



## Legislation Details (With Text)

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**File created:** 11/19/2020      **In control:** Board of Supervisors

**On agenda:** 1/26/2021      **Final action:** 1/26/2021

**Title:** Chief Administrative Office recommending the Board:  
 1) Conceptually approve the creation of the Office of the Alternate Public Defender as a new county department initially serving the West Slope;  
 2) Authorize the Chief Administrative Officer to extend Agreement 4108 with El Dorado Law for the provision of conflict defense services for period of three months; and  
 3) Authorize the Chief Administrative Officer, or designee, to negotiate up to two contracts for conflict defense services in the Tahoe Basin.

**FUNDING:** General Fund.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Public Comment BOS Rcvd 1-25-2021

Date	Ver.	Action By	Action	Result
1/26/2021	1	Board of Supervisors	Approved	Pass

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### DISCUSSION / BACKGROUND

The El Dorado County Public Defender’s Office is appointed by the El Dorado Superior Court to handle over 4,000 cases per year, including adult and juvenile criminal cases, as well as contempt and conservatorship cases. When the Public Defender has a conflict of interest based on multiple defendants or based on prior representation, El Dorado County must provide a different attorney to any conflict client. Since July, 2016, the County has contracted with El Dorado Law to provide representation in conflict cases. El Dorado Law sub-contracts with individual local attorneys to provide these services.

Prior to contracting with El Dorado Law, the County contracted directly with 10-11 attorneys for conflict counsel. This was an extreme administrative burden, which included not only administering the contracts and processing monthly payments to attorneys, but processing payment for court-ordered services coming through 10 or 11 different law offices, to multiple vendors. In addition, this model provided the County with no ability to evaluate the quality of the services being provided. This

model also made it very difficult to manage the budget for these services, as requests for case-related services were approved directly by the courts, and the County would often receive little or no notice of such services before receiving an invoice to pay. In an attempt to streamline the administration of the program and ensure greater coordination of the services, in 2016 the County issued a Request for Proposals (RFP), seeking a single firm to provide all services. Three responses were received, two of which met the RFP requirement to cover the entire county. El Dorado Law was selected. While this has streamlined the contract administration, other administrative difficulties remain, due in part to the independent contractor status of El Dorado Law's subcontract attorneys. Given these administrative challenges as well as the ongoing changes in criminal justice, which have recently accelerated, the County determined that it is appropriate to research other models of providing conflict case representation, in order to improve services and to achieve more predictable costs. California counties have several different hybrid models for providing conflict attorney services statewide, including divisions under the main Public Defender's Office, as well as independently run offices.

It is recommended that an Alternate Public Defender Office be formed, operating as a separate county department. This is the most conservative model for maintaining the integrity of the conflict cases. Fiscal and administrative support will be provided by the Chief Administrative Office Central Fiscal Unit. At this time, it is recommended that the office primarily serve the West Slope, and that the County continue to contract for conflict defense services in the Tahoe Basin through the end of FY 2022-23. This will provide an opportunity for the new Alternate Public Defender to focus on building the office and concentrating efforts where the majority of cases are located. In addition, the Alternate Public Defender can use this time to assess the service needs in the Tahoe Basin and determine how to best meet those needs in the future. If approved, the CAO will coordinate the negotiation of contracts with attorneys to serve the Tahoe Basin.

The Public Defender staff reviewed approximately four years of statistical caseload reports provided by the current conflict contractor, El Dorado Law, and determined the staffing requirements needed for the efficient operation of the office to serve the West Slope are as follows; 1.0 FTE Alternate Public Defender (department head), 2.0 FTE Deputy Public Defender I-IV, 1.0 FTE Public Defender Investigator, and 1.0 FTE Legal Secretary. Although there may be a need for a few contracts with local attorneys for "as-needed" services to handle multi-defendant cases or overflow cases, the majority of conflict cases on the West Slope will be handled by this new office. There may also be capacity for this office to handle third-tier conflicts in the Tahoe Basin. It should be noted the El Dorado County Superior Court believe an additional attorney will be needed to handle the workload. Considering the number of conflict cases changes year to year, staff will continue to monitor the workload and if an additional attorney is needed a request to increase the allocations will be made to the Board of Supervisors.

The creation of a new department must be done by ordinance. In addition, a Job Classification and Specification will need to be developed for the department head, and minor changes are need to the Deputy Public Defender Classification. The goal would be to create the office and staff it in before the start of the fiscal year; however, In order to provide adequate time to form the office and recruit employees, the Board is asked to authorize the CAO to negotiate a three-month contract extension with El Dorado Law to ensure that there is no gap in service. The contract with El Dorado Law expires June 30, 2021.

County staff regularly evaluates programs and services, in conformance with the Strategic Plan. The recommendation to form an Alternate Public Defender's Office is based on benefits to the entire

justice system, as a dedicated conflicts office can more quickly handle a significant caseload. This new method of service delivery also has the benefit of greater predictability of costs.

### **ALTERNATIVES**

Should the Board decline this recommendation the County will seek contracted services similar to the current structure.

### **PRIOR BOARD ACTION**

N/A

### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

Public Defender, Human Resources, District Attorney, Superior Court, Criminal Attorney's Association

### **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

### **FINANCIAL IMPACT**

In FY 2019-20 actual expenses of the contracted Indigent Defense program were \$1.26 million. In FY 2020-21 budget expenses of the contracted Indigent Defense program are \$2.5 million (including \$1 million for a potential capital murder case). The proposed costs for the Alternate Public Defender Office is estimated at \$1.35 million for FY 2021-22. The base cost for an additional three months of the El Dorado Law contract would be approximately \$250,000 at the current contract rate. After expiration of the contract, there will be continued General Fund cost of open cases currently assigned to the contracted attorneys at the time of transition from the El Dorado Law services to the Alternate Public Defender division and over time those will phase out as cases are closed and no longer have new cases assigned. The staff will be located in a County-owned facility, so there will be no building lease costs; however, some one-time funding will likely be needed to configure the space for this purpose.

### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

N/A

### **STRATEGIC PLAN COMPONENT**

Good Governance

### **CONTACT**

Sue Hennike, Deputy Chief Administrative Officer