

MONTEREY COUNTY BOARD OF SUPERVISORS

| | |
|--|-----------------------|
| MEETING: June 28, 2011 | AGENDA NO.: 32 |
| SUBJECT: a) Receive information regarding the Office of the Public Defender's (PD) FY 2010-11 anticipated budget shortfall due to costs related to Death Penalty cases, Court appointments of private counsel pursuant to Penal Code sec. 987.2(d), Truancy Court staffing and offender treatment program placement services provided by Monterey County Placements (MCP); b) Recognize unanticipated revenue and increase appropriations in the amount of \$206,151 from State Reimbursements of prison defense costs; c) Report directly to the full Board of Supervisors after conferring with the CAO regarding the remaining anticipated shortfall of \$297,054. | |
| DEPARTMENT: PUBLIC DEFENDER | |

RECOMMENDATION:

It is recommended that the Budget Committee of the Board of Supervisors:

- a) Receive information regarding the Office of the Public Defender's (PD) FY 2010-11 anticipated budget shortfall due to costs related to Death Penalty cases, Court appointments of private counsel pursuant to Penal Code sec. 987.2(d), Truancy Court staffing and offender treatment program placement services provided by Monterey County Placements (MCP);
- b) Recognize unanticipated revenue and increase appropriations in the amount of \$206,151 from State Reimbursements of prison defense costs and client registration fees.
- c) Report directly to the full Board of Supervisors after conferring with the CAO regarding the remaining anticipated shortfall of \$297,054.

SUMMARY/ DISCUSSION:

Penal Code sec. 987.2 directs the county to pay charges for defense costs and ancillary defense costs for individuals determined to be indigent when the Public Defender is unavailable due to a conflict of interest. Ancillary defense costs are expert services which may include psychiatrists, DNA analysis, investigations, etc. The county may be responsible for indigent defense costs even when indigent defendants are not represented by the Public Defender's Office or the Alternate Defender's Office (due to a conflict), but rather a private attorney. The County does not budget for death penalty costs and the CAO has directed the Public Defender to submit costs to the County for reimbursement when and if they occur. Current projections estimate a year-end shortage of approximately \$250,000.

There are many factors which contribute to the shortfall. Billings for two death penalty cases prosecuted during the current fiscal year exceed \$225,000. Exact amounts and allocations are confidential per statute. Additional trial costs are projected before the end of the fiscal year. Costs in these types of cases generally increase near the time of trial when the prosecution determines that it will proceed in seeking death and trial related expenses combine with general investigation costs. In addition, death penalty cases include a "Penalty Phase" which requires a social history of the defendant and any factors in mitigation which may exist. A second attorney (Keenan Counsel) is appointed by the Court. The CAO has directed the Public Defender not to budget for potential Death Penalty cases which occur irregularly. Instead, the costs of capital cases will be added to the impacted budget of the PDO or the ADO. An increased number of multi defendant murder and attempted murder cases have resulted from increased gang activity. These cases almost always face

life in prison penalties. These require additional counsel beyond the PD and contracted ADO attorneys who already represent parties in the case.

Sexually Violent Predator cases are essentially civil in nature. Due to overwhelming caseloads of the Public Defender, and the specialized nature of these cases, they were outsourced to a private lawyer who specializes in these cases and performs the same function in Sacramento and other counties. This has allowed the PDO to maintain caseloads for existing staff and accept all viable Court appointments. There are currently five (5) open cases with billings paid or received year to date of \$68,646. Further billings are expected prior to fiscal year end to exceed the amount already billed.

The Superior Court in Monterey has appointed the PDO on several contempt and paternity cases which the PDO is obligated by caselaw and/or statute to accept for representation. Approximately \$5,000 in billings has been received to date and additional billings are anticipated prior to the end of the fiscal year.

The Board in its February 15, 2011 meeting had approved the continuation of Court representation by two Truancy Attorneys and the offender treatment program placement services provided by Monterey County Placements for the remainder of the year. The cost necessary to fund these contracts for the second half of the year is \$76,441: \$39,000 for the two Truancy Court attorneys and \$37,441 for MCP. The PDO was directed at that time to report projected shortfalls to the Budget Committee towards the end of the fiscal year, at which time the department will be better able to assess its current year needs.

The PD anticipates additional revenue of approximately \$71,393 from outstanding State billings and client fees applicable to the current fiscal year. This anticipated additional receipts increase the amount indicated in the Budget Committee Report from \$134,758 to \$206,151, which was reported verbally to the Budget Committee at its meeting on June 17, 2011 by the Public Defender.

At its meeting of June 17th, the Budget Committee also heard the Public Defender's request for transfer of \$297,054 from Contingencies to the Public Defender's budget to cover the anticipated budget shortfall detailed above. However, after discussion, the Budget Committee asked that the Public Defender's Office work with the County Administrative Office to continue to analyze outstanding expenses and determine what funding, if any, might be needed from Contingencies. The Committee also directed the Public Defender to return to the full Board of Supervisors with that request if and when needed after completing further analysis of outstanding and expected year end expenditures.

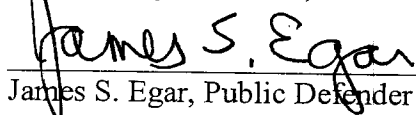
OTHER AGENCY INVOLVEMENT:

The County Administrative Office has reviewed this report.

FINANCING:

The Public Defender's Office is requesting an increase in revenues and appropriations in the amount of \$206,151. This increase in revenues and appropriations will have no effect on the department's General Fund Contribution.

Respectfully submitted,


James S. Egar, Public Defender