

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Defender

BOARD AGENDA # B-10

Urgent Routine

AGENDA DATE May 4, 2010

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the Reduction-In-Force of Five Filled Full-Time Positions in the Public Defender's Department Effective July 17, 2010

STAFF RECOMMENDATIONS:

1. Approve the reduction-in-force of five full-time funded positions in the Public Defender's Department budget as outlined in the Staffing Impacts section of this report effective July 17, 2010.
2. Amend the Salary and Position Allocation Resolution to reflect the changes as outlined in the Staffing Impacts section of this report effective July 17, 2010.

FISCAL IMPACT:

The Public Defender's Office has been projected to expend no more than \$5,667,290 in Fiscal Year 2010-2011. This budgeted amount includes \$5,018,298 in General Fund revenue and \$648,992 in Departmental revenue. This is \$636,802 less than the actual cost to operate the Department during the 2008-2009 Fiscal Year. The Public Defender's projected actual costs are estimated at \$6,304,550 for the 2010-2011 Fiscal Year. This means the Department budget will have been reduced approximately 10% since the end of June 2009. Adding to the financial pressure, the Department is being required to absorb an increase in retirement costs of approximately \$85,000 next fiscal year.

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BOARD ACTION AS FOLLOWS:

No. 2010-277

On motion of Supervisor O'Brien, Seconded by Supervisor DeMartini
and approved by the following vote,
Ayes: Supervisors: O'Brien, Chiesa, DeMartini, and Vice Chairman Monteith
Noes: Supervisors: None
Excused or Absent: Supervisors: Grover
Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT: (Continued)

The cost to maintain the staff of the Public Defender at the current level as projected at the end of Fiscal Year 2009-2010 would be approximately \$5,500,000. Each year the Public Defender is charged certain amounts by other County departments for such things as data processing, rent, collection services, utilities, etc. These charges are collectively referred to as cost allocation plan (CAP) charges. This coming year the CAP charges and rent the Public Defender has been given amount to approximately \$480,000. The Department also faces service and supply charges for such items as expert witnesses and general office expenses each year in the amount of at least \$200,000. In summary the Public Defender would start Fiscal Year 2010-2011 with a deficit of at least \$500,000 unless expenses are sharply reduced.

In order to meet this budgetary shortfall of \$512,000 a reduction-in-force of five filled full-time positions is being recommended.

DISCUSSION:

In the 2002-2003 Fiscal Year when workload demands were best met, the Public Defender's Office had a staff allocation of 52 full-time staff. Currently there are 45 full-time allocated positions, all of which are currently filled. With these recommended reductions-in-force the allocated staff will be reduced to 40 full-time staff. In Fiscal Year 2009-2010 Fiscal Year the Department deleted three filled contract employee positions in an effort to reduce costs along with implementing eight furlough days. The Department also left an attorney position vacant following the retirement of a senior Attorney in March 2009. With these recommended reductions the Department will experience the loss of more than 17% of the staff including contract employee positions over the last two years and a loss of more than 23% of the staff over the last seven years.

At this level of staffing, the Department hopes to maintain most of the services it has provided in the past. In each of the past five years the Department has accepted appointment in approximately 15,000 new matters. In every one of these matters the Department is required to provide competent legal representation. If the Public Defender's office becomes so overloaded with new cases, if in the opinion of the Public Defender there are not sufficient resources in the Department to provide competent representation then the office would refuse appointment in new cases. The Stanislaus Superior Court would appoint local private attorneys to act as counsel in the refused matters. The cost for such counsel would be substantial. If the Department is able to accept appointment in the same number of cases as in past years it seems likely that staff will be slower in providing that service simply because of the reduced number of staff. These delays may cause the Stanislaus Superior Court to relieve the Public Defender as counsel and appoint private counsel. The cost for such replacement counsel would again be substantial.

In the last 12 months, the Public Defender was appointed in more than 15,000 new cases, of which approximately 5,500 were felonies, 5,500 were misdemeanors, and the balance

were violations of probation and other criminal matters. The American Bar Association as well as the State Bar of California has published suggested guidelines for the provision of indigent defense services. These guidelines suggest that attorneys who are providing these services should handle not more than 150 felony cases per year of 400 misdemeanor cases per year. If these guidelines were mandated, this Department would need at a minimum a staff of 55 attorneys along with 15 to 20 support people for a total staff of at least 70 employees. There are presently 18 attorneys in the Department who spend the majority of their time handling adult felony matters and seven attorneys who handle adult misdemeanors. If the number of cases handled by the Department is divided by the respective number of staff attorneys it becomes apparent that the felony attorneys are carrying a caseload of approximately 305 cases or twice the guideline amount. The misdemeanor attorneys have a caseload of 785 cases, almost twice the guideline amount. Currently, with only 68% of guideline staffing, this Department, while struggling to provide competent representation to our thousands of clients, has been able to do so. Further reduction of staff may make this impossible.

A rough estimate of the cost to the County to provide private counsel on cases that the Public Defender is unable to handle can be arrived at as follows: the County currently utilizes appointed private attorneys to handle those cases which cannot be handled by the Public Defender or the two conflict firms because of ethical conflicts of interest. Those private attorneys are paid an hourly rate that is set by the Stanislaus County Superior Court. In the current budget year the County has budgeted approximately \$2,000,000 to fund the costs of attorneys fees, investigations, and other related costs. Over the past four years there have been 250 to 300 of these cases each year. If the yearly cost of these cases is divided by the number of cases per year this results in an estimated cost per case of from \$6,667 to \$8,000. The Public Defender is currently appointed in 35 murder cases, a greater number than ever before in the history of the Department. These cases are time consuming and require many additional resources including medical and psychiatric expert testimony. The cost to the County of having private counsel appointed to a case of this type would be approximately \$17,600 per year, per case.

There are 14 Superior Court Departments in which the attorneys of the Public Defender's Office regularly appear. In order to cover this number of courts and in order to prevent the overloading of the staff attorneys the Public Defender believes that the office must have at least 27 attorneys who are assigned to court. That is the number remaining after these proposed reductions. In order to operate the department needs legal clerks to make sure the files of the 15,000 cases handled each year are with the right attorney in the right department. These 15,000 matters are generally not resolved in a single appearance. Each time a file needs to go to court a clerk must pull it and make sure it is with the correct attorney. When it returns from court the matter must be filed in the correct location. With the loss of the Supervising Legal Clerk II position and the Account Clerk III position the department will have only nine clerks to handle the many thousands of files the office is connected with each year. The loss of these positions will cause delay and some disorder in the handling of the cases to which the Public Defender is assigned. The loss of the Account Clerk position will mean that the Department Confidential Assistant III must

handle all of the office payroll, bookkeeping and personnel matters. Finally the loss of two of the three special investigators will undoubtedly force some matters to be delayed while witnesses are contacted and records are obtained. If these delays are too great the Superior Court may remove the office as counsel and substitute private counsel.

POLICY ISSUE:

The Board of Supervisors should determine if approval of staff's recommendation meets the priority of A Safe Community and Efficient Delivery of Public Services.

STAFFING IMPACTS:

Currently there are 45 full-time allocated positions in the Public Defender's Office, all of which are currently filled. This agenda item recommends the deletion of five filled allocated positions requiring approval of a reduction-in-force action. It is recommended that the Salary and Position Allocation Resolution be amended to reflect the recommended position changes as outlined in Attachment A and the deletion of five total full-time positions effective July 17, 2010. Final effective dates and impacts for the reduction-in-force may be modified as a result of additional vacancies generated through the Voluntary Separation/Retirement Incentive Program to be implemented in July 2010.

Recognizing the potential impact this recommendation may have on the County's workforce, representatives from the County's Chief Executive Office/Human Resources Division and the Public Defender's Office have discussed the potential impacts of this action with the affected labor organizations. Chief Executive Office staff will work with the affected employees regarding any opportunities available within the organization. Staff affected by these recommendations will also have access to Workplace Wellness and the County's Alliance Worknet Department should staff wish to seek their assistance.

CONTACT PERSON:

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Attachment A

**Public Defender
May 4, 2010**

Recommended Position Transfers and Deletions

Allocated Budget Unit	Position	Allocated Classification	Filled/ Vacant	Filled Classification	Recommendation
Public Defender	11873	Attorney V	Filled	Attorney III	Delete Position
Public Defender	10962	Supervising Legal Clerk II	Filled	Supervising Legal Clerk II	Delete Position
Public Defender	8218	Special Investigator II	Filled	Special Investigator I	Delete Position
Public Defender	8216	Special Investigator II	Filled	Special Investigator II	Delete Position
Public Defender	7840	Account Clerk III	Filled	Account Clerk III	Delete Position