



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: District Attorney
Department No.: 021
For Agenda Of: October 16, 2012
Placement: Departmental
Estimated Tme: 30 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Joyce E. Dudley, District Attorney
Head:
Contact Info: Gordon Auchincloss, Chief Deputy District Attorney, 568-2369
Kimbra McCarthy, Director of Administration, 568-2304
SUBJECT: Misdemeanor Diversion Program

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Risk Management

Recommended Actions:

It is recommended that the Board of Supervisors:

1. Receive a report on the new District Attorney Misdemeanor Diversion Program; and
2. Approve the Contract for Service between the District Attorney and Pacific Education Services for the Misdemeanor Diversion Program.

Summary Text: According to statistics gathered by the California District Attorney's Association, the Santa Barbara County District Attorney has had the highest caseload per attorney in the state for several years. During this period, workloads for all county Law and Justice Partners have remained relatively static while resources have suffered significant declines. The new challenges of Assembly Bill 109 and increased jail overcrowding have further exacerbated the gap between the county's assets and liabilities in the workforce. As a result, the District Attorney has proactively implemented efficiencies and sought new opportunities for revenue and savings. In a climate of diminishing budgets, the necessity for creative new solutions to fiscal challenges has never been greater. The new Misdemeanor Diversion Program offers an exciting promise to address each of these problems in a way that costs the county nothing while realizing significant savings and obtaining better outcomes in criminal cases.

Background: Diversion programs allow criminal offenders to have their criminal charges deferred until they complete a rehabilitative program. If the offender successfully completes the program, the District Attorney agrees to never file the charges or dismiss them if they have already been filed. The concept of diverting criminal offenders from the criminal justice system into rehabilitative programs is not new.

For instance, diversion for first-time drug offenders into drug programs has been provided for by law since 1972 (See Penal Code Section 1000 et seq.). However, the concept of a general diversion program for low-level, non-recidivist, general misdemeanor offenders is a newer idea that is gaining national acceptance and is currently implemented in counties across the State of California including: Orange County; Sacramento County; Merced County; Yolo County; Napa County; El Dorado County; Placer County; Sonoma County; Contra Costa County; Madera County; Sutter County and San Joaquin County.

For the past year, the Santa Barbara County District Attorney has been actively engaged in the process of investigating and creating a general misdemeanor diversion program for Santa Barbara County. We have met with numerous local and out-of county providers of treatment programs. We have visited the Orange County District Attorney's Office and observed its diversion program operations in the courtroom and in the classroom. We opened a dialogue with local stakeholders including the Courts, Probation Department, Public Defender, law enforcement agencies, and members of the local defense bar to provide information and receive input.

As a result of these efforts, we have designed an alliance between Pacific Education Services (PES), the state leader in misdemeanor diversion programs, and our local Council on Alcoholism and Drug Abuse, in order to provide program services to diversion candidates. This alliance combines the experience of the oldest and largest misdemeanor diversion program in the state with the wisdom and local knowledge of one of Santa Barbara County's most esteemed non-profit therapeutic organizations. Finally, we have crafted a comprehensive Misdemeanor Diversion Program for Santa Barbara County that will save time and resources for the District Attorney while creating substantial savings for our partners in Law and Justice and Public Safety.

This new program would be offered to criminal offenders at a pre-filing stage after a case is referred to our office for prosecution by a law enforcement agency. Only non-recidivist offenders for lesser misdemeanor offenses will be considered for diversion. After the District Attorney has determined that criminal charges can be proven, a letter will be sent to the offender offering misdemeanor diversion in-lieu of criminal prosecution. If the offender accepts, the District Attorney will agree to delay the filing of charges for a time certain to allow the offender to pay all victim restitution and complete a rehabilitative program designed to address the criminal conduct they have been accused of.

Such programs may deal with life skills; theft offenses; vehicular offenses; anger management and substance abuse. The offender will be required to pay Pacific Education Services \$250-\$450 for the program, depending on the number of classes required for the offense. PES will pay the District Attorney \$50 per offender participating in the diversion program to offset costs associated with reviewing cases for eligibility and managing the program. Program costs will be waived for indigent individuals who can prove inability to pay, as determined by the District Attorney.

Upon successful completion of these conditions, the District Attorney will agree not to file charges against the offender. Those who agree to diversion but do not fulfill their commitments will face the prospect of filed criminal charges. Successful program participants will avoid going to court, a criminal conviction, and fines and sanctions associated with that conviction.

The authority to divert criminal offenders into a rehabilitative program in lieu of criminal charges rests with the District Attorney as charging authority itself rests with the District Attorney. The District Attorney has broad discretion in charging crimes. This discretion includes the determination of whom to charge, what charges to file, and what punishment to seek. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451.) Government Code section 26500 provides the prosecutor “shall attend the courts, and *within his or her discretion* shall initiate and conduct on behalf of the people all prosecutions for public offenses.” (Italics added.) Moreover, Government Code section 26500.5 specifies that the “district attorney may sponsor, supervise, or participate in any project or program to improve the administration of justice.”

It is anticipated that this new program will be able to reduce the number of misdemeanor cases the District Attorney files countywide by 1,500 to 2,000 cases per year – approximately 15%. This reduction in low-level misdemeanor cases will allow the District Attorney to reorganize our resources so that our attorneys are able to focus more time and energy on our most serious cases. It is also hoped that we will be able to reduce our attorney caseloads so that they are closer to the state average for other District Attorney Offices.

Reducing the number of cases we file should result in significant savings in resources for the Courts, Public Defender, Probation Department, and conflict defense attorneys. Because offenders who successfully complete the program will no longer receive sentences in county jail, this program should also provide a positive impact in reducing the critical problem of jail overcrowding.

Another goal of the misdemeanor diversion program is to achieve more positive criminal outcomes and reduce recidivism. Currently, low level misdemeanants generally receive no rehabilitative programs and little or no criminal sanctions. Because of limited resources at the Probation Department, this population does not typically receive any supervision. Because of jail overcrowding, this same population will serve diminished sentences or receive alternatives to custody. Misdemeanor diversion provides a therapeutic outcome where each offender receives a program that is tailored to the alleged conduct while providing restorative justice to the victim by requiring immediate restitution.

Our final goal is to reduce recidivism. Our program provider, PES, has a proven track record for success in this area. Two separate studies have been conducted on the efficacy of the PES program in Orange County that showed almost identical results. The first study conducted by PES showed a reduction in recidivism for the group that attended their program after one year from 22% to 6%. The second study conducted by the Orange County District Attorney Research Unit found a similar recidivism reduction from 21% to 6%.

In sum, the Misdemeanor Diversion Program is a win-win for all concerned. Significant savings in resources, improved efficiencies, and better outcomes – these are the hallmarks of the new program.

Fiscal and Facilities Impacts:

The department will receive \$50 per offender from Pacific Education Services, provided said offender is not deemed indigent. Preliminary estimates of 1,500 – 2,000 program participants per year could provide approximately \$75,000 – \$100,000 in new departmental revenue.

Staffing Impacts: None

Special Instructions:

Please return executed contract to Kimbra McCarthy, Director of Administration

Attachments:

Contract for Service, Presentation

Authored by:

Gordon Auchincloss, Chief Deputy District Attorney