SANTA BARBARA COUNTY
BOARD AGENDA LETTER

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

Agenda Number:	
Prepared on:	6/9/05
Department Name:	Public Defender
Department No.:	023
Agenda Date:	6/21/05
Placement:	Administrative
Estimate Time:	NA
Continued Item:	NO
If Yes, date from:	

TO: Board of Supervisors

FROM: James S. Egar
                 Public Defender

**STAFF
CONTACT:**   Carol Wilson
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SUBJECT: Budget Revision Request for Case Expenditures

Recommendation:

That the Board of Supervisors approve a Budget Revision Request of $265,000 to cover costs of services in capital cases; $200,000 from General Fund contingency and $65,000 from unanticipated Proposition 172 revenue.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 1. An Efficient Government Able to Respond Effectively to the Needs of the Community.

Executive Summary and Discussion:

The Law Office of the Public Defender represents persons accused of capital homicides. However, the Office does not budget for these extraordinary cases. During the last five years the Public Defender has represented as many as five capital defendants simultaneously while at other times there have been none. By agreement with the County, the Public Defender maintains $50,000 for capital case expenditures. It cannot be predicted whether a capital case will be assigned to the Office so this amount is designated so that representation can begin as soon as the Court makes the assignment. It is, and always has been the understanding of all concerned parties that the remainder of the expense will be paid from the County General Fund, as mandated by California Penal Code §987.2(a) and (d) cited below.

> **(a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum**

for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county; . . .
(d) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants.

When the Public Defender is assigned to represent a potential capital defendant, it petitions the court to approve expenditures for necessary experts and investigations. (Such petitions are filed under seal and are confidential and privileged.) The petition must establish to the Court's satisfaction that the requested funds are reasonably necessary for the preparation and presentation of the defense. (Penal Code §987.9(a))

Due to the complexity and seriousness of capital cases, they require significantly more resources for both guilt phase and potential penalty phase litigation. In addition, due to limited Public Defender staff, the Court can and almost always does appoint second (Keenan) counsel as directed by Penal Code §987(d). (Such applications are filed under seal and are confidential and privileged.)

Mandates and Service Levels:

The right to counsel comes from the Sixth Amendment to the United States Constitution: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district have been previously ascertained by law, and found to be informed of the nature and cause of the accusation, to be confronted with the witnesses; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The State continues to mandate indigent defendant rights in Government Code §27706, Duties of the Public Defender, stating "The Public Defender shall perform the following duties:

(a) **Upon request of the defendant or upon order of the court, the public defender shall defend, without expense to the defendant, . . . any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior courts at all stages of the proceedings including the preliminary examination. The public defender shall, upon request, give counsel and advice to such person about any charge against the person upon which the public defender is conducting the defense, . . ."**

California Penal Code §686.1 (Capital cases, representation by counsel at all stages of preliminary and trial proceedings) further breaks down indigent rights in a capital case by stating:

Notwithstanding any other provision of law, the defendant in a capital case shall be represented in court by counsel at all stages of the preliminary and trial proceedings.

In addition, California Penal Code §987, Right to counsel: assignment and duties of counsel; financial statement; co-counsel states:

(b) In a capital case, if the defendant appears for arraignment without counsel, the court shall inform him or her that he or she shall be represented by counsel at all stages of the preliminary and trial proceedings and that the representation is at his or her expense if he or she is able to

employ counsel or at public expense if he or she is unable to employ counsel, . . . if the defendant is unable to employ counsel, the court shall assign counsel to defend him or her.

Fiscal and Facilities Impacts:

The Public Defender currently represents one or more persons charged with offenses for which they may face execution. Current expenditures exceed the $50,000 set aside by $71,000. An additional $194,000 is owed or projected due to various vendors, experts, counsel and witnesses as provided by statute. These costs total $265,000.

Fiscal impacts to the General Fund include a transfer of $200,000 from contingency and $65,000 from unanticipated Proposition 172 Public Safety Sales Tax revenues. There are no facilities impacts.

Attachments:

Budget Revision Request
Budget Journal Entry
Journal Entry