

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



ITEM: 3.40
(ID # 20532)

MEETING DATE:
Tuesday, November 29, 2022

FROM : PUBLIC DEFENDER:

SUBJECT: PUBLIC DEFENDER: Approval to Amend Salary Ordinance No. 440 pursuant to Resolution No. 440-9313 submitted herewith and a Budget Adjustment for the Creation of the Resentencing Unit for Management of SB483 Caseload. All Districts. [\$2,168,129 Ongoing cost; 100% General Fund Contingency] (4/5 Vote Required)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Amend Salary Ordinance No. 440 pursuant to Resolution No. 440-9313 submitted herewith approving the addition of Seven (7) Deputy Public Defender IV positions and three (3) Paralegal II positions, and
2. Approve and direct the Auditor-Controller to make the budget adjustments shown on Schedule A.

ACTION:


Steven Harmon, Public Defender 11/17/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended and that Resolution 440-9313 is adopted as recommended.

Ayes: Jeffries, Spiegel, Washington, Hewitt, and Perez
Nays: None
Absent: None
Date: November 29, 2022
xc: HR, Public Defender

Kecia R. Harper
Clerk of the Board

By: 
Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 1,084,065	\$ 2,168,129		\$ 2,168,129
NET COUNTY COST	\$ 1,084,065	\$ 2,168,129		\$ 2,168,129
SOURCE OF FUNDS: 100% General Fund Contingency			Budget Adjustment:	Yes
			For Fiscal Year:	22/23

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

The California Legislature passed Senate Bill 483, which went into effect on January 1, 2022, requiring resentencing of all incarcerated people who have a prison prior or drug prior on their case, as those priors are no longer legally valid.

In June 2022, SB 483 was codified in Penal Code 1171.1 and Penal Code 1171 before they were moved to PC 1172.7 and PC 1172.75. SB 483 set requirements for resentencing, which now include the following:

- The resentencing will result in a lesser sentence,
- The Judge is required to apply all Judicial Council standards and all new law changes,
- Post-conviction factors may be considered, including the person’s record of rehabilitation in prison, whether the age, medical condition, or time served have reduced the likelihood of future violence, and any other changes since the original sentence.

On July 1, 2022, the California Department of Corrections and Rehabilitation sent us a list of incarcerated people who are eligible for resentencing pursuant to SB 483. This list of people who are required to be resentedenced is 740 cases long. These matters must be resentedenced by December 31, 2023. These resentencing cases are not a simple task for the defense, since the new laws that apply at resentencing include not only SB 483, but also all other changes in the law since the original sentence. Those recent criminal sentencing changes include (but are not limited to):

- Senate Bill 567 overhauls the triad (upper-term, mid-term, low-term) determinate sentencing framework, requires proof beyond a reasonable doubt finding before the use of the upper-term sentence and requires the imposition of the low-term for youth offenders (under 26) and others. PC 1170, 1171.
- Senate Bill 81 encourages courts to dismiss enhancements in the interests of justice and sets several standards for evaluating what would be “in the interests of justice.” PC 1385. For example, defense counsel to allowed to present to the Judge whether the current offense if connected to mental illness and whether the current offense is connected to prior victimization or childhood trauma.

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- Senate Bill 518 modified Penal Code 654 to no longer require the longest term of imprisonment; any term can now be chosen. PC 654 is the law that prohibits two or more punishments for the same criminal act.
- Assembly Bill 333 changed the proof requirements in gang enhancement cases, opening the possibility for retrial or required dismissal. PC 186.22 et seq., see People v. Salgado (G060656 (Super. Ct. No. 99NF0291) Gang enhancements must be reconsidered as new law makes the definitions narrower, harder to prove. A new trial may be necessary.
- Assembly Bill 124 requires mitigation consideration for defendants who were human trafficking survivors, domestic violence survivors, etc. PC 236.15, PC 236.23, PC 236.24, PC 1016.7.
- Senate Bill 1393 allows the Judge to use discretion in striking of previously mandatory 5-year prior enhancements.
- Senate Bill 620 allows the Judge to use discretion in striking previously mandatory gun enhancements.
- If the client was under 18 at the time of the offense, they must be remanded to juvenile court for a new transfer hearing under the new transfer hearing laws. People v. Garcia (2018) 30 Cal. App. 5th 316, and People v. Montes (2021) 70 Cal. App. 5th 35.
- Senate Bill 73 expands the Judge's discretion to grant probation in drug cases. PC 1203.07, 1203.073, H&S 11370.
- Assembly Bill 177 eliminated 17 costs and fees on criminal cases and made any remaining fees unenforceable. Penal Code 1465.9, VC 42240.

SB 483 / PC 1172.7 and 1172.75 require the following duties on the defense counsel to be adequately prepared for resentencing.

- Study the record of conviction so that all new law changes are found and requested to be applied in favor of a lower sentence.
- Review the classification file of the incarcerated people to locate all positive notes from CDCR, including education, work progress, and medical condition. This data is needed to persuade the Judge to choose a lesser sentence. Most classification records are 1000s of pages.
- Research whether youthful offenders committed their crimes due to their youthfulness or was the youthfulness a factor in the crime. This would likely require investigation and experts re: youthful mental maturity levels of clients at the time of the offense.
- Franklin hearings for youthful offenders must be held. PC 1203.01.
- Veteran's Resentencing hearing for veterans must be held. PC 1170.91.
- PC 1172.6 resentencing on murder or manslaughter cases where the client was not the actual killer.
- Investigate Racial Justice Act claims if racial issues potentially tainted law enforcement investigation or prosecution.
- Watch for PC 1473.7 immigration advisal issues, which could lead to the vacatur of the original plea.

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- Motions re: three strikes sentences and whether the changes in the three strikes law requiring super strikes change the resentencing options.
- Request and complete a new trial on any gang allegations.

Out of the 740 cases, 288 cases are conflict cases. That leaves us with 452 cases to distribute, and we cannot handle these cases by the statutory deadline of December 31, 2023. Due to the tsunami of backlog of cases, our current attorneys are already handling caseloads that are double or triple the pre-COVID caseloads. These attorneys are unable to complete these resentencing cases along with their trials within the statutory deadline of December 31, 2023.

As such, we need additional attorneys and paralegals for this resentencing task, who would be assigned exclusively to handle these cases. We request 7 new attorney positions and 3 new paralegal positions to be dedicated to this new unit. Our Writs and Appeals unit is working on the first 75 Public Defender cases that needed immediate assistance due to their earlier release dates. The remainder, 377 cases, would be assigned to the new attorneys, resulting in 50 + cases per new attorney. We believe this is the only responsible way to properly represent these clients within the time designated by the legislature.

Impact on Residents and Businesses

There is no impact on residents and businesses.

SCHEDULE A. BUDGET ADJUSTMENT

Increase Appropriations:	
10000-2400100000-510040 Regular Salaries	\$650,439
10000-2400100000-518100 Budgeted Benefits	\$433,626
Anticipated use of Unassigned Fund Balance:	
10000-2400100000-370100 Unassigned Fund Balance	\$1,084,065
Decrease Appropriations:	
10000-1109000000-581000 Appropriations for Contingencies	\$1,084,065
Anticipated Increase of Unassigned Fund Balance:	
10000-1109000000-370100 Unassigned Fund Balance	\$1,084,065

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ATTACHMENT A. RESOLUTION NO. 440-9313

Heydee Koury

Heydee Koury, Sr Accountant - Auditor 11/18/2022

RESOLUTION NO. 440-9313

BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California, in regular session assembled on November 29, 2022, that pursuant to Section 4(a)(ii) of Ordinance No. 440, the Public Defender is authorized to make the following listed change(s), operative on the date of approval, as follows:

<u>Job Code</u>	<u>+/-</u>	<u>Department ID</u>	<u>Class Title</u>
78554	+ 7	2400100000	Deputy Public Defender IV
78506	+ 3	2400100000	Paralegal II

ROLL CALL:

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.

KECIA R. HARPER, Clerk of said Board

By: 
Deputy

11.29.2022 3.40

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