

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

DEPT: PUBLIC DEFENDER

BOARD AGENDA # *B-4

Urgent ☐

Routine ☒

AGENDA DATE April 23, 2013

CEO Concurs with Recommendation YES ☒ NO ☐
(Information Attached)

4/5 Vote Required YES ☒ NO ☐

SUBJECT:

Approval to Increase Appropriations up to \$500,000 in the Public Defender - Indigent Defense Budget Funded by a Transfer from Appropriations for Contingencies

STAFF RECOMMENDATIONS:

1. Approve an increase in appropriation up to \$500,000 in the Public Defender - Indigent Defense budget unit.
2. Authorize the transfer of up to \$500,000 from Appropriations for Contingencies by a 4/5 vote of the Board of Supervisors.

FISCAL IMPACT:

For Fiscal Year 2012-2013 the Public Defender - Indigent Defense budget was \$3,071,140. This amount includes the annual cost of \$1,256,232 for the two conflict firms that provide counsel when the Public Defender has a legal conflict of interest. The remaining amount in this budget is to cover cost associated with Court appointed attorneys and related costs. In December 2012 this fund experienced a significant increase in costs. While the increase in January and February weren't as significant of an increase, the fund still experienced higher costs than the first five months of the fiscal year. The Public Defender - Indigent Defense budget will require up to \$500,000 in appropriations transferred from Appropriations for Contingencies. "CONTINUED ON PAGE 2"

BOARD ACTION AS FOLLOWS:

No. 2013-177

On motion of Supervisor O'Brien, Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION: This Item was removed from the consent calendar for discussion and consideration.

ATTEST:

Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT: Continued

These increased appropriations will pay for Court appointed attorney and related costs (i.e. investigations, experts . . .) for the remainder of the 2012-2013 Fiscal Year. As invoices are received, the Chief Executive Office will transfer over the needed funding from the Appropriations for Contingencies budget. This fund will not have any carryover into the 2013-2014 Budget Year.

If the entire \$500,000 that is being requested was expended this fiscal year the total paid out would be \$3,571,140. The following table shows the actual expenditures from Fiscal Year 2008-2009 to 2012-2013 year-end projection.

Fiscal Year	Actuals
2008-2009	\$3,388,194
2009-2010	\$3,584,882
2010-2011	\$3,389,803
2011-2012	\$2,981,020
2012-2013	\$3,571,140 (projected)

This fund is experiencing an increase in charges despite the fact that the hourly rate paid to local panel attorneys was lowered last year. The rate paid to attorneys was reduced after a series of meetings between the Superior Court Administrative staff, the County Chief Executive Office, the Public Defender and members of the Stanislaus County Criminal Bar Association. The reduction in the hourly rate paid varied depending on the type of case. For example fees for felony cases in adult and juvenile court were reduced from \$85 per hour to \$80 per hour. The process has also changed on murder counsel fees. Once a murder charge is dropped, murder counsel rates now revert back to felony rates. The projected increase in expenditures seems to be consistent with the increase in the number of felony cases filed in the county.

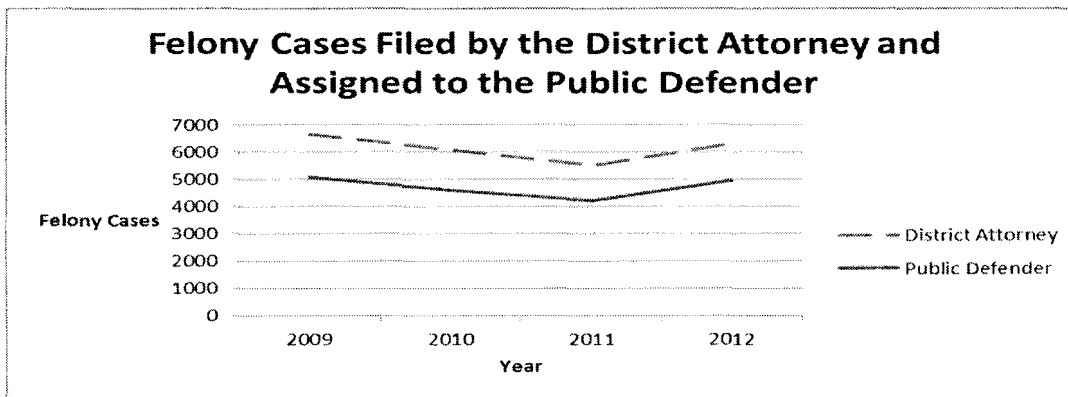
DISCUSSION:

This budget funds costs for indigent defense that are not provided by the Public Defender's Office. When the Public Defender is unable to represent an individual because of a conflict of interest, separate counsel must be provided. For this purpose, the county contracts with two local law firms. When those firms are unable to provide representation, the services of a member of the local criminal defense bar panel are retained. The cost for the yearly contract with the two firms and the panel attorneys are paid from this fund. In addition, any expert witness fees or investigation costs that arise in these cases are paid from this fund. The cost for the contract firms has not increased this year. The fund has experienced an increase in private appointed attorney fee claims along with an increase in the costs associated with the investigation of these cases.

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With a little over two months remaining in the 2012-2013 Fiscal Year the Indigent Defense Fund is almost depleted. Staff is recommending that the Stanislaus County Board of Supervisors approve the transfer of up to \$500,000 from Appropriations for Contingencies to this fund to cover any additional charges that may accrue by year-end.

While it is impossible to identify the precise reason there are greater claims against this fund this fiscal year, the most likely cause is the increase in the number of felony cases that have been filed by the District Attorney's Office in the last calendar year. The trend of these numbers match closely with the new felony cases that were assigned to the Public Defender's Office.



The principal cost driver of the expenses experienced by this fund is the number and type of felony cases assigned to the private attorneys. The fund does not experience a charge as soon as a felony case is assigned to a private attorney. There is generally a delay that varies between several months and several years before expenses associated with the defense of the cases are paid out by the fund. The fund would logically expect to see an increase in billings some time after there is an increase in the number of new cases filled.

Other factors that may be impacting this fund are a high number of multiple defendant gang and murder cases that are currently pending in the county which are typically handled by private appointed counsel. There were 109 inmates housed in the Stanislaus County Jail in March of 2013 facing a charge of murder. Last year in March there were 91. The criminal justice realignment enacted by AB109 a little more than a year and a half ago may also be impacting this fund. Many local law enforcement offices have publicly stated that realignment is leading to an increase in criminal activity in the community. Realignment is forcing the county to house inmates who would have gone to state prison in local jails. When those inmates are released early because of jail overcrowding they can commit new offenses that would not have been possible if they served their full sentence in the state prison.

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POLICY ISSUES:

The Board of Supervisors is asked to decide if staff's recommendations are consistent with the Board Priority of A Safe Community.

STAFFING IMPACTS:

Staff from the Public Defender's Office will continue to monitor invoices received by appointed Attorney's.

CONTACT PERSON:

Tim Bazar, Public Defender

209-525-4223