



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: Public Defender
Department No.: 023
For Agenda Of: July 18, 2023
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: 4/5

TO: Board of Supervisors
FROM: Department Tracy M. Macuga, Public Defender X83494 *TM Macuga*
Director(s) *U*
Contact Info: Deepak Budwani, Chief Financial & Administrative Officer X83589
SUBJECT: Acceptance of Board of State and Community Corrections Award of \$1,122,341 for grant agreement, budget and personnel resolution for Public Defense Pilot Grant Program; Salary Resolution Amendment

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- A. Adopt a Resolution (Attachment A) authorizing the Public Defender to execute a multi-year grant agreement and grant amendment with the Board of State and Community Corrections (BSSC) for the Public Defense Pilot Program (PDPP) accepting \$1,122,341 for the grant agreement term of March 1, 2022 through March 1, 2025.
- B. Approve, ratify and authorize the Public Defender, or designee, to execute the BSSC Grant Agreement (Attachment B) and BSSC Grant Amendment (Attachment C) for the PDPP with the BSSC accepting \$1,122,341 (\$563,624 for Year 1 and \$558,717 for Year 2) for the County of Santa Barbara to create a Post-Conviction/Re-entry Unit, enhance data reporting, enhance our content management system (eDefender); leading to data-driven decision making for the thirty-four-month grant project period of March 1, 2022 through January 1, 2025 (BSSC Grant Agreement Term March 1, 2022 through March 1, 2025); and

- C. Approve and authorize the Public Defender, or designee, to execute subsequent reports pursuant to Attachment B, BSCC Grant Agreement or make immaterial amendments that do not change the total agreement amount, do not extend the term of the agreement, or change any other substantive terms of the BSCC Grant Agreement and subject to the Board's ability to rescind this delegated authority at any time; and
- D. Approve and authorize the Public Defender, or designee, to execute subsequent reports pursuant to Attachment C, BSCC Grant Agreement Amendment or make immaterial amendments that do not change the total agreement amount, do not extend the term of the agreement, or change any other substantive terms of the BSCC Grant Agreement and subject to the Board's ability to rescind this delegated authority at any time; and
- E. Adopt a Resolution (Attachment D) amending the Salary Resolution to allocate three (3) additional full-time (1.0 FTE) positions to the Office of the Public Defender, effective July 24, 2023; and
- F. Determine that the above actions are government fiscal activities or funding mechanisms which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment, and are therefore not a project under the California Environmental Quality Act (CEQA) pursuant to Section 15378(b)(4) of the CEQA guidelines.

Summary Text:

The above referenced item is on the agenda to request approval of the recommended actions authorizing the Office of the Public Defender (OPD) to sign an agreement with the BSCC accepting \$1,122,341 grant funds. The recommended action would also authorize the OPD to execute subsequent reports or immaterial amendments to the BSCC PDPP Grant Agreement that do not change the amount or substantive terms of the PDPP Grant Agreement.

The OPD has designed a project that will begin to address decades of racial injustices from the tough-on-crime era that left communities of color devastated. Continuing to meet ever-expanding Constitutional and Ethical duties will require the creation of a Post-Conviction/Reentry unit comprised of two FTE Deputy Public Defenders (DPD) and one FTE Legal Office Professional (LOP). Increasing data capacity and integrating post-conviction data into our case management system will be central as we look to reshape the way our office collects, stores, and shares post-conviction data. Our path forward as an organization will integrate data into our daily practice. This practice will only enhance the heart of public defense, which at its core is about the art of protecting human rights and ensuring justice.

Specialization in post-conviction relief cases will result in a more efficient and effective litigation of these rights. A speedy analysis of an individual's case will also result in unnecessary transports from California Department of Corrections and Rehabilitation (CDCR) to county jail. The Sheriff's Office is required to house those CDCR inmates who seek relief and who are transported from CDCR to await their hearing. The longer the delay in resolving the matter, the longer the Sheriff's Office must house a state prisoner. A dedicated team including an attorney and other specialized team members will thoroughly research, digest and understand the law; create pleadings and workflows that will eliminate duplicative work, and litigate cases to their conclusion in an efficient and expeditious manner.

Background:

The Budget Act of 2021 (Senate Bill 129) established the PDPP. PDPP funds must be utilized for indigent defense providers, including public defenders, alternate defenders, and other qualifying entities that provide indigent defense in criminal matters for the purposes of workload associated with the provisions

in paragraph (1) of subdivision (d) of Section 1170 of, and Sections 1170.95, 1473.7, and 3051 of, the Penal Code.

The Budget Act appropriated \$50,000,000 for the PDPP of which \$49,500,000 is available for California counties and \$500,000 is available for administrative costs and for an independent evaluation. The BSCC calculated the amount of funding each county is eligible to receive for FY 2021-22 by dividing \$49,500,000 by the county's share of the total adult population using the 2021 projected population figures from the Department of Finance. Pursuant to the Budget Act, county funding allocations are determined by the total adult population. The OPD was eligible for \$563,624 of program funding in Year 1. In support of these efforts, the Public Defender developed a Project Work Plan that identifies measurable project goals, objectives, and commensurate timelines.

Penal Code (PC) sections 1170(d)(1), 1170.95, 1473.7, and 3051 are all examples of recent legislative changes affecting the needs of Public Defense. The complexity of these laws and the litigation challenges posed are novel and require specialization. For example, SB 1437 allows people who are serving lifetime prison terms for murders they did not personally commit, and/or under circumstances where they did not intend a murder to occur, to seek resentencing and release from prison. California murder law is complex and these petitions require a great deal of legal research, case review, and brief writing. The case review requires piecing together the facts of an event that may have occurred years or even decades ago. The time required to provide effective representation is extensive and the stakes are high.

Pursuant to the Budget Act, county funding allocations are determined by the total adult population. The BSCC calculated the amount of funding each county is eligible to receive for FY 2021-22 by dividing \$49,500,000 by the county's share of the total adult population using the 2021 projected population figures from the Department of Finance.

Post-Conviction/Reentry Unit

Recent legislative changes impacting sentencing laws that apply retroactively have increased the need for the creation of a Post-Conviction/Reentry Unit. This grant will provide funding to add one (1) full-time DPD IV, one (1) full-time DPD III, and one (1) LOP Senior for all three years of the grant.

The Post-Conviction/Reentry Unit will collaborate with the Department's IT/Data staffing to integrate data and client needs into our case management system, enhance data and reporting as it relates to PC sections 1170 (d)(1), 1170.95, 1473.7, and 3051, and track outcomes to improve client-centered representation within our system for these clients. To support the administrative side of the grant, hours to engage with the quarterly progress reports and invoice submittal by the Assistant Public Defender and Chief Financial and Administrative Officer will be set aside. Funding is also set aside for minimal operating costs like cell phones and computers.

The work of the Post-Conviction/Reentry Unit continues to mount, and it is anticipated that, with the retroactive application of the Racial Justice Act, it will continue to grow in the upcoming fiscal years. This grant funds the Post-Conviction Unit, allowing for a team-based model for effective organization, communication, and litigation.

Performance Measure:

The OPD will be required to report data and outcomes to the BSCC on the identified, measurable goals and objectives listed below:

(1) Goal:	Provide excellent representation in post-conviction cases.
Objectives	<p>A. Establish a functioning Post-Conviction/Reentry Unit to specialize in post-conviction work specifically on PC 1170(d)(1), 1170.95, 1473.7, and 3051 cases to conduct legal research, create templates, and establish workflows.</p> <p>B. Provide communication with, representation to, and litigation for both incarcerated and formerly incarcerated clients seeking post-conviction resentencing relief.</p>

(2) Goal:	Ensure data-driven decision making in staffing and resourcing post-conviction needs
Objectives	<p>A. Assist with the data collection and analysis of PC 1170(d)(1), 1170.95, 1473.7, and 3051 cases.</p> <p>B. Assist with data collection and analysis to support data-driven decision-making and staff re-allocation with PC 1170(d)(1), 1170.95, 1473.7, and 3051 cases.</p>

(3) Goal:	Increase data capacity of content management system to track post-conviction related data specific to this grant.
Objectives	<p>A. Add data fields into the content management system (eDefender) to track case information in regards to PC 1170(d)(1), 1170.95, 1473.7, and 3051 cases.</p> <p>B. Set up automation and workload assistance in the content management system (eDefender) with PC 1170(d)(1), 1170.95, 1473.7, and 3051 cases.</p>

Fiscal and Facilities Impacts:

Budgeted: No.

Fiscal Analysis:

	Year 1	Year 2	Two Year Total
Budget Line Item			
1. Salaries and Benefits	\$555,223	\$558,717	\$1,113,940
2. Services and Supplies	\$0	\$0	\$0
3. Professional Services or Public Agency Subcontracts	\$0	\$0	\$0
4. Non-Governmental Organizational (NGO) Contracts	\$0	\$0	\$0
5. Equipment/Fixed Assets	\$8,400	\$0	\$8,400
6. Other (Travel, Training, etc.)	\$0	\$0	\$0
7. Indirect Costs	\$0	\$0	\$0
TOTAL	\$563,624	\$558,717	\$1,122,341

Salary and Benefits costs include:

- Deputy Public Defender IV - One FTE Deputy Public Defender IV. Three-year funding, annual salary including benefits will be \$234,200
- Deputy Public Defender III - One FTE Deputy Public Defender III. Two-year funding, annual salary including benefits will be \$200,623
- Legal Office Professional Sr. - One FTE LOP Sr. Three-year funding, annual salary including benefits will be \$117,100.
- Data Analyst – One Department Business Specialist I. One-year funding, annual salary for extra-help will be \$64,000.
- (eDefender) consultant – Extra-Help Computer System Specialist I. Two-year funding for part-time employee, annual salary including benefits will be \$35,217.
- FTE positions to see yearly increases as well.

Services and Supplies totaling \$8,400 to provide cell phones and computers for grant staff.

Entire funding of \$563,624 will not be spent in year 1, with \$292,713 going towards funding needed in year 2 and 3. The grant project period is from March 1, 2022 to Jan 1, 2025. Grantees will be required to submit final progress reports and any final data required for the statewide evaluation by March 1, 2025. Any unspent allocation from year 1 of the grant can be rolled over to subsequent years as long as funds are encumbered by January 1, 2025.

Upon completion of the grant, the Department plans to absorb the needed FTE positions via attrition over the subsequent 26 months or seek other sources of funding outside of the General Fund. Certain work done within the grant is limited in scope and will not need additional funding upon the grant completion.

Key Contract Risks:

This grant agreement is valid through Public Defense Pilot Program funding generated from the General Fund. The Public Defender (“Grantee”) agrees that the BSCC’s obligation to pay any sum to the Grantee under any provision of this agreement is contingent upon the availability of sufficient funding granted through the passage of the Budget Act of 2021 (Senate Bill 129). It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Grant Agreement does not appropriate sufficient funds for the program, this Grant Agreement shall be of no further force and effect. In this event, the BSCC shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Grant Agreement.

Staffing Impacts:

<u>Legal Positions:</u>	<u>FTEs:</u>
3	3

Personnel will be established creating three new legal positions: 1.0 FTE DPD IV, 1.0 FTE DPD III, 1.0 LOP Sr.

Special Instructions:

Please return one (1) Minute Order to Deepak Budwani at dbudwani@countyofsb.org.

Attachments:

Public Defense Pilot Program BL FY 23-24

Attachment A: Board Resolution to accept the BSCC award

Attachment B: BSCC Grant Agreement, Public Defense Pilot Program Grant Agreement BSCC-343-21

Attachment C: BSCC Grant Agreement Amendment, Public Defense Pilot Program Grant Agreement BSCC-343-21

Attachment D: Salary Resolution

Authored by:

D. Budwani, Chief Financial and Administrative Officer, Public Defender's Office