training, written guidelines, statistical analysis and other tools to monitor the issuing function. However, it appears the audit staff *actually* concludes (both in the body of the report and in the recommendations) that the significant time expenditure results from over-centralization of the charging function, not as a result of inconsistent use of resources. In fact, increased emphasis on existing guidelines and the expansion of specialized-case procedures and use notes in the Pleading Manual, as recommended, will likely increase the time necessary to review cases in the discharge of our charging function. This increase will create a need for additional staff and support resources.

It should also be noted that the Supervising Deputy District Attorneys who issue cases are assigned to specialized units handling the most serious cases (i.e. sex crimes, gangs and homicide) and have requisite specialized knowledge and experience.

Our existing Pleading Manual is comprehensive and available to all attorneys through the office-wide computer network. Updated as necessary to reflect changes in the law and to address issues that become apparent through the discharge of our prosecutorial function, the Pleading Manual contains all information necessary to complete the charging form(s) to be used on each issuing sheet. This includes appropriate special allegations which have significant effect on sentencing consequences, such as probation eligibility, limitations on custody credits and length of sentences. Authorization to use a format other than that in the Pleading Manual must come from an Assistant District Attorney or the Chief Assistant District Attorney.

In combination with existing policy on issuing standards, the Pleading Manual provides valuable and reliable guidance for charging accuracy and consistency.

**1.1 Place more emphasis on existing charging guidelines, and expand the use of specialized-case procedures and use notes to increase the utility of the Pleading Manual, by adding additional information to it from internal and external sources. The use notes should include references to recurring evidentiary and factual issues in certain classes of cases, and guidance, including citation to statutory and case law, in analysis of those cases. (Priority 1)**

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Response: Partially Agree

Including cross-references in the Pleading Manual to external sources such as standardized criminal jury instructions would increase its utility.

Expansion of specialized-case procedures and use notes in the Pleading Manual will likely increase the time necessary for case review in the discharge of our charging function. This increase will create a need for additional staff and support resources.

**1.2 Develop specific definitions for, and train staff in the use of, formal case rejection codes. Periodic statistical review should occur to examine potential trends related to the charging function, and determine whether additional action is warranted. (Priority 1)**

Response: Agree

**1.3 Develop a training system for attorneys assigned primarily to issuing functions, to include mock fact patterns and reference materials which include relevant legal authority. (Priority 2)**

Response: Agree

**1.4 Develop additional issuing resources in each specialized unit by expanding issuing responsibilities beyond supervisors and/or one primary issuing attorney per unit. (Priority 2)**

Response: Agree

## Section 2. Drug Court Operations and Staffing

### Clarifications:

The audit report identifies a number of cases where a defendant received either a Deferred Entry of Judgment or probation from a trial court, concluding that this scenario proves our concern that defendants often receive similar or better offers in a trial department at Hall of Justice than what is offered to them at Drug Court. This analysis does not go far enough. It is highly likely that a narcotics matter considered appropriate for probation at Drug Court would remain appropriate for probation at a later stage in the prosecution, and even after trial. To be meaningful, the analysis should compare the specific conditions of probation (particularly the amount of jail time) offered at Drug Court versus the conditions imposed by the trial court. The same expanded analysis also should be performed on cases where there was a prison offer at Drug Court and a prison

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sentence imposed by the trial court (e.g. how many months in prison). Correcting this analysis will require further work by the audit team.

**2.1 Confer with the Superior Court and other affected groups to establish a separate calendar in one Drug Court for routine status reviews in Deferred Entry of Judgment or Proposition 36 cases. A prosecutor would not be present at this hearing, which would be continued to a subsequent date for a prosecutor to be available, in the event that violations of program requirements or other matters requiring further court action are discovered. (Priority 1)**

Response: Defer to Working Group

As noted, the proposed calendar reorganization is already being assessed by a working group composed of representatives from the Superior Court (Judge Emerson), Office of the Public Defender, Adult Probation Department and Office of the District Attorney. Since the same staffing issues observed by the audit staff are common to the Adult Probation Department and the Office of the Public Defender, that group is well-suited to make appropriate recommendations on this issue.

**2.2 Confer with the Superior Court and other affected groups to modify existing procedure to recognize and enforce the premise that while defendants generally receive favorable consideration in exchange for a case disposition that includes an early acceptance of responsibility and acknowledgment of guilt (e.g. before preliminary examination) absent unusual circumstances, these favorable offers would not be renewed and never undercut after preliminary examination. (Priority 1)**

Response: Partially Agree

It is suggested that this recommendation be modified by the inclusion of “absent changed circumstances” as follows:

“Confer with the Superior Court and other affected groups to modify existing procedure to recognize and enforce the premise that while defendants generally receive favorable consideration in exchange for a case disposition that includes an early acceptance of responsibility and acknowledgment of guilt (e.g. before preliminary examination), absent changed circumstances, these favorable offers would not be renewed and never undercut after preliminary examination. (Priority 1)”

## Section 3. Regional Misdemeanor Staffing

### Clarifications:

The audit staff’s use of 2006 statistics created unnecessary confusion in the analysis of misdemeanor staffing and caseload information due to staffing changes that occurred

## Management Audit – District Attorney Response

throughout that year. We believe that data for CY 2007 provides better baseline information for these purposes and we provided this information to the audit staff during the review process.

In comparing duties among attorneys assigned to the different outlying court units, it is apparent that audit staff believes the North County misdemeanor attorneys are not primarily responsible for issuing cases as stated in the introduction to this section. This is inaccurate. During 2007, the North County misdemeanor lawyers reviewed almost 1600 cases for issuing, compared to approximately 880 misdemeanor cases reviewed by the attorney assigned to issue both felonies and misdemeanors. This data shows that the North County misdemeanor attorneys share relatively equally in issuing responsibilities for their unit.

While the South County misdemeanor attorney does review more cases for issuing (approximately 1540 cases in 2007) compared with the Central Misdemeanor Unit and the North County Unit, a significantly fewer number of misdemeanor cases are set for trial in South County and an even fewer number of cases are actually tried there. 2007 data is summarized in the following tables:

**Table 1**  
**Misdemeanors Set for Trial (1/07 – 11/07) Compared to 2007 Staffing**

	# of attorneys	# of cases set for trial	# of trial cases per attorney
Central Misd Team	5.5*	1,585	288.18
North County	2	410	205
South County	1	79	79
<b>Average</b>	<b>2.66</b>	<b>691.33</b>	<b>200.33</b>

\* This entry reflects five full-time trial attorneys and two volunteer attorneys that each had trial responsibilities for separate 90-day periods during 2007.

**Table 2**  
**2007 Misdemeanor Trials**

	# of trial attorneys	# of cases tried	# of trials per attorney
Central Misd Team	5.5	79	14.36
North County	2	10	5
South County	1	4	4
<b>Average</b>	<b>2.66</b>	<b>31</b>	<b>8.26</b>

As the above information shows, a caseload comparison among the three misdemeanor units reflects that while the South County misdemeanor assignment has a higher number of cases per attorney at the earlier stages of case management, those ratios invert as cases progress beyond the pretrial stage (e.g. trial preparation, trial and sentencing). Although

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it is difficult to quantify the amount of work necessary on a given file at different stages of the criminal prosecution, trial preparation and the presentation of an actual trial invariably require greater attention to detail, more contact with involved persons (victims, witnesses, etc.) and a far greater expenditure of time per case than events occurring at, or before, the pretrial stage.

Therefore, if South County misdemeanor staffing were augmented, the greatest benefits would be afforded by adding resources at the initial stages of case management, rather than at the later stages. This could be accomplished by assigning the Central Misdemeanor Issuing attorney to the South County Facility on a periodic basis (for example, once per week) to review cases submitted for issuing. Such an adjustment would allow the South County Misdemeanor attorney more time to prepare for pretrial and other court calendars while offering relief from issuing duties. This schedule adjustment could be absorbed by the Central Misdemeanor Issuing attorney and would not involve any additional department costs.

### **3.1 Augment misdemeanor staffing in South County through one of the following two options:**

- A. Assign responsibility for the misdemeanor trial calendar in South County to the trial attorneys on the Central Misdemeanor Team. This would require a trial attorney (either a staff attorney or volunteer attorney) to appear at the South County Courthouse each Monday; or**
- B. Assign a Bar Certified law clerk to the South County Unit whose primary responsibilities would include traffic court, legal research and logistics support. This would include assisting misdemeanor and felony attorneys with motions and trial preparation. (Priority 2)**

Response: Partially Agree

A) As noted above, any augmentation would be more efficient at the front-end of the process, rather than at the trial stage. It would also be counter-productive to the Volunteer Attorney Program to send attorneys seeking jury trial opportunities to a facility that only experiences four trials in an entire year. Further, since our Central Misdemeanor trial attorneys tend to be entry-level lawyers, sending them to South County to handle trial calendars on short notice could present them with challenges unsuitable to their skill and confidence levels. This would compromise our client's interests and the office's interest in developing junior attorneys in a suitable fashion.

B) We agree with this recommendation, assuming Bar Certified Law Students of suitable skill levels are available. However, it should be noted that the current "temporary" office facilities in South County are too cramped to house another person more than occasionally.

### **3.2 Confer with the County Counsel's Office about transferring responsibility for the bond calendar in San Jose to that office if the Central Misdemeanor Team were to handle misdemeanor trials in South County. (Priority 2)**

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Response: Partially Agree and Defer to County Counsel

We believe a transfer of bond calendar duties to County Counsel should be explored regardless of whether Central Misdemeanor Trial attorneys are assigned to assist with trial duties in South County.

### **3.3 Continue to monitor misdemeanor caseload levels in the outlying offices in comparison to the Central Misdemeanor Team, and more fully evaluate staffing for the entire South County Unit with the opening of the new courthouse in Morgan Hill. (Priority 3)**

Response: Agree

## **Section 4. Prosecutorial Staff Organization**

### **4.1 Eliminate the existing dedicated job classification for Assistant District Attorneys, replacing it either with a system that would temporarily promote Attorney IVs to executive management at the District Attorney’s discretion, or with a County Charter change that would define Assistant District Attorneys specifically as unclassified positions, serving at the discretion of the District Attorney. (Priority 3)**

Response: Partially Agree

Redefining executive management positions to unclassified pursuant to a County Charter change would not affect existing executive managers, but would give the next District Attorney flexibility in designating his or her executive staff. This is a better option than a system of temporary promotions.

### **4.2 Fill future job vacancies with entry-level staff, reallocating staff as necessary to assign the new staff to misdemeanor prosecution or other duties appropriate to entry-level staff. (Priority 2)**

Response: Agree

### **4.3 Consider establishing a limited-term hiring system for entry-level staff, similar to that provided in Contra Costa County and Orange County. (Priority 1)**

Response: Disagree

Our experience in recruiting attorneys clearly indicates that limited-term hiring practices for entry-level staff leads to significant difficulties in retention and morale. Any possible fiscal gain realized by such a practice would be more than offset by resulting decreases in

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the strength of the department through employee dissatisfaction and eagerness of promising staff to seek more stable employment elsewhere.

### **4.4 Establish a system of formal written evaluations for attorney staff, as called for by the County Ordinance Code. (Priority 2)**

Response: Agree – In collaboration with GAA and Labor Relations.

### **4.5 Combine the Consumer Protection and Environmental Crimes units, and place the existing Major Fraud, Real Estate Fraud and Elder Fraud units under the same Supervising Deputy District Attorney position, eliminating one of the two vacant positions created by pending retirements in the Major Fraud and Consumer Protection units. (Priority 1)**

Response: Partially Agree – Combination of units is appropriate; however, subsequent position elimination is not feasible.

## **Section 5. Investigation Bureau: Operations**

### **Clarifications:**

In the Background Section, the table entitled “Civilian Positions,” incorrectly states that the Public Information Officer is a civilian position when it is actually a sworn position. Also the Management Analyst position should be listed as an Associate Management Analyst.

### **5.1 Require all Criminal Investigator III division supervisors to perform as working supervisors in accordance with County job specifications. (Priority 1)**

Response: Agree

### **5.2 Implement procedures to ensure that all investigative staff diligently use the CRIMES case management system so that management and supervisory monitoring and reporting of individual and unit caseload and productivity is consistent throughout the Bureau and based on reliable data. (Priority 1)**

Response: Agree

## **Section 6. Bureau of Investigation: Organization and Staffing**

### **6.1 Reorganize Bureau reporting responsibilities as shown in Exhibit 1 and consolidate the two Public Assistance Fraud Divisions to improve span-of-control ratios in the Bureau, including the deletion of one Criminal Investigator III position**



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and the addition of one Criminal Investigator II position as described in this section. (Priority 2)

Response: Agree

**6.2 Make an assessment of the investigative responsibilities throughout its units to identify those positions that could be filled with lower level sworn or civilian support staff, based on the duties and responsibilities of the positions, and fill positions as they become vacant with appropriate lower level sworn or civilian staff. (Priority 1)**

Response: Agree

**6.3 Establish an investigative recruitment policy that will result in a more balanced workforce of entry, mid and senior level sworn investigative and civilian support staff on an ongoing basis. (Priority 1)**

Response: Agree

**6.4 It is recommended that the Employee Services Agency and County Counsel: Prepare an amendment to the Personnel Section of the County Ordinance Code to provide a generic, but thorough definition of the duties, responsibilities, and other issues pertaining to the use of Lead positions in County service. In addition, ESA should review the job descriptions of the Criminal Investigator series to determine if changes and/or an expanded description should be prepared for Lead-Criminal Investigator II positions, and if any changes are needed in the Criminal Investigator III job description, to clarify the working supervisor responsibilities of the position. (Priority 2)**

Response: Agree – Defer to ESA and County Counsel for Implementation

## **Section 7. Bureau of Investigation: Staff Accountability and Organizational Policies and Procedures**

**7.1 Request the Employee Services Agency begin a meet and confer process with the District Attorney Investigators Association, Inc. to develop and implement a performance evaluation system for its investigative staff. (Priority 1)**

Response: Agree

**7.2 Develop and implement a Department-wide monthly time reporting system for all staff. This information should be used to create monthly management reports for all managers and supervisors. (Priority 2)**

Response: Agree – To be implemented in conjunction with 12.1 and 12.2.

**7.3 Review and update its general policy and procedure manual as well as its operational policy and procedure manuals in each division, and amend Bureau policies to ensure that all Bureau policy and procedure manuals are continuously reviewed and updated. (Priority 2)**

Response: Agree

## **Section 8. Bureau of Investigation: Interdepartmental Services**

**8.1 It is recommended that the Department of Child Support Services: Purchase the services of a Protective Services Officer from the Social Services Agency, or a Deputy Sheriff or Sheriff's Security Guard from the Sheriff's Department, or request a position of Protective Services Officer in the FY 2008-09 budget and reduce or delete the object two funds currently used to purchase security services from the Office of the District Attorney. (Priority 3)**

Response: Defer to DCSS

**8.2 Delete one Criminal Investigator II position from the FY 2008-09 budget and reassign the criminal investigation staff who are currently providing DCSS facility security to appropriate criminal investigation functions through attrition. (Priority 3)**

Response: Agree - Pursuant to resolution of 8.1

## **Section 9. Crime Laboratory Photography Services**

**9.1 Delete the Photographer (J39) position from the Crime Laboratory through attrition and delete non-salary expenditures when the position becomes vacant. (Priority 2)**

Response: Defer to the County Executive and Clerk of the Board (refer to 9.3)

**9.2 Assess the quality of photographic evidence it is receiving from law enforcement agencies, particularly those that are doing all the photography and photo processing themselves. If necessary, the Office should require the Crime Laboratory photographer to provide training to County and non-County law enforcement agencies on digital camera photography and other work that these agencies could provide in lieu of the Crime Laboratory providing these services. (Priority 3)**

Response: Agree

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**9.3 Develop a plan for replacement of this position by a contractor, training of existing staff, or a part-time position if necessary for non-Crime Laboratory photography work. (Priority 3)**

Response: Defer to the County Executive and Clerk of the Board (refer to 9.1)

## **Section 10. Break Periods for Clerical Staff**

**10.1 It is recommend that this matter be referred to the Administration of the Employee Services Agency: To enforce the break times authorized for clerical and paralegal staff in the District Attorney’s Office to 15 minutes for each four hours worked. (Priority 1)**

Response: Agree – Implementation upon concurrence with ESA

**10.2 It is recommended that this matter be referred to the Administration of the Employee Services Agency: To determine whether there are other County departments in which a majority of personnel take breaks in excess of that specified by the applicable MOU, and enforcing the negotiated break time. (Priority 3)**

Response: Defer to ESA

## **Section 11. Inefficient Allocation of Support Duties**

### **Clarifications:**

“The District Attorney’s management has expressed the belief that it would be impossible to reallocate any of the paralegal tasks carried out by attorneys, which appear as white space in Chart 11.1 to legal tasks.”

The report mischaracterizes our comments. We concurred that more paralegal services are needed to help support attorneys. We disagree that attorney services can be reduced in order to pay for the additional paralegal services and told the auditors that the issue is more complex than the audit acknowledges. It is also unreasonable to recommend further reductions in attorney staffing without first analyzing the ability of remaining attorneys to staff the courts, meet mandated legal requirements, provide quality legal services and avoid errors.

We have already reduced attorney staff from 208 in 2002 to 165 today, a 21% reduction. We have also reduced attorney management staff by 29%. Our county’s population has not had a corresponding reduction. The numbers of courts we must service has grown and will continue to grow as South County expands. Property crimes, stolen vehicle cases, cold cases, gang activity, identity theft, bad checks, and real estate fraud have grown. A

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further reduction in attorney staff will adversely impact public safety and our ability to provide mandated legal services and staff the courts.

In principle, we understand the audit observations and generally agree that where possible, it is preferable for attorneys to focus on attorney work. However, the audit accepted various estimated amounts of attorney time spent on work paralegals could do, without verification.

We believe time and caseload studies would be a reasonable and more accurate way to evaluate attorney time use. The audit relies on the estimates of attorneys while at the same time noting that some attorneys do not know what services paralegals can legally perform.

It should also be noted that had the auditors mentioned to attorneys that attorney codes would be cut to fund paralegal positions, it is likely the responses would have been different. This is why more objective time and workload studies should be conducted to ensure data is accurate.

The audit made no analysis of the percentage of attorney time that would be reasonable to perform clerical or paralegal-type duties. Inevitably, all county attorneys (and we suspect, even auditors) perform some clerical-type functions, such as filing, copying, and answering the telephone. While desirable to minimize non-legal functions from attorney duties, it is not completely possible for a variety of reasons. The audit simply assumes none of the attorney's time would be used for paralegal or support-type services. This is neither realistic nor practical. The audit also does not consider the cost of paralegal overtime in its computations.

The audit also concedes it did not evaluate the cost of work that is postponed or not done at all. For example, failure to do work on a timely basis can result in continuances at court, which is inefficient and costly for our staff, the court and members of the public who have to return another day. Postponing work can result in the expiration of the statute of limitations and could preclude our filing charges at all.

While the audit acknowledges that attorneys describe they have significant caseloads, that they must put off work, that they sometimes provide poor customer service to victims and witnesses, and that some work is simply not done, it makes no analysis of how much legal service time would be required to correct those issues. Likewise, there is no objective analysis of how many hours of legal service time would be actually required to effectively staff the courts, avoid errors and continuances, ensure the appropriate filing of charges, and meet customer service goals.

The need for more paralegals has not evaded this office's attention. Despite the 21% reduction in attorney staff since 2002, no paralegal cuts have been made. Our own analysis concludes that nine more paralegals in key positions would significantly help our organization to address key areas where there are no paralegals, backlogs and intense trial work or casework. We recommend paralegals in the following positions:

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- 1) South County: This office has no paralegal code. Reducing an attorney code for this unit is not feasible as the audit already observes the work load of the South County attorneys is heavy.
- 2) Gangs Unit: This unit has an increased demand for its services because gang activity has risen. In this unit, almost 100% of police reports must be redacted in some way to protect witness and victim contact information from reaching people who would jeopardize their safety. This includes redaction of victim addresses, names of family members, telephone numbers, dates of birth, social security numbers and any information in the report which may present a risk of harm to an individual. Redaction is also important to ensure pending investigations are not compromised. The volume of work in this unit is already more than existing staff can handle, and yet these are among the most serious and complex cases in the office.
- 3) Career Criminal Unit: This unit is responsible for the prosecution of most cases charged under the "Three Strikes" law. These cases require an extensive amount of paralegal support to provide discovery, order prior convictions and assist in the preparation of case summaries and social histories required to determine whether to seek a life sentence. Paralegal staffing at the expense of the trial attorneys ultimately charged with prosecuting these serious cases is not feasible.
- 4) Juvenile Wards: This is a high volume unit with only one paralegal. The workload for attorneys in this unit is high and a reduction is impractical, particularly in view of the greatly accelerated timelines applicable to these cases. Although these cases move very rapidly from investigation to adjudication, all accused minors have the same constitutional rights as adult offenders and many juvenile cases are very complex, involving extensive reports and related documentation. Therefore, discovery obligations and case logistics are often just as complex as adult cases, yet the assigned paralegal is called upon to regularly assist in these tasks to ensure their completion at a much faster pace than similar adult matters. It should be noted that Truancy Abatement is a resource intensive-activity and one further paralegal is urgently needed for that function alone.
- 5) Misdemeanors: We recently assigned a full time paralegal to this unit. The two part time codes primarily provide discovery for the portion of the 20,000 misdemeanors handled by this office annually which are set for trial. We need another paralegal to provide witness coordination for this unit. This unit has more trials per year than any other unit. Again, reducing attorneys in this high volume unit is not reasonable or feasible.
- 6) High Technology Unit & Public Assistance Fraud Unit (shared): Currently we have only one part time extra help paralegal assisting both the high tech and public assistance fraud units. This position has a significant learning

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curve, requires specialized knowledge and should be full time permanent code. We have recently reduced our high tech, identity theft unit by one attorney code in order to meet county reduction goals. It is not feasible to have further attorney staff reductions in this unit. We already prioritize Internet fraud and identity theft cases so that only the most voluminous and serious cases are prosecuted. Public assistance fraud cases are similarly prioritized for the same reasons.

- 7) Floater/special projects: Currently, there is no redundancy for the 21 paralegals that work for our office. If sick or on vacation, they return to a workload that has built up during their absence. In addition, a paralegal could handle special projects such as public records requests, statistical reports, and research for procedures. Currently we must pull overworked paralegals from their current duties to work on these projects or attorneys must complete them. A full time paralegal should be assigned to this function.
- 8) Certification of Drug treatment programs: Our office monitors and certifies drug treatment programs. We need a full time paralegal to monitor approximately 96 drug treatment programs to ensure they comply with basic standards.
- 9) Supervision: The span of control for the existing supervising paralegal is too great. Two to three leads should be appointed to train and supervise a staff of 30 paralegals if the expanded staffing were authorized.

The above represent our most urgent needs. However additional paralegal codes should be added as funding becomes available. This evaluation of paralegal needs by unit is provided to point out that the statistical calculation by the auditors to justify the reduction in attorney codes is too simplistic and an insufficient measure of the work that needs to be done.

### **11.1 Reduce attorney staffing through attrition by up to 12 positions – the number of positions equal to the conservatively estimated number of work hours that attorneys now spend on non-attorney duties – and use most of the savings to gradually increase the paralegal staff by up to 25 positions. (Priority 1)**

Response: Disagree

We agree that additional paralegals are needed. We disagree that 12 attorney positions should be eliminated to pay for them.

There was ample evidence to support that additional paralegals are required in this office. We also agree that attorneys do perform some paralegal duties because there are not

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enough paralegals available. In addition, as is pointed out in the audit, some units have no paralegal at all. Please see our comments above.

We disagree, however, that the additional paralegals can be provided simply by eliminating attorney codes. The audit failed to conduct any meaningful analysis of how the elimination of 12 attorneys would impact our ability to provide mandated legal services in court as well as in the office. It also uses time estimates of attorneys who are not familiar with how paralegals perform services, rather than perform more appropriate time and workload studies. In addition, the audit report states, “The cost analysis does not reflect the costs or effects of duties that are simply put off for lack of available staff.”

For example, we currently do not have enough attorneys to work on about 200 cold case homicides. We do not have attorney staff to evaluate, issue and prosecute hundreds of welfare fraud cases. There are hundreds of identity theft, auto theft, bad check cases and real estate fraud cases that go unsolved for lack of attorney and paralegal resources. We have already reduced from 208 attorney codes in 2002 to 165 Deputy District Attorney codes today, a 21% reduction. We also reduced Assistant District Attorney codes by two codes, a 29% reduction. There has not been a similar reduction in population. Simply calculating that a reduction of 12 attorneys will pay for 25 paralegals without further analysis is not reasonable.

The number of courtrooms has not reduced, but has grown and will continue to grow with the opening of the South County Court house later this year. Juvenile Court also recently added a courtroom we are required to staff.

The report recognizes that many attorneys have difficulty keeping up with workloads and states the following: “Multiple attorneys said that cases could not be filed as timely as they would like, or that they must curtail prosecution to fewer counts than they would otherwise file,” and, “Some attorneys said they were unable to return calls to witnesses and victims in a timely way, or that their overall service to these individuals is poor.”

We agree that it is desirable to have additional paralegal services to allow our attorneys to adequately prepare and attend to their existing caseloads, to provide good customer service to victims and witnesses, provide a professional work product, and to file cases on a timely basis with appropriate charges. If an attorney had an additional 5-6 hours per week of time to do perform work in the qualitative manner they desire, the above objectives could be met for existing caseloads. The audit performed no study of how many additional hours of additional legal services would be required to avoid any attorney having to “wing it” in court, or how many hours of legal services would be required to provide good customer service and file charges appropriate to the case.

The audit did, however, cite an example of work that has to be prioritized and stated: “For example, a criminal who has stolen the identities of 30 people should face 30 counts of theft charges, but may only be charged with a few counts due to lack of available staff time to compile the evidence needed to prosecute all known instances of the crime.”

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The audit recognizes that each victim of a crime should be represented in a complaint, when appropriate, and that attorneys have to prioritize their work because of existing workloads. However, the audit omits any evaluation of how much attorney time would be required to file a 30 count complaint. This is important to understand. To prepare a 30 count complaint, the attorney must review additional documentary evidence from 30 victims as opposed to three. The attorney may need to get supplemental information and evidence for 30 victims versus three. If bank or internet records are required, the attorney must subpoena or execute search warrants for 30 victims on various banks and their internet service providers.

Identity theft evidence often leads to overseas accounts, or accounts in other states, which creates further legal complications. The attorney must devote significant more time to drafting a complaint for 30 charges instead of three. Finally, it would take more court time at each phase of the court proceedings: Motions, settlement discussions, preliminary hearings, opening statement, closing statements, witness time on the stand, the time to prepare and mark exhibits in court, all would take substantially more time. It would likely take ten times the amount of legal service time to prepare a 30 count complaints opposed to a three count complaint and prosecute the matter in court. While the audit recognizes that our attorneys must prioritize work with existing caseloads, that work is put off, and that some work is simply not done, these issues and related costs have not been analyzed in their recommendation.

No independent time studies were conducted to confirm actual time spent on various duties and functions. No analysis of the attorney's actual work was completed and attorneys were not asked to track actual time. The audit methodology was designed in a manner which provides a predisposed result rather than an objective determination of how attorneys use time. Had the auditors advised the attorneys that 12 attorney codes were to be eliminated, it is likely their responses would have been different. We believe that actual time and workload studies would be a more reliable, fair and reasonable methodology.

In addition, the audit appears to have been conducted in such a manner as to lead attorneys, who were part of the sample, to believe they might receive paralegal help which would result in bias in the result, as opposed to an objective outcome.

A recommendation to reduce staff by 12 attorneys based on a biased methodology, no time or workload studies, no analysis of our ability to staff the courts, or provide legal services in a professional manner, and no evaluation of "work put off or not done", is not sufficient and is unreasonable. We realize that many of these types of studies could not be performed because of a lack of audit time and resources.

### **11.2 Implement a training program to assist attorneys in learning to delegate to and maximize use of paralegal staff. (Priority 1)**

Response: Agree



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**11.3 Use a portion of the additional savings from implementation of Recommendation 11.1 to add a Messenger Driver whose route includes daily service to the South County. (Priority 2)**

Response: Disagree, see response to item 11.1

While an additional Messenger Driver would assist the office, we currently have a regular delivery process for outlying facilities. When viewed in light of the proposed elimination of attorney positions to fund a position such as this, we cannot agree to it.

## Section 12. Payroll Inefficiencies and Control Concerns

**12.1 Implement a timecard system, with time worked and leave time approved by each employee's supervisor, and which clearly delineates time spent on reimbursable activities, and which is submitted to a central payroll processing position. (Priority 2)**

Response: Agree – pursuant to implementation of item 12.2

**12.2 Hire an Associate Management Analyst-B position to manage the Office's payroll processes and inquiries and ensure that the Office accounts for and charges the maximum amount of eligible work time to grant-funded and reimbursable activities. (Priority 1)**

Response: Agree

## Section 13. Vehicle Assignment and Use

**13.1 It is recommended that the Board of Supervisors: Direct the County Executive's Office, Fleet Management and Risk Management to develop and implement a County-wide policy governing the criteria for assignment of commuter vehicles and the assigned party's responsibilities, including payment of any required income taxes, associated with use of such vehicles. (Priority 2)**

Response: Defer to FAF and Risk Management.

**13.2 It is recommended that the Board of Supervisors: Direct County payroll personnel to determine whether there are applicable taxes owed by any current and all future commuters in the District Attorney's office. (Priority 3)**

Response: Defer to Controller's Office

**13.3 Improve records available to upper management regarding vehicle needs, assignments and usage, and monitor vehicles whose mileage is higher or lower than**

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**expected or reasonable given the nature of the assigned individual's job duties to assess whether the vehicle is needed and usage appears appropriate. (Priority 1)**

Response: Agree

**13.4 Restrict use of commuter vehicles to individuals whose positions and work demands clearly necessitate such vehicle use. It appears likely that this restriction would facilitate a reduction of the 13 commute vehicles shown in Appendix 13.2. (Priority 2)**

Response: Agree – And will evaluate utilization of vehicles to determine the number of vehicles to remain in District Attorney's pool.

**13.5 Evaluate implementation of a policy requiring investigators to inform dispatchers when they are on the scene of events to improve officer safety and facilitate the capture of information regarding the time and nature of responses.**

Response: Agree

## Section 14. Management of Cal-ID Program

HRAC Recommendations not received as of this writing.

## Section 15. Fee Collection for Crime Laboratory Services

**15.1 Implement staff tracking by case to determine specific staff costs associated with cases when the new LIMS system is implemented and perform a full cost accounting analysis. (Priority 2).**

Response: Agree.

**15.2 Coordinate with the County Executive and the Sheriff's Department to implement Crime Laboratory fees to jurisdictions and agencies for which the Sheriff's Department acts as a municipal law enforcement agency. (Priority 1)**

Response: Agree

**15.3 Collaborate with the County Executive and the County Police Chiefs' Association to determine a more equitable fee schedule for Crime Laboratory services, which still recoups costs from non-County agencies. (Priority 2)**

Response: Agree to analyze and assess the fee schedule in collaboration with the County Executive and the Police Chiefs' Association.

**15.4 Report back to the Board of Supervisors in six months on the status of Recommendation 15.2 and 15.3. (Priority 3)**

Response: Agree

**15.5 Work with the County Executive to perform an analysis of the fee schedule for non-County agencies to improve cost recovery. (Priority 3)**

Response: Agree

## **Section 16. District Attorney Management Information**

**16.1 Create a list of all existing reports generated from CRIMES or other sources and used by supervisors and executive managers in the District Attorney’s Office. (Priority 2)**

Response: Agree

**16.2 Determine, through a series of shorter discussions at regular weekly meetings of executive management or several lengthier workshops, which of the existing reports should be carried over to the new CRIMES system, and which ones the District Attorney desires to receive on a monthly or quarterly basis. Also identify any new reports that are desired from the new system, consulting with the Information Services Manager as to whether they can be created. (Priority 2)**

Response: Agree

**16.3 Develop, as described in this section, a more extensive procedures manual for entering information into the new CRIMES system, including defining in greater detail what information should be entered when cases are referred by law enforcement or at other key milestones. (Priority 2)**

Response: Agree

**16.4 Provide the District Attorney and all executive managers monthly and/or quarterly management reports as developed through Recommendation 15.2, including statistical information and short narrative explanations of that information and other key topics. Information for these period reports will be collected by the Administrative Services Unit, working in conjunction with the Chief Assistant District Attorney and the Assistant Chief of the Bureau of Investigation. (Priority 2)**

Response: Agree