



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 12-495, **Version:** 1

Approve the transfer of \$571,179 from Contingencies to the Office of the Public Defender due to unanticipated costs related to Court appointments of private counsel pursuant to Penal Code sec. 987.2(d), for Death Penalty, Sexually Violent Predator, Misdemeanor Appeals, Prison, and Paternity cases, Truancy Court staffing, and Salaries and Benefits;

Authorize the Auditor-Controller to approve the following adjustments in appropriations: transfer from Department 1050 CAO Non-Departmental, Unit 8034 Contingencies, Appropriation Code CAO020 of \$571,179 to Department 2270 Public Defender, Appropriation Code PUB001, Unit 8168 Alternate Defender, Object 6302 \$39,153 and Object 6606 \$409,230, and Unit 8169 Public Defender, Object 6111 \$122,796.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Approve the transfer of \$571,179 from Contingencies to the Office of the Public Defender due to unanticipated costs related to Court appointments of private counsel pursuant to Penal Code sec. 987.2(d), for Death Penalty, Sexually Violent Predator, Misdemeanor Appeals, Prison, and Paternity cases, Truancy Court staffing, and Salaries and Benefits;

Authorize the Auditor-Controller to approve the following adjustments in appropriations: transfer from Department 1050 CAO Non-Departmental, Unit 8034 Contingencies, Appropriation Code CAO020 of \$571,179 to Department 2270 Public Defender, Appropriation Code PUB001, Unit 8168 Alternate Defender, Object 6302 \$39,153 and Object 6606 \$409,230, and Unit 8169 Public Defender, Object 6111 \$122,796.

SUMMARY:

DISCUSSION:

The California Penal Code directs that counties are responsible for the defense of indigent persons accused of crimes. To do this, the County has established an Office of the Public Defender and an Alternate Defender's Office to accept appointment of cases when the Public Defender has a conflict of interest or other appropriate reason to decline representation. Beyond that, the Superior Court appoints private counsel funded by the County's General fund per statute, when neither of those offices is able to accept the appointment for appropriate legal reasons.

Due to budget reductions, the department reduced some of the functions that the PD and ADO are funded to perform. However, the obligations are mandatory and are still the responsibility of the County. Examples include Truancy Court and Death Penalty cases. However, the Penal Code directs that counsel must still be appointed by the Superior Court to represent these persons at the expense of the County's General Fund.

As a result, the Offices of the PD and the ADO face a net budgetary shortfall in the amount of \$571,179 during the current fiscal year. This includes \$448,383 in Services and Supplies, \$190,391 in Salaries and Benefits. This also includes, Board approved appropriations increase of \$67,595 to cover unbudgeted costs associated with the July 2011 position restorations. Many reasons contribute to this shortfall:

Trial Related Expenses, \$45,541; Outside Counsel, \$475,995-Alternate Defender; the County incurs significant costs when the Court makes direct appointments of attorneys, investigators and experts. Attorneys are more

expensive who are not under contract. Appointment costs cannot be monitored and expenditures are often unknown until a bill is submitted at the conclusion of the case. The Public Defender has proposed that the County add an additional felony contract attorney to help reduce these costs in each of the last several years. It is anticipated that the greater the percentage of cases that can be handled without direct Superior Court appointment, the larger will be the savings that are realized by the County. The County Administrator's Office has agreed to support the addition of a felony contract attorney in the upcoming fiscal year. However, the current fiscal year (FY 2011-2012) has resulted in the Superior Court appointing outside counsel resulting in a shortfall of \$521,537. This total includes \$205,000 for murder cases, including one that was a death penalty case. The Public Defender has periodically advised the CAO's Office of this anticipated consequence during the course of the current fiscal year. It was agreed that the issue would be addressed at or near the conclusion of the current fiscal year with a report to the Budget Committee of the Board. The Budget Committee received the Public Defender's report at its meeting on May 25, 2012 and supported the recommendation for submission to the full Board.

Termination Pay Off, \$103,935; these costs were incurred for staff who retired, terminated county employment either voluntarily or involuntarily, which could not be anticipated. Budget for this item was limited by overall budget reduction for the PD.

Vacation Buy Back, \$49,623 year-end estimate; this is a Board of Supervisor approved employee benefit. Budget for this item was limited by overall budget reduction for the PD for the current fiscal year.

Retirement Insurance Cost, \$27,392 year-end estimate; this is an unbudgeted cost and used to be paid through County Risk Management.

Human Resources Services, \$14,282; this is an unexpected additional cost. Previously, the costs of the department's HR analyst, technician, and supplies were shared with three other departments. This number was unexpectedly reduced when one of the contributing departments unexpectedly withdrew from the partnership after the start of the new budget year. This resulted in greater costs for each remaining agency.

Emergency Temporary and Allocation on Loan Deputy Public Defenders (attorney), \$77,657; the Public Defender's Office continues to have significant professional staff turnover. In the current fiscal year, eight have terminated their county employment or retired. However, caseloads remain very heavy and backfill staff was required in order to meet ongoing client requirements. Courts could not be covered without providing attorneys to replace those who had left. During the budget process for FY 2011-12, one full time attorney position was saved from being deleted by allowing the employee to stay on through an Allocation on Loan position until the retirement of a senior DPD early in the fiscal year; a temporary attorney was hired as backfill for an attorney on a leave of absence; and another attorney was hired using an Allocation on Loan position until another senior attorney's retirement.

There are currently bills which have been submitted for payment to the ADO which total \$341,351 and an estimate of \$226,385 of invoices for the month of June, including the remaining balance on the ADO contracts.

OTHER AGENCY INVOLVEMENT:

The County Administrative Office has reviewed this report.

FINANCING:

The current balance in the contingencies appropriation is \$4,735,854. The balance in contingencies was included in the estimated financing available to support the FY 2012-13 Recommended Budget. This request

would lower the contingencies balance to \$4,164,675 and may require future budget action to maintain budgetary balance.

Prepared by: Emilie Espinosa, Finance Manager, ext. 5805

Approved by: James S. Egar, Public Defender, ext. 5806

Attachments:

None