

California's

58

**Public Defense
Systems**



**Office of the State
Public Defender**

Indigent Defense Improvement Division

58

By statute, counties in California are granted the sole authority to decide how to design and fund their public defense services. As a result, California is a state with 58 independent indigent defense systems with no centralized funding, standards, or data collection. (Govt Code 27700 et. seq.)

Primary Offices:

25 of California's 58 counties do not have an institutional public defender's office and instead rely on contract-based systems. The counties with no institutional offices are predominantly small or rural. (Figure 1)



Conflict Offices:

When two people are charged as codefendants, they each need an attorney, and those attorneys cannot generally work in the same office. Therefore all counties need “conflict counsel.” Conflict systems vary widely. 12 counties in California have alternate public defender’s offices, 9 use assigned counsel or bar association systems and 37 counties rely on contracts. (Figure 2)

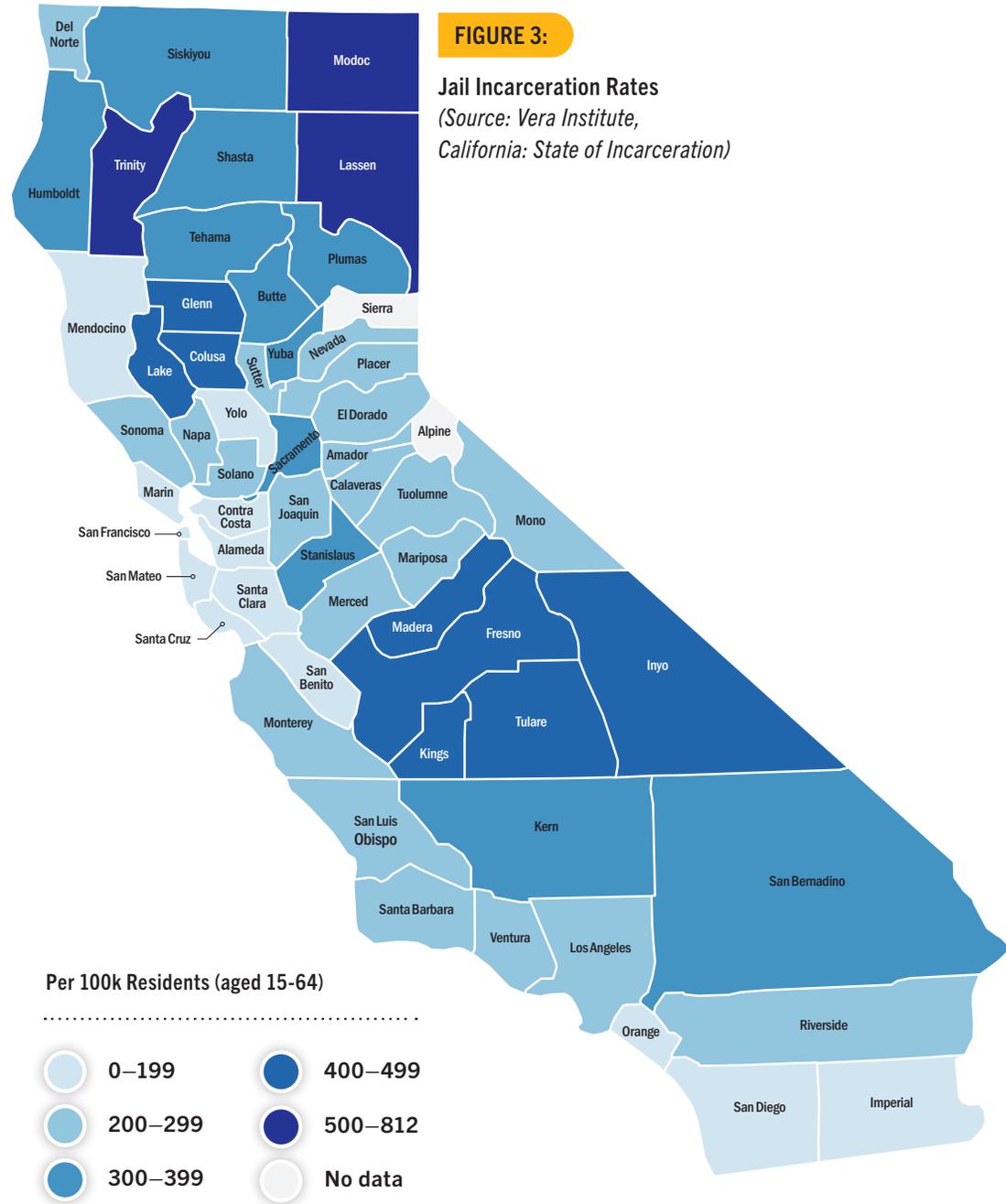
Contract Systems with Flat Rate Payment Systems

Most counties in California using a contract model for indigent defense pay their attorneys a predetermined amount to take an unrestricted number of cases over a set period. Amongst the 25 counties using a contract or assigned counsel model for their primary method of public defense, 15 use these “flat rate” contracts. Recognizing the dangers of contracts without workload controls, some states prohibit flat fee contracts. Contract systems must create provisions and structures to ensure that a contract does not create a conflict between the hours and resources available to an attorney, and their client’s right to effective representation.¹



Incarceration Rates:

Small and rural counties, many without institutional public defender offices, have some of California's highest incarceration rates, a trend that is seen across the country.² (Figure 3).

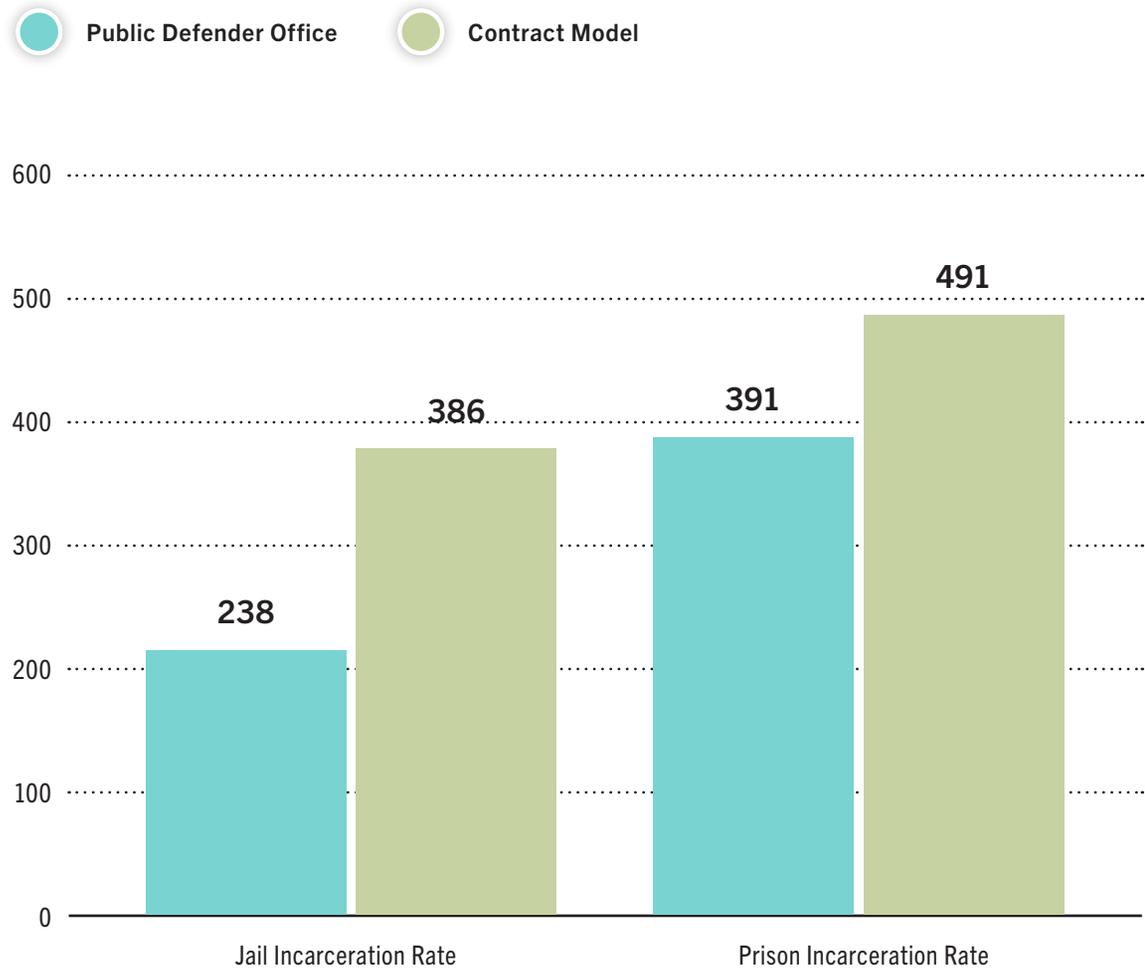


Incarceration Rates and System Types

Counties with institutional public defender offices correlate with lower incarceration rates than counties with contract models. (Figure 4)

FIGURE 4:

Incarceration Rates in Counties with Institutional Public Defender Offices
Average Incarceration Rates per 100K Residents: Public Defender versus Contract Model

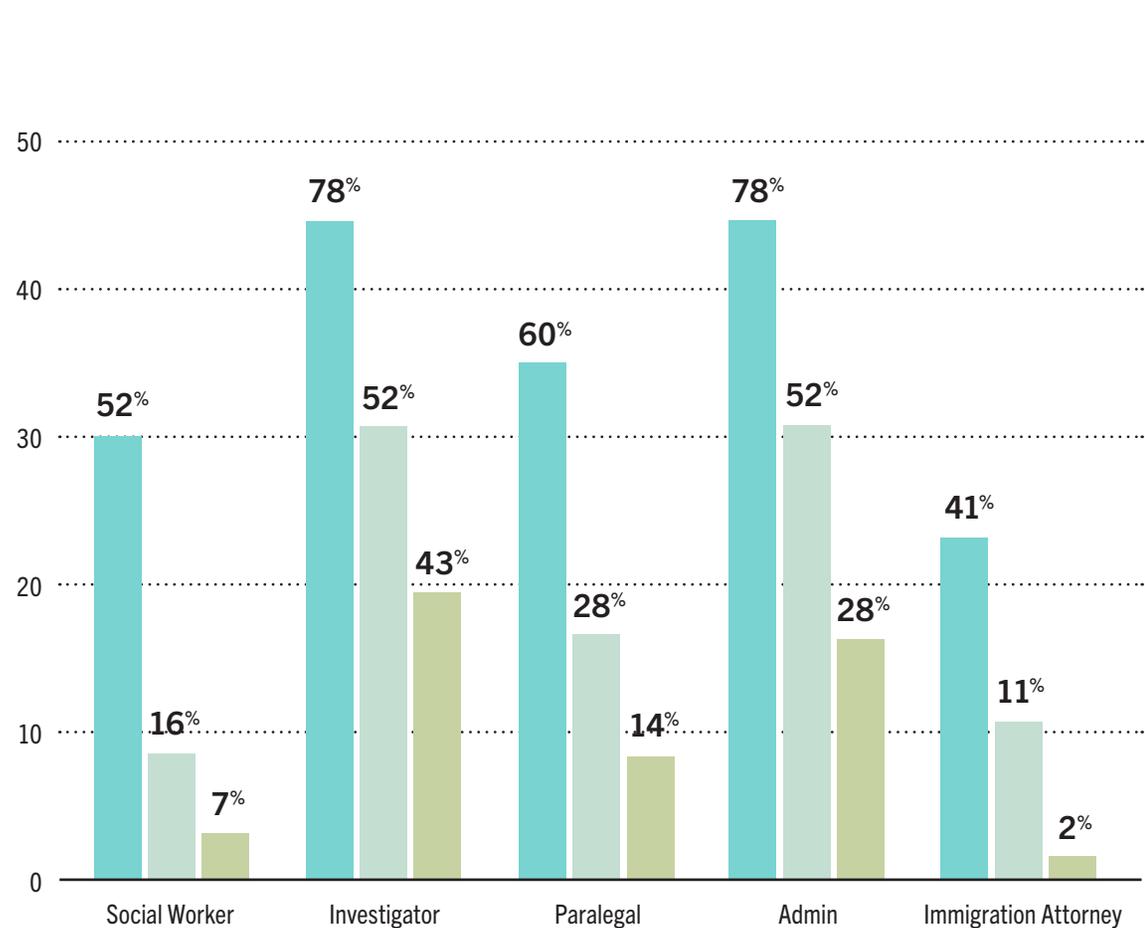


Access to Immigration Attorneys, Social Workers, Investigators, Paralegals and Support Staff

People in California who are represented by the county's primary defense system often have significantly greater access to immigration specialists, social workers, investigators, and support staff than those represented by conflict counsel systems (*Figure 5*). For example, while 52% of primary public defense systems have at least one social worker, only 16% of first level conflict systems have access to social workers. This creates great disparities in services and representation available to people, even in counties with high functioning primary public defender systems.³

FIGURE 5:
Staffed or Contracted Resources by Level of Representation

Primary First Level Conflict Second Level Conflict

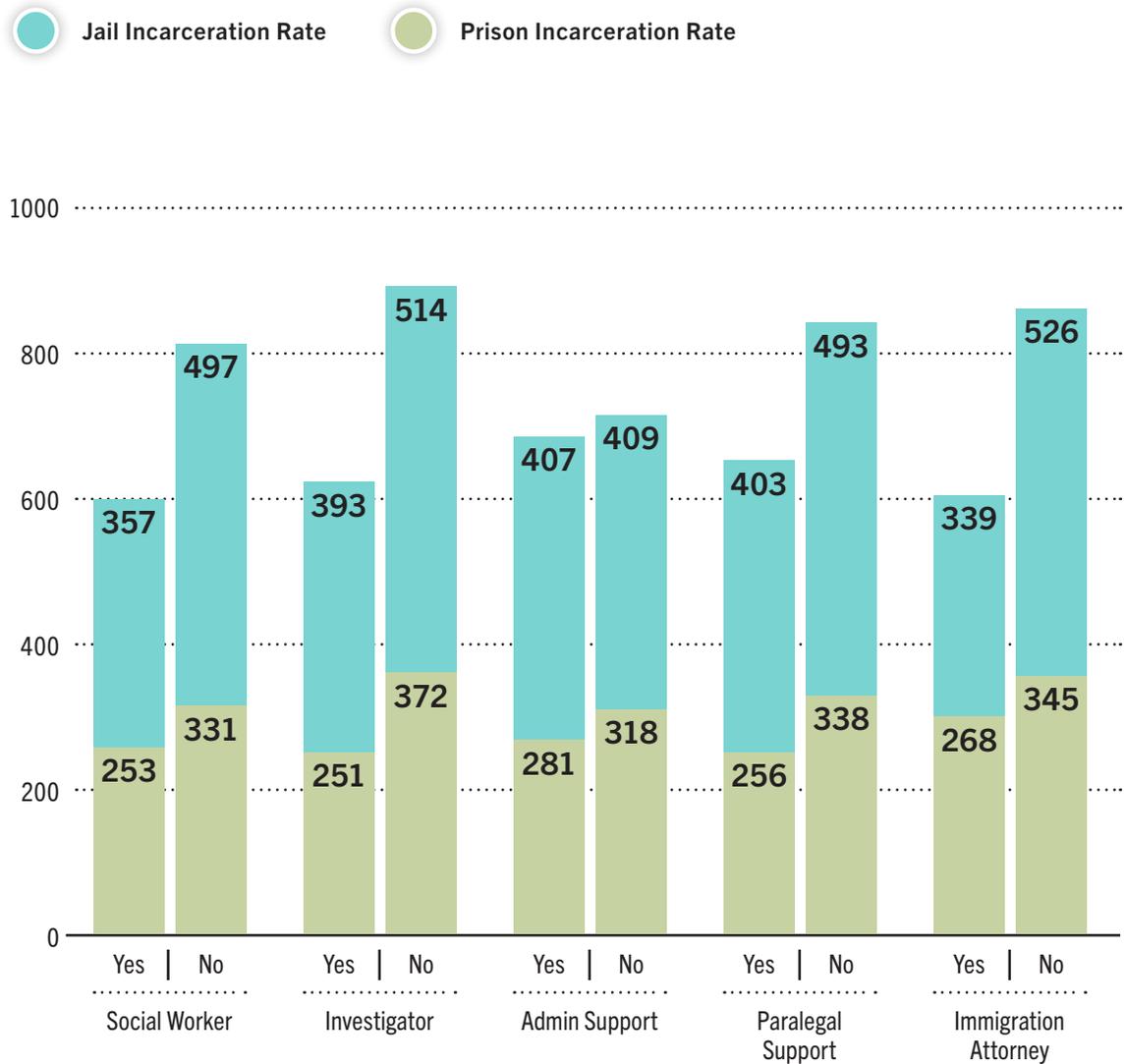


Staffing and Incarceration Rates

Counties whose primary indigent defense systems lack staffed or contracted social workers, investigators, administrative support, paralegal support and immigration attorneys correlate with higher incarceration rates for jail and prison (*Figure 6*).

FIGURE 6:

Average Incarceration Rates Per Capita by Staffed or Contracted Resources

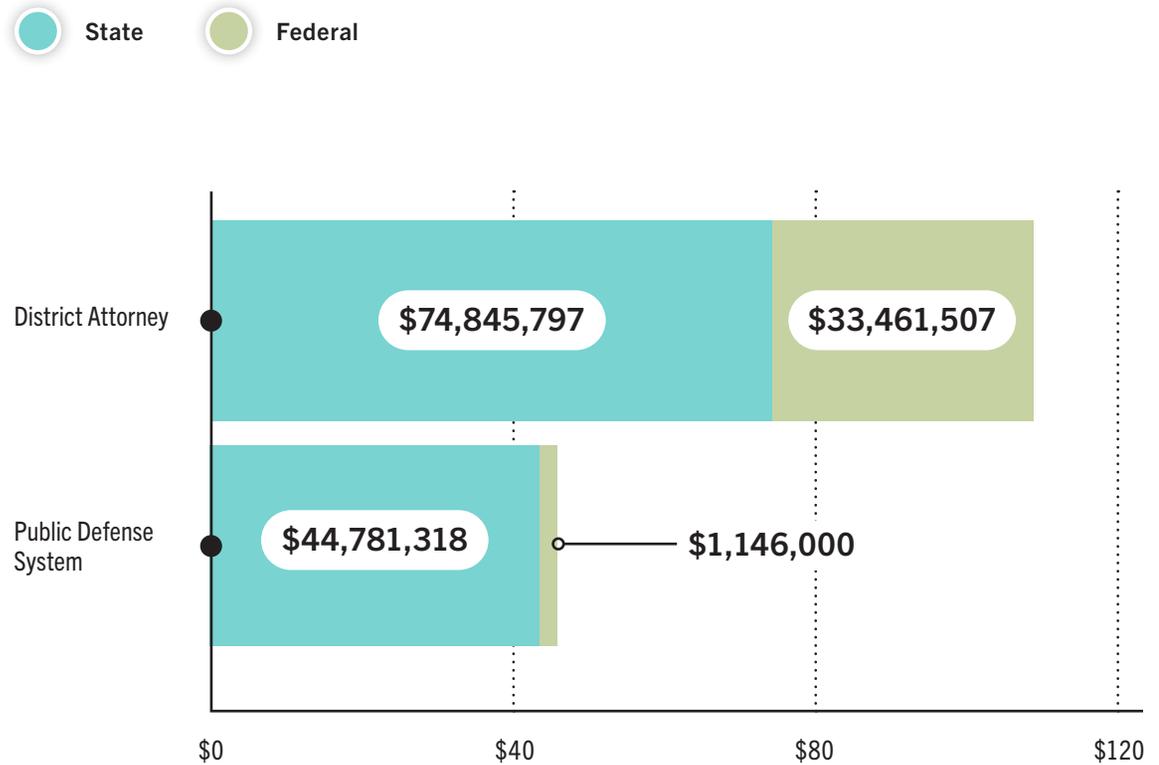


Prosecutors Have Greater Access to Funding

In California, both prosecutors and defense systems are locally funded. However, prosecutor offices have access to state and federal grant funding that defense systems do not (*Figure 7*).⁴ When prosecutors receive grant funding to investigate and file more charges, the defense must defend those cases with no additional resources. This adds to the already large disparity between local funding for prosecutors and defense.⁵

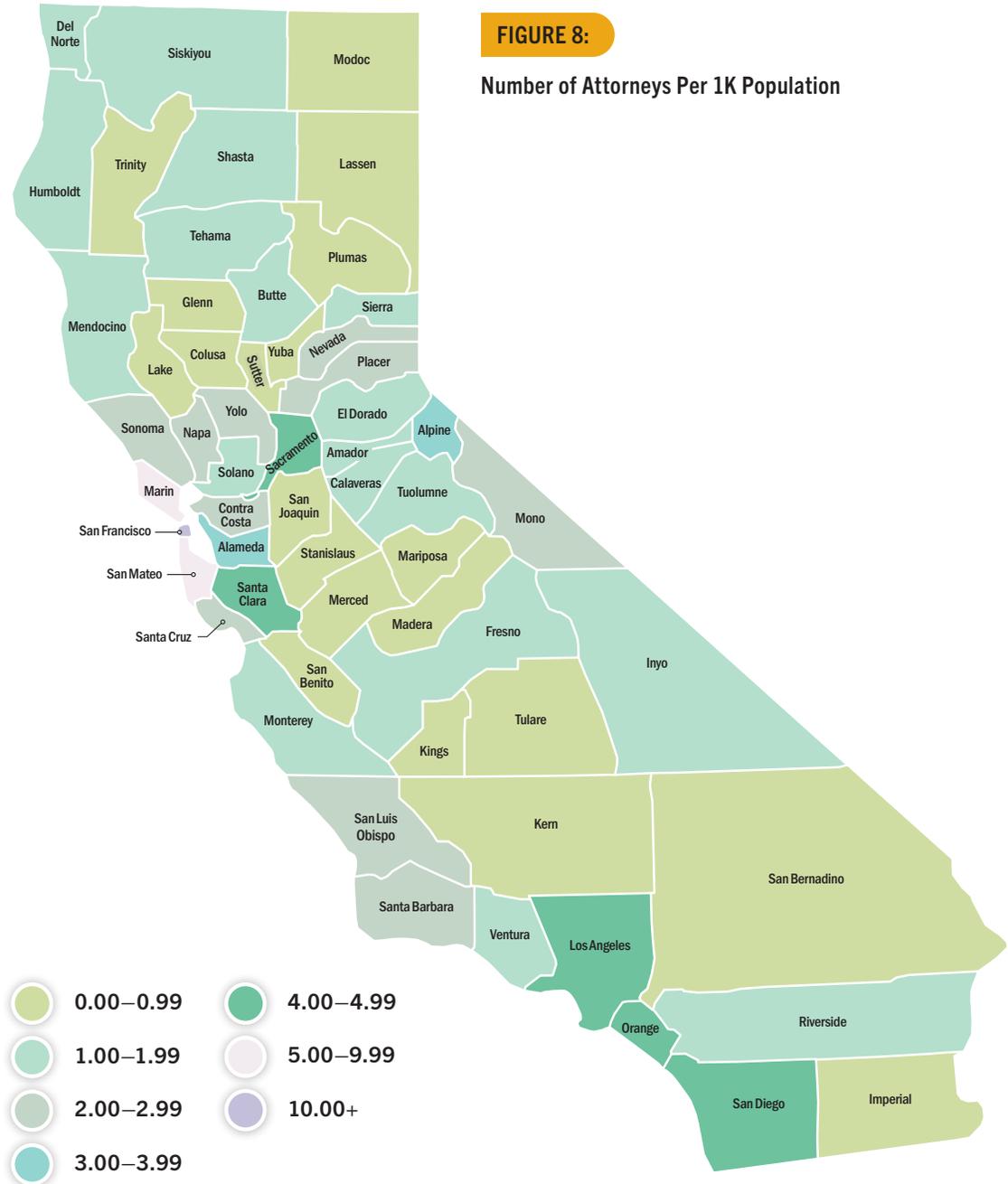
FIGURE 7:

California State and Federal Grants FY 2022–23
In Millions



Legal Deserts

OSPD collected data from the State Bar of California showing the total number of attorneys registered in each county. Data reflected vast inequities in attorney populations per capita in California. For example, while Kern County and San Francisco County have similar populations of nearly a million people, Kern County has roughly 1,000 attorneys total whereas San Francisco has more than 20,000 attorneys (*Figure 8*). This creates significant hurdles to maintaining sufficient attorney to client ratios.



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All data referenced in this report, unless otherwise noted, comes from a statewide survey conducted by OSPD's Indigent Defense Improvement Division in 2023 and from the "California Indigent Defense Summit: Connecting Panel & Contract Systems" held on May 10, 2023. The Office of the State Public Defender thanks the Center for Justice Innovation and Arnold Ventures for making the Summit possible. Full data report available upon request at IDIDtraining@ospd.ca.gov

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1. Idaho, Michigan, South Dakota, Washington, have taken steps to abolish flat fee contracts. See e.g. "Abolishing flat fee contracts for public defense services-ABA Principle 8," [Sixth Amendment Center](#).
 2. California: The State of Incarceration, [Vera Institute](#).
 3. Some states have enhanced, structured conflict systems. See e.g. [Colorado Alternate Defense Counsel](#) or [Massachusetts Private Counsel Division](#).
 4. See e.g. Elder Abuse Grant; Insurance Fraud Grant; Alcohol and Drug-Impaired Driver Prosecution Programs; Disability and Healthcare Fraud Programs; Violence Against Women Grant; Rural Violent Crime Reduction Grant; Auto Theft and Recovery Grant; Agricultural Crime Grants; Internet Crimes Against Children Grant.
 5. Petek, Gabriel "Analyzing the Provision of Indigent Defense," [Legislative Analyst's Office](#), September 2022, p. 13 [indicating that per 2018-2019 data, spending on indigent defense across the state is just 55 percent of the amount spent statewide on district attorney offices. Put another way, spending on district attorney offices was nearly \$50 per person versus \$27 per person in indigent defense.]