



# County of Monterey

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

## Board Report

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**File #:** 13-0693, **Version:** 1

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- a. Approve transfer from Department 1050 CAO Non-Departmental, Unit 8034 Contingencies, Appropriation Code CAO020 of \$96,862 to Department 2270 Public Defender, Appropriation Code PUB001 due to Court appointments of private counsel and expert witness pursuant to Penal Code sec. 987.2(d) including on Special Circumstance, Paternity, and County integrity cases (4/5<sup>th</sup> vote required), and
- b. Authorize the Auditor-Controller to approve adjustments in appropriations. (ADDED VIA ADDENDUM)

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve transfer from Department 1050 CAO Non-Departmental, Unit 8034 Contingencies, Appropriation Code CAO020 of \$96,862 to Department 2270 Public Defender, Appropriation Code PUB001 due to Court appointments of private counsel and expert witness pursuant to Penal Code sec. 987.2(d) including on Special Circumstance, Paternity, and County integrity cases (4/5<sup>th</sup> vote required), and
- b. Authorize the Auditor-Controller to approve adjustments in appropriations.

### SUMMARY:

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 (ADO) 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.

It is difficult, if not impossible, to predict the cost of providing ADO services in any given year. Fiscal year 2012-13 is a perfect example. Projected year-end ADO services cost is approximately \$191,400 less than the prior fiscal year which is attributable to the addition of a fourth contract with private counsel to provide the required representation. However, the Public Defender's Office anticipates a net shortfall in the amount of \$96,862 to finish the fiscal year: \$154,708 estimated shortfall in Unit 8168-ADO and \$57,846 estimated balance in Unit 8169-PDO. The PD's use of Contingencies last year was \$571,179.

### DISCUSSION:

The Alternative Defenders Office is also responsible for:

- Certain types of cases that are not covered by the contracts. Murder cases with life in prison exposure or where allegations of special circumstances murder are alleged.
- Civil Contempt cases arising out of civil litigation. These cases are heard in the Civil Department at the Monterey Superior Court on Aguajito Road; and
- Cases where the Public Defender is not available as counsel for reasons other than a conflict of interest. This includes misdemeanor appeals.
- Sexually violent predator cases. These cases are assigned to attorneys based upon their complexity and

the level of experience of the attorney. These cases and costs are unpredictable. The County has not contracted with additional attorneys because of the uncertainty whether they are needed. These costs also include the Truancy Attorneys who are appointed by the Court and for which the Public Defender was not funded. This also includes a significant number of murder cases.

- Court appointments on miscellaneous criminal cases previously represented by private counsel where defendants become indigent during the criminal proceedings. (The Superior Court recently appointed the PD to take over representation of an integrity case.)

Funding requirements for these cases have exceeded appropriations in the past several years. The Public Defender has implemented a written policy and system requiring advance approvals before conflicts of interest may be declared in an effort to keep tight control of their declaration; however, it is inevitable that an augmentation will be required to meet court ordered obligations. This is based on expectations derived from reviews of the last five years appointments. This fiscal year's augmentation request is for the amount of \$96,862. This includes the total of outstanding invoices for trial related services on the ADO's desk as of 6/17/2013 and estimated additional invoices for the remainder of the fiscal year.

Examples of year-to-date actual and estimated costs contributing to the department's year-end budget shortfall are as follows:

Unit 8168-ADO: \$50,858 for a murder case that has been pending for several years and is complex. The lawyer handling the case had a heart attack several days prior to the start of the trial. He was unable to continue. New counsel and an investigator were appointed. This meant the new lawyer started preparation from scratch; \$59,000 for an ADO appointment in a civil case where a jail sentence was possible. The initial lawyer handling the case moved out of the area necessitating the assignment of new counsel; \$72,000 for Truancy cases; \$22,657 for SB90 cases (costs are submitted each year for State reimbursement); and, initial billing on an integrity case.

Unit 8169-PDO: \$30,000 employee settlement payoff; \$5,200 extra help attorney to handle the caseload of the recently vacated position until a permanent employee is hired; approximately \$4,361 share of additional Human Resources personnel costs; \$71,659 estimated cost overrun in Trial Related Expenses; \$3,023 additional costs incurred to replace outdated computer hardware and peripherals; \$4,927 for computer software necessary to meet the County's technology advancements and to streamline work processes; and \$26,656 estimated department cost overrun in Information Technology services for programming the newly purchased and hand-me-down computers, deploying updated software, and related services.

#### OTHER AGENCY INVOLVEMENT:

The County Administrative Office has reviewed this report.

#### FINANCING:

The current balance in the contingencies appropriation is \$4,401,664. 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 \$4,304,802 and may require future budget action to maintain budgetary balance.

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Approved by: James S. Egar, Public Defender

Attachments: None