

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



950

FROM: Executive Office

SUBMITTAL DATE:
February 17, 2010

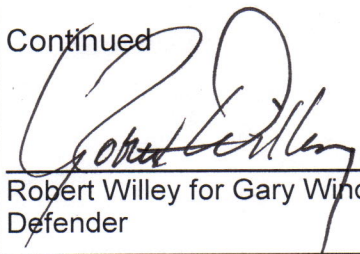
SUBJECT: Alternate Public Defender for Death Penalty Cases

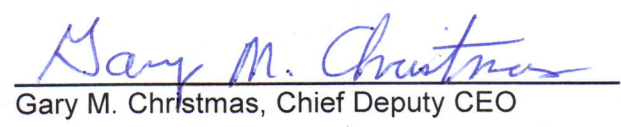
RECOMMENDED MOTION: That the Board of Supervisors approve in concept adding an Alternate Public Defender (ADP) Office to handle death penalty cases when the Public Defender declares a conflict and commit funding based upon a budget to be submitted for FY 2010/11.

BACKGROUND: Cases will arise where the Public Defender has an ethical conflict of interest and is prohibited by law from representing an individual facing the death penalty. The Public Defender can only represent one person in death penalty cases with multiple defendants since each person charged with a crime is entitled to have a lawyer devoted to protecting each individual's interests in the case. The defendant with the most serious charges is the case commonly handled by the public defender. If the other person or persons charged with the same crime are indigent, the court must appoint other counsel to represent them. Currently the county handles this situation by having the court appoint private counsel.

Departmental Concurrence

Continued

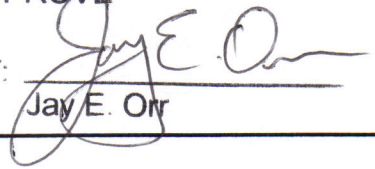

Robert Willey for Gary Windom, Public Defender


Gary M. Christmas, Chief Deputy CEO

FINANCIAL DATA	Current F.Y. Total Cost:	\$0	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$0	Budget Adjustment:	No
	Annual Net County Cost: (estimated)	\$3,500,000	For Fiscal Year:	2010/11

SOURCE OF FUNDS: General Fund	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: Approve APPROVE

BY: 
Jay E. Orr

County Executive Office Signature

- Policy
- Policy
- Consent
- Consent

Dept's Recomm.:
Per Exec. Ofc.:

Background continued:

When the conflict panels reach contract capacity, generally three death penalty cases, the court must appoint outside counsel.

The annual estimated total for an APD is \$3.5 million, which includes all personnel, space and related costs. Funds would be added to the FY 10/11 budget and the Indigent Defense budget, which provides private counsel, would be reduced accordingly. In its first year of operation the APD is estimated to save the County \$1.2 million. Savings would come from a variety of sources. Six experienced attorneys would move from the Public Defender's Office and take current capital cases and others with them. The Public Defender would then backfill with entry level attorneys and phase in that hiring over six months; the initial savings in salaries and benefits would be approximately \$900,000. Since 2008, Riverside County has committed \$3.9 million toward the defense of 20 individuals charged with death. Of this amount, \$2.9 million is for appointed outside counsel. Not all cases have been resolved; pending payments could increase this amount. The County has also paid more than \$1 million for investigation, expert witnesses and mitigation since 2008. Once the ADP is in place, the conflict panels take the third position for case assignment and previously appointed cases are resolved, it is unlikely the County will need to hire beyond the conflict panels. Presently the average fees paid to private counsel for legal services exceeds \$200,000 per case; the salary and benefits for attorney staff to provide the same legal services with a funded capacity of eight new cases per year is less than \$170,000 per case for an annual savings of \$250,000. Finally, the current costs for investigation and expert witnesses are provided for hired counsel through the Confidential Fund (Penal Code § 987.9) funded by the County and administered by the Court. Necessary mitigation experts are also provided through this fund for hired counsel. At the end of the first quarter the Board added \$450,000 to the Confidential Fund, more than doubling the initial FY 09/10 \$430,000 appropriation. The Executive Office anticipates that the fund will need to be increased during the third quarter since 74% of the funds have already been spent. The proposed APD cost includes all investigation, mitigation and expert witness costs. Conservatively this would save at least \$100,000 in the first year alone. Over time the Confidential Fund will be returned to its pre FY 2009/10 level, \$250,000, a savings of \$750,000.

San Diego and Los Angeles counties determined that the system of appointed outside counsel, recommended by the conflict panel, is not always in the best interest of the county. In the long term it is not cost effective and it also raises questions of liability in the process of selecting counsel. San Diego created an APD Office in 1990, Los Angeles followed suit in 1998.

During the 2009 budget hearings the Board directed the Executive Office to evaluate the feasibility and potential costs of replacing the conflict defense panels with an APD. In late June (3.10 of 6/23/09) the Executive Office reported and recommended that the Public Defender submit a bid proposal when criminal and juvenile indigent defense contracts were again bid out. Bidding occurred during the fall of 2009 and the Public Defender submitted a cost proposal for an APD.

Background continued:

After reviewing the costs of criminal defense for death penalty cases handled by the Public Defender, by the conflict panels and by counsel hired to represent individuals who required counsel after such time as the Public Defender and the conflict panels had reached capacity, the Executive Office has determined that an APD for death penalty cases is a viable option. The cost of the APD handling the cases is likely to be less over the long run than either the conflict panel or appointed counsel.

Currently 57 individuals are facing the death penalty in cases where they are alleged to have committed murder with special circumstances. It is estimated that during any given year an additional 15-20 individuals will also be charged in death penalty cases. Cases with multiple defendants are no longer the exception and while they are not the norm, they are more frequent than they were in the past. As a result, several attorneys will be needed to provide a proper defense.

The Public Defender can handle up to a maximum of 10 new death penalty cases each year with a current cap of 20 death penalty cases open at any one time. Each of the conflict panels is limited to three (3) death penalty cases each year. If there are more than 16 defendants facing the death penalty in a given year, those cases are currently handled by private attorneys working via a letter of agreement. Therefore the Executive Office, working with the conflict panels hires counsel for indigents charged with death--a function better provided by criminal defense attorneys. An APD could handle up to eight (8) new death penalty cases with a cap of 16 death penalty cases open at any one time and would be the first avenue when the Public Defender declares a conflict.

Capital cases where the District Attorney has announced the intent to seek the death penalty are very resource intensive cases. A study released by the Federal courts in June 2008 of death penalty cases filed in federal jurisdiction showed that the average death penalty case required 3,500 hours of attorney time through jury trial on the penalty phase of the case. Minimum standards require assigning two attorneys to each case. Each case is also required to have an investigator as well as a person trained in discovering and developing the mitigation case. Rather than routinely using outside investigators and mitigation experts, having appropriately trained people in-house is most cost effective. This was one of the conclusions of the above-mentioned Federal study as well.

Death penalty cases frequently take years to come to trial. One recent case was tried seven years following the victim's death. Although mitigating circumstances can occur, having counsel prepared for trial tends to limit continuances and trailing trials lessen clogging in the court system. The Public Defender has implemented a system to move death penalty cases forward and to reduce the likelihood of such cases trailing because counsel is not ready to proceed; this same advantage would occur with an ADP. This will result in indirect but real savings to the criminal justice system as a whole, including the courts and the Sheriff's Department. The Sheriff's Corrections budget will benefit by reducing the length of time these individuals are in custody awaiting trial. These savings

Background continued:

will be ongoing and in addition to the savings previously mentioned. Finally, the ongoing costs of private counsel for existing cases will decrease as those old cases move through the system.

An APD also increases the integrity of the criminal defense system by ensuring that all counsel are supervised, trained and maintain the highest professional ethics. The top supervisory personnel are focused on the quality of the counsel provided to all indigent defendants as well as ensuring that costs are reasonable for the taxpayers. Private counsel also provide excellent criminal defense but within the scope of continuing a private practice.

The Public Defender would have the Board's approval to work with Human Resources and begin the hiring process to ensure that on July 1 the APD would be fully functional.