

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT District Attorney	(2) MEETING DATE 3/24/2015	(3) CONTACT/PHONE Dan Dow, District Attorney 781-5800	
(4) SUBJECT Request to authorize the District Attorney to sign a five year sole-source agreement (Clerk's File) with Pacific Educational Services (PES), Inc., to implement a pre-prosecution misdemeanor diversion program effective April 1, 2015, and approve a corresponding amendment to the Position Allocation List (PAL) to add a 1.00 FTE Legal Clerk position in FC 132 - District Attorney. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board of Supervisors <ol style="list-style-type: none"> 1. Authorize the District Attorney to sign a five year agreement with Pacific Educational Services (PES), Inc., to implement a pre-prosecution misdemeanor diversion program effective April 1, 2015, and 2. Approve a corresponding amendment to the Position Allocation List in FC 132 - District Attorney, to add a 1.00 FTE Legal Clerk Position. 			
(6) FUNDING SOURCE(S) Fees collected by vendor	(7) CURRENT YEAR FINANCIAL IMPACT \$11,683 expense, April-June 2015	(8) ANNUAL FINANCIAL IMPACT \$70,100 expense	(9) BUDGETED? No
(10) AGENDA PLACEMENT { } Consent { X } Presentation { } Hearing (Time Est. ___) { X } Board Business (Time Est. <u>20 mins.</u>)			
(11) EXECUTED DOCUMENTS { } Resolutions { X } Contracts { } Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5 Vote Required { X } N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { X } N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW Geoff O'Quest, Administrative Analyst			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: District Attorney / Dan Dow, District Attorney
781-5800

DATE: 3/24/2015

SUBJECT: Request to authorize the District Attorney to sign a five year sole-source agreement (Clerk's File) with Pacific Educational Services (PES), Inc., to implement a pre-prosecution misdemeanor diversion program effective April 1, 2015, and approve a corresponding amendment to the Position Allocation List (PAL) to add a 1.00 FTE Legal Clerk position in FC 132 - District Attorney. All Districts.

RECOMMENDATION

It is recommended that the Board of Supervisors

1. Authorize the District Attorney to sign a five year agreement with Pacific Educational Services (PES), Inc., to implement a pre-prosecution misdemeanor diversion program effective April 1, 2015, and
2. Approve a corresponding amendment to the Position Allocation List in FC 132 - District Attorney, to add a 1.00 FTE Legal Clerk Position.

DISCUSSION

Significant changes in the criminal justice system have occurred in the state of California since 2011 with the passage of AB 109, known as Criminal Justice Realignment, and with the 2014 passage of Proposition 47. By shifting a significant number of felons from incarceration in state prison to incarceration in county jails, AB109 has increased crowding in our county jail. In addition, AB109 shifted a portion of felony offenders from post-incarceration supervision by state parole to supervision by County Probation, thus AB109 has kept more offenders in the local courts as the courts are now processing violations of the terms of these supervision grants. Proposition 47 reclassified as misdemeanors the majority of non-serious and non-violent drug possession and theft offenses formerly filed as felonies. This will cause an increase in the number of misdemeanor cases. At the same time, the jail has limited space for low level misdemeanor offenders.

These changes reflect a trend in criminal justice which includes prevention of recidivism by providing meaningful education, treatment, and rehabilitation to appropriate offenders. As a whole, the criminal justice system is taking a hard look at itself and re-evaluating alternatives to the traditional incarceration system.

The District Attorney's proposed Misdemeanor Diversion Program offers the opportunity to better allocate county resources while aiming to reduce recidivism among low level offenders by providing offense-specific education which emphasizes accountability, in lieu of traditional prosecution.

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 criminal charges. 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 California including: Orange County; Santa Barbara County; Riverside County; Stanislaus County; Sacramento County; Merced County; Yolo County; Lake County; Nevada County; Calaveras County; Napa County; El Dorado County; Placer County; Sonoma County; Contra Costa County; Madera County; Sutter County; and San Joaquin County.

For over a year, the San Luis Obispo County District Attorney's Office has been actively engaged in the process of investigating and creating a general misdemeanor diversion program for San Luis Obispo County. We have met with providers of treatment programs. We have observed the Pacific Educational Services (PES) program in the classroom. We discussed the proposal with local stakeholders including the Court, Probation Department, Public Defender, law enforcement agencies, and with members of the local county legal community.

Fresno County recently ran a competitive selection process for their Post-Plea Diversion Program and selected PES as the unique vendor to provide these services. We have negotiated a proposed agreement between PES, the state leader in misdemeanor diversion programs, in order to provide program services to diversion candidates. Our proposal would provide a comprehensive Misdemeanor Diversion Program for San Luis Obispo County that will save time and resources for the District Attorney while benefitting our criminal justice partners, and at the same time will provide education aimed at reducing recidivism in lieu of traditional prosecution and incarceration. The agreement does not require payment by the County to PES and is funded solely with fees paid by offenders. Given the comprehensive and broad experience of PES, our ability to observe their work and their successful operation of programs in other counties, we believe it is in the best interest of the County, District Attorney and success of the pre-prosecution misdemeanor diversion program to directly contract with PES. It is therefore requested that the Board waive any applicable policy with regard to processing a Request for Proposal for this service.

The 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 offense will be considered for diversion. After the District Attorney has determined that criminal charges can be proven, and that the offense and the offender qualify for the program, a letter will be sent to the offender offering misdemeanor diversion in lieu of criminal charges. If the offender accepts the diversion program, 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.

Such programs may deal with life skills, theft offenses, vehicular offenses, anger management, substance abuse, and victim impact. The offender will be required to pay PES \$300-\$500 for the program, depending on the number of classes required for the offense. Included in the total collected by PES is \$100 that will be remitted to the District Attorney to offset costs associated with reviewing cases for eligibility and managing the program. PES will provide payment plans for offenders who cannot pay all of the fees at one time. PES will also collect victim restitution as appropriate and ensure that the victim receives the restitution.

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

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 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 specified that the "district attorney may sponsor, supervise, or participate in any project or program to improve the administration of justice."

It is estimated that this new program will be able to reduce the number of misdemeanor cases the District Attorney files countywide by approximately 1,000 cases per year—approximately 10% of the current number of misdemeanor cases filed. This reduction in low level misdemeanor cases will allow the District Attorney to redirect our resources so that our attorneys are able to focus more time and energy on our most serious cases.

Reducing the number of cases we file will result in savings in resources for the Courts, Public Defender, and conflict defense attorneys by reducing their caseload by the same number of cases diverted. Because offenders who successfully complete the program will no longer receive sentences in county jail, whether as part of the initial sentence or as a sanction for a probation violation, this program should also provide a positive impact in reducing the critical problem of jail crowding. Our office has presented the diversion program to all of our criminal justice partners including the Sheriff's Department, the SLO County Criminal Justice Administrators Association, the Superior Court Criminal Court team, and the Criminal Defense Bar. The program has been well received at every turn and has received strong support from each of the stakeholders.

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 crowding, 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 population 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.

OTHER AGENCY INVOLVEMENT/IMPACT

The District Attorney has consulted with the Court, the Sheriff, the Public Defender, and the Administrative Office. The proposed contract has been reviewed by County Purchasing and Risk Management to ensure that all requirements are met to protect the interests of the County. Finally, the proposed contract has been reviewed and approved as to form and legal effect by County Counsel.

FINANCIAL CONSIDERATIONS

The Misdemeanor Diversion will result in an estimated 1,000 fewer cases being filed in Court. However, our attorneys and legal clerk staff will be required to review and process approximately 5,000 to 7,000 cases to determine eligibility, process the files, refer to PES, and data entry/collection. The salary cost associated with this process is estimated to be approximately \$100 per case, or \$100,000 per year based on a projected 1,000 eligible cases per year. This amount was calculated by estimating that each diverted case will require one half hour of work for a Deputy District Attorney, one hour for a Legal Clerk, and 5% of an hour for a Chief Deputy District Attorney. Each participant will pay a \$100 administrative fee directly to PES who will then remit the collected administrative fees to the District Attorney. Assuming 100% successful completion rate, this will result in an estimated \$100,000 of revenue to offset the administrative costs for these diverted cases. Assuming a 75% successful completion rate, this will result in \$75,000 revenue in the first year. If more cases are eligible for diversion, then actual revenue will be higher.

The District Attorney's office is requesting the addition of a 1.00 FTE Legal Clerk position to the District Attorney Position Allocation List in order to support the additional administrative requirements set forth above. The salary and benefits cost for this position is \$70,100 for a full year. The estimated first year revenue from the Diversion Program of \$75,000 will more than offset this additional cost. Revenue of \$18,750 is expected in the current fiscal year (April – June) and

increased expense for the Legal Clerk position is projected to be \$11,683 (May – June).

PES will not charge the County for its services, but instead will charge participants directly \$300 for a six hour class and \$500 for a 12 hour class. It is estimated that PES will realize approximately \$400,000 in revenue per year based on the assumption of 1,000 cases being successfully diverted.

RESULTS

750 misdemeanor diversion participants are expected to successfully complete diversion in the first year. PES reviewed San Luis Obispo County misdemeanor case filing statistics as collected and reported by the Superior Court for 2012 and compared the statistics to current diversion programs in Santa Barbara County and Riverside County. PES then estimated a possible 3,000 cases could be diverted in San Luis Obispo County. After reviewing the data provided by PES, the District Attorney adopted a more conservative approach to estimate the actual impact on our County. Consequently, we estimate approximately 1,000 cases will be eligible for diversion in our first year. PES states that the successful completion rate in similar counties is approximately 75%. Therefore, it is anticipated that approximately 750 cases will successfully complete our diversion program in the first year.

While our local misdemeanor recidivism rate is difficult to capture today due to recent transition from an old mainframe computer system to a new case management system, it is anticipated that we will see similar reductions in recidivism as were realized in Orange County during a study conducted in 2010 and 2011. The Orange County District Attorney's office reported a misdemeanor repeat offender rate of 22% prior to implementing PES misdemeanor diversion and reported a misdemeanor repeat offender rate of 6% after completion of PES misdemeanor diversion program. Therefore, we expect to reduce recidivism by a similar margin.

The District Attorney's office will utilize our new case management system to collect and track the data of how many participants are referred each year, the number who successfully complete the program, and the number who are referred for a new criminal offense. Using this data, we will be able to continually review the success of our diversion program.

As a result of the Misdemeanor Diversion Program, criminal justice resources will be better allocated, and low level non-recidivist offenders will be given the opportunity for meaningful rehabilitative programs and will be diverted from the traditional criminal justice system, allowing them to continue to be productive members of society.

ATTACHMENTS

1. Attachment 1 - Clerk's Filed Contract
2. Attachment 2 - Position Allocation List (PAL) Amendment Resolution