

(1) DEPARTMENT Administrative Office	(2) MEETING DATE 6/21/2016	(3) CONTACT/PHONE Geoff O'Quest 781-5011	
(4) SUBJECT Request to approve four renewal agreements (Clerk's File) with private attorneys San Luis Obispo Defenders (formerly Maguire and Ashbaugh) in the amount of \$4,095,757, J. Barry Schiavo in the amount of \$695,835, and Jere Sullivan in the amount of \$348,815 for the provision of public defender services, and with Adams and Lucero in the amount of \$280,017 for contract legal representation related to mentally disordered offenders. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board: 1) Approve the renewal agreements with San Luis Obispo Defenders, J. Barry, and Jere Sullivan for the provision of public defender services, and 2) Approve the renewal agreement with Adams and Lucero for contract legal representation related to mentally disordered offenders.			
(6) FUNDING SOURCE(S) General Fund State Reimbursements Cost recovery fees	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT \$5,420,424	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ___) <input type="checkbox"/> Board Business (Time Est. ___)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input checked="" type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A    Date: <u>June 22, 2010, item A-2</u>	
(17) ADMINISTRATIVE OFFICE REVIEW This item was prepared by the Administrative Office.			
(18) SUPERVISOR DISTRICT(S) All Districts			

## County of San Luis Obispo



TO: Board of Supervisors

FROM: Administrative Office / Geoff O'Quest / 805-781-5011

DATE: 6/21/2016

SUBJECT: Request to approve four renewal agreements (Clerk's File) with private attorneys San Luis Obispo Defenders (formerly Maguire and Ashbaugh) in the amount of \$4,095,757, J. Barry Schiavo in the amount of \$695,835, and Jere Sullivan in the amount of \$348,815 for the provision of public defender services, and with Adams and Lucero in the amount of \$280,017 for contract legal representation related to mentally disordered offenders. All Districts.

### **RECOMMENDATION**

It is recommended that the Board:

- 1) Approve the renewal agreements with San Luis Obispo Defenders, J. Barry, and Jere Sullivan for the provision of Public Defender services, and
- 2) Approve the renewal agreement with Adams and Lucero for contract legal representation related to mentally disordered offenders.

### **DISCUSSION**

#### **Executive Summary**

The County's four Public Defender contracts expire at the end of June 2016. The County is required under the existing contracts to negotiate with each firm to try to renew the agreement. The County Administrative Office negotiated with all four firms and reached agreement to continue for a minimum of four years. As part of the contract renewal discussion, the Primary Public Defender firm and the Conflict Public Defender firm are each requesting additional resources, a total expenditure increase of \$269,000, based on workload and the Superior Court's reorganization in 2014.

#### **Background**

The Constitution of the State of California requires that counties provide for the legal defense of indigents accused of crimes. The County of San Luis Obispo contracts with four private attorney firms to provide these Public Defender services for an annual fixed price. The three agreements for general Public Defender services include: the Primary Public Defender, the Conflict Public Defender, and the Conflict-Conflict Public Defender.

The Primary Public Defender handles the majority of indigent defense cases appointed by the Courts. If the primary firm has a conflict and cannot represent the defendant, the Public Defender firm takes the case. If the Conflict firm has a conflict as well, the Conflict-Conflict firm represents the defendant. If this firm also has a conflict, the Court will appoint an attorney from the public defense bar, who will then invoice the County for the cost of the defense, subject to review and approval by the Court.

The County also contracts with a fourth firm to provide legal representation related to mentally disordered offenders. The indigent caseload handled under this contract mainly handles commitment hearings for patients in Atascadero State Hospital (ASH). Almost all of the work done under this contract is reimbursed by the State. The small remainder of cases are paid by the County, where the patient is from San Luis Obispo County, or by other counties with a patient committed at ASH.

All four existing agreements will expire June 30, 2016, and each contract requires the County attempt to negotiate renewal agreements with the existing contractors. The County Administrative Office has negotiated with all four firms and reached agreement to continue each agreement for a minimum of four years. The agreements may be extended for two additional years by mutual agreement with the approval of the County Administrative Officer.

The essential terms and scope of the four renewal contracts have not changed substantially from the existing agreements. However, additional resources totaling \$269,000 are recommended to be added to the agreements for the Primary Public Defender and the Conflict Public Defender beginning in FY 2016-17. These increases are based on workload growth and the Superior Court's reorganization in 2014, which had the effect of requiring more attorney time from the Public Defenders. The expenses for these additional resources were included in the FY 2016-17 Proposed Budget.

Primary Public Defender – San Luis Obispo Defenders (Formerly Maguire and Ashbaugh):

The County's Primary Public Defender services are currently provided by Maguire & Ashbaugh. Beginning in FY 2016-17, Maguire and Ashbaugh will begin doing business as San Luis Obispo (SLO) Defenders. The existing contract provides for 21 attorneys, 3 paralegals, 4.50 investigators, a social worker, and a half-time Information Technology (IT) support position. Total compensation for these resources in FY 2015-16 is \$3,795,448. The following resources are recommended to be added to the agreement with SLO Defenders beginning in FY 2016-17.

<b>Resource</b>	<b>FY 2016-17 Expense</b>
1.00 Attorney	132,000
0.50 Investigator	40,000
0.50 Paralegal	45,000
Additional IT support	9,000
<b>Total:</b>	<b>\$226,000</b>

Two factors have driven the need for additional resources to support the County's Primary Public Defender services. The first is the reorganization of the Superior Court calendar in 2014. The reorganization created two early disposition courts, one each for felonies and misdemeanors, each with its own courtroom, and with five courtrooms to hear cases. Previously the court calendar was divided alphabetically among six courtrooms. The new system requires the Public Defender to staff an additional courtroom each day. The Primary Public Defender has covered all six courtrooms with existing resources since the reorganization, but this has come at the expense of non-courtroom hours, and coverage has been especially difficult to sustain if an attorney is sick or takes vacation time.

The second factor is a relative increase in felony case hours driven by an increase in the complexity and difficulty of cases represented by the Primary Public Defender. In November 2014, voters approved Proposition 47. This new law converted many felony offenses to misdemeanors. The Primary Public Defender had expected to see the number of felony cases drop by 20-30% as a result of this change, as felony drug possession and other lower level felonies became misdemeanor offenses. Instead, however, the number of cases grew slightly. Felony cases increased 6% or 271 in the year following passage of Proposition 47, and the total number of felony case hours increased 8% or 1,618 hours.

At the same time, the number of hours per felony court appearance by Primary Public Defender attorneys grew 58%, increasing from 1.2 hours to 1.9 hours on average. This increase supports the Primary Public Defenders observation that many of the felony cases they have been representing in past two years have are more complex than in the past, including homicides, vehicular manslaughter, and sexual crimes cases. In particular, the Primary Public Defender reports prosecution of sexual assault and child molestation cases are being pursued more aggressively, resulting fewer settlements and more cases going to trial than before.

Meanwhile, the number of misdemeanor cases declined 32% in the year following passage of Proposition 47, while the number of hours per misdemeanor case grew 44%, and the number of hours per misdemeanor court appearance increased 20%. These figures point to one of the outcomes the Superior Court intended in creating the early disposition courts: to weed out cases that are not a good use of the Courts' time and focus more attention on those misdemeanor cases that need to be in Court.

Conflict Public Defender – J. Barry Schiavo

The County's contract with J. Barry Schiavo for Conflict-Conflict Public Defenders services provides for three full-time attorneys and the availability of two additional. Total compensation for these resources is currently set at \$640,034 in FY 2015-16. An additional \$43,000 for additional attorney staff time is recommended to be added to the Conflict Public Defender agreement beginning in FY 2016-17. This addition is based also on the Courts' implementation of early disposition courts, and was included in the FY 2016-17 Proposed Budget.

Conflict-Conflict Public Defender – Jere Sullivan

The County’s contract with Jere Sullivan provides for one full-time and two part-time attorneys to perform the duties of Conflict-conflict or second conflict Public Defender. Total compensation for these resources is currently set at \$341,976. No additional resources are recommended to be added to this agreement in FY 2016-17.

Mentally Disordered Offender Public Defender – Adams and Lucero

The County’s contract with Adams and Lucero for mentally disordered offender Public Defender services provides for a minimum of three full-time attorneys to provide legal representation to mentally disordered offenders in Atascadero State Hospital. Total compensation for these resources is currently set at \$274,526. No additional resources are recommended to be added to this agreement in FY 2016-17.

**OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel has reviewed the proposed agreements as to form and legal effect.

**FINANCIAL CONSIDERATIONS**

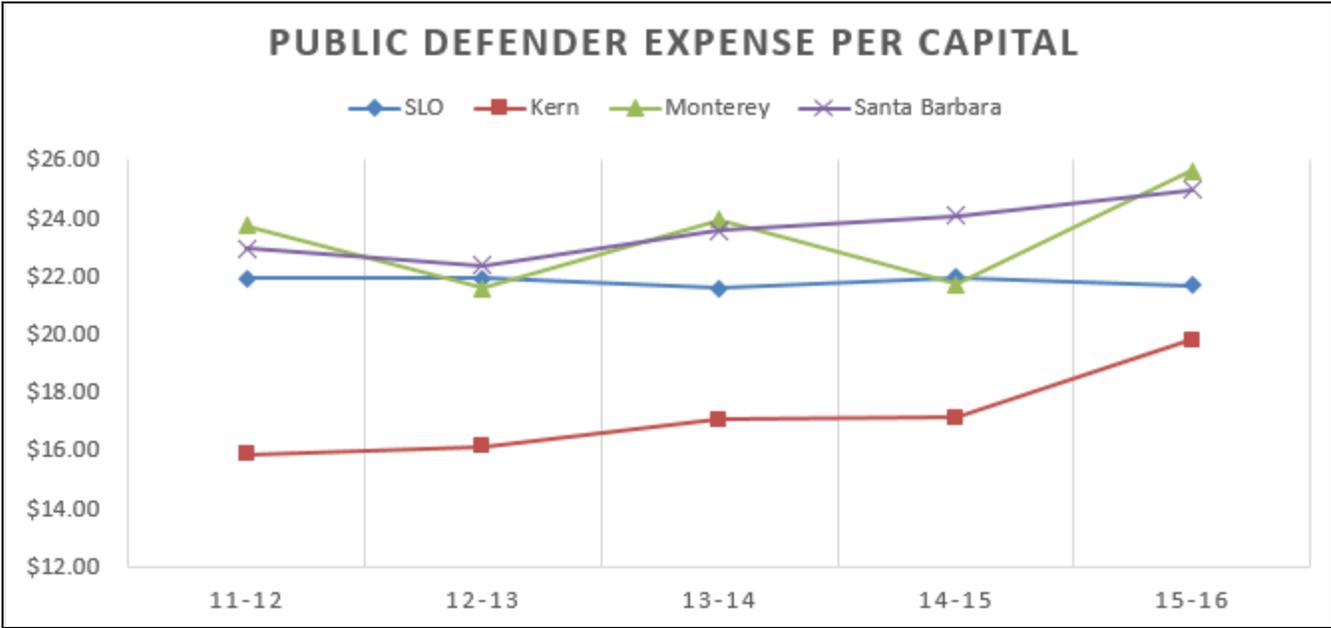
Total adopted expense for Public Defender services provided through the four fixed price private attorney agreements totals \$5,051,985 in FY 2015-16. Under the existing agreements, and continuing in the renewal agreements, compensation for each of the four attorney firms increases according to the LA-Riverside-Orange Consumer Price Index (CPI) issued by the Federal Bureau of Labor Statistics. CPI has averaged 1.8% over the last five years and in calendar year 2015, the period that determines the increase for FY 2016-17, CPI increased 2.0%. (Note that CPI is not applied to \$81,000 of expense included in the agreement funded through the Community Corrections Partnership.) The total CPI increase for FY 2016-17 at 2% is \$99,439.

As discussed above, additional resources are recommended to be added to the Primary Public Defender (\$226,000) and Conflict Public Defender (\$43,000), totaling \$269,000. Combined with the CPI increase, the total expense increase for FY 2016-17 is \$368,441, for a grand total of \$5,420,424.

Item	FY 15-16 Expense	CPI Increase	Additional Resources	FY 16-17 Expense
Primary Public Defender	3,795,448	74,309	226,000	4,095,757
Conflict Public Defender	640,034	12,801	43,000	695,835
Conflict-Conflict Public Defender	341,976	6,839	0	348,815
MDO Public Defender	274,527	5,490	0	280,017
<b>Total:</b>	<b>5,051,985</b>	<b>99,439</b>	<b>269,000</b>	<b>5,420,424</b>

The four agreements make up 82% of the total FY 2016-17 proposed expenditure budget for Public Defender services provided by the County of \$6,619,935. The remaining 18% of Public Defender expense covers court appointed attorney services, with whom the County has no contracts, jury and profession witness expenses, and other miscellaneous expenses. General Fund support for all Public Defender expenses in the FY 2016-17 Proposed Budget totals \$6,051,424.

Measured on a per capital basis, the County of San Luis Obispo’s total cost for Public Defender services generally compares favorably to our neighboring counties, at just under \$22. The exception is Kern County, which has averaged just under \$17 per capita; but, increased its per capita spending in FY 2015-16 to almost \$20. The recommended increases for Public Defender contract services and other expenses would increase the County of San Luis Obispo’s per capital spending by \$0.08 to \$21.77.



County	FY 1-12	FY 2-13	FY 13-14	FY 14-15	15-16
Monterey	\$ 23.74	\$ 21.59	\$ 23.96	\$ 21.75	\$ 25.65
Santa Barbara	\$ 22.98	\$ 22.40	\$ 23.60	\$ 24.11	\$ 25.00
San Luis Obispo	\$ 21.94	\$ 21.95	\$ 21.62	\$ 21.99	\$ 21.69
Kern	\$ 15.87	\$ 16.14	\$ 17.08	\$ 17.13	\$ 19.82

**RESULTS**

The firms providing Public Defender services each have a long standing working relationship with the Superior Court and handle over 11,000 cases a year. While the number of cases handled each year has decreased by about 7% during the six year period of the existing contracts, the number of felony cases has increase by over a third, from 3,908 cases to 5,457 cases. The cost of Public Defender services—provided mainly through the County’s agreements four private attorney firms—compares favorably to neighboring counties, averaging just under \$22 a year. Over the six years of the existing contracts, there were no cases reversed based on the allegation of inadequate defense. The services provided by the County’s agreements with the four Public Defender attorney firms support the County’s communitywide goals of a safe and well-governed community.

**ATTACHMENTS**

Clerk’s File Statement – Public Defender Services Agreements 2016-2020