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STAFF REPORT

BOARD MEETING DATE: June 28, 2011

DATE: June 21, 2011
TO: Board of County Commissioners
FROM: John Berkich, Assistant County Manager
Richard Gammick, District Attorney
THROUGH: Katy Simon, County Manager
SUBJECT: Update on the Early Case Resolution program and possible direction to staff regarding a contract for a pilot program

SUMMARY

In summary, staff and the District Attorney (DA) are presenting an update on the Early Case Resolution (ECR) program and seek possible direction from the Board regarding a contract for a pilot program.

BACKGROUND

The nation's first ECR program was established here in Washoe County in 1997 under the leadership of DA Gammick, Assistant DA John Helzer together with the assistance of David Bennett, a leading national consultant in criminal justice.

Over the next eleven years, over 5000 cases (approximately 38% of all filed felonies) were resolved. During this period, there was only one challenge to the program which was unsuccessful. The fundamental basis of the program is to provide early discovery and along with an expedited settlement offer, which the defendant then has the right to accept or reject. The defendant's participation in the program is entirely voluntary and he/she may opt out prior to the entry of plea. For those that do choose to participate, this program allows for the possible resolution of a case within 72 hours of arrest. The key to the success of the program is that assigned counsel from both prosecution and defense are experienced, seasoned attorneys who possess the skills necessary to resolve cases in this manner.

Since its inception, similar ECR programs modeled after the Washoe County program have been successfully established in the following jurisdictions:

- Spokane County, WA
- Lee County, FL
- Stafford County, NH
- Sonoma County, CA
- Washington County, OR

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- Salt Lake County, UT

It's important to note, that in none of these jurisdictions, has there been a challenge to the establishment of the program by any national public defense organization. Furthermore, through the efforts of consultant Bennett, we have been offered statements of support for this concept from judges, public defenders and district attorneys from some of the above jurisdictions.

More recently here in Washoe County, in February 2008 the Public Defender withdrew from participating in the then-existing Early Case Resolution (ECR) program based on the limitations imposed on attorneys under the proposed performance standards from the January 2008 order from the Supreme Court in ADKT No. 411. This order proposed the implementation of performance standards on attorneys providing indigent legal defense counsel statewide which eventually became effective April 1, 2009. Then in a subsequent order, the Court moved away from referring to them as "standards" choosing to call them "guidelines" which was later supported in the U.S. Supreme Court's decision in *Bobby v. Van Hook*.

Since that time, the concept of an ECR process has been the subject of numerous discussions and meetings of the Indigent Defense Commission and a special sub-committee as well as testimony before the Court in the various hearings held to date. Independently, staff has explored various concepts to re-establish a similar program that would comply with the performance guidelines for attorneys, which became effective April 1, 2009 pursuant to the Court's October 2008 order.

In the meantime, as part of its efforts to re-establish the program, staff approached both the DA and WLS to explore the development of a program that would be consistent with the adopted guidelines and would be provided under contract by WLS. Such a program would be provided to indigent defendants in certain felony and misdemeanor cases in **addition to and prior to** proceedings afforded to them under their existing rights to due process under current law.

The DA, WLS and County staff have collaboratively developed such a proposed program which is designed to provide for more timely review of discovery, enable defendants to meet with their attorneys sooner, and facilitate expedited settlement offers. It is estimated that approximately 2000 cases each year may qualify for such a program and provide for numerous benefits to both defendants and the County including:

- Substantial detention costs savings of thousands of jail days at the current rate of \$127 per day
- Reduced overtime for law enforcement agencies
- Savings in jail transportation costs
- Measureable reduction in court processing time and cost
- Facilitates early release which results in the significant reduction in social costs to inmates and their families i.e. loss of jobs, housing, family impacts
 - More timely access to treatment for offenders
 - More timely placement of offenders under the appropriate level of supervision

- Swift certain resolution of the case providing the offender a connection between the behavior that resulted in the arrest, with the consequence
- Increase satisfaction to the victims and witnesses of crime that their case has been successfully resolved
- Lower per case cost to the County using WLS contract resources versus in-house legal staff.
- Significant savings in the DA's office due to the reduced caseload
- Significant reduction in caseload at both the Public Defender, Alternate Public Defender offices and Conflict Counsel.

In addition to providing an update on the program for the Board, the purpose of this item is also seek the Board 's direction to develop a pilot program for the proposed new ECR program through an agreement with WLS. The proposal to directly contract with WLS for the proposed program is for professional services and is jointly recommended as such by both the DA and staff for the following reasons:

- WLS is the only local **non-profit** agency with the necessary qualifications as a legal services agency to provide such proposed services
- WLS' Board and its Executive Director, philosophically support the creation of the program for the benefits it may generate for both individuals, families and society
- WLS can/will provide the required services at the lowest per case cost
- WLS has an excellent performance history in providing other programs providing legal services on behalf of the county
- WLS will provide resources similar to a law firm
- WLS Executive Director has extensive experience as a criminal lawyer

Should the Board direct, a business plan and agreement would be developed with WLS under the following general terms and conditions:

- WLS would agree to:
 - Provide all the necessary personnel including attorneys and support staff
 - Provide all facilities and equipment
 - Provide all management and administration
 - Provide all legal services for the early resolution of felony and misdemeanor cases
- County would agree to:
 - Provide all funding for startup costs and operating expenses for a pilot project period of six months.
 - Fully cooperate with WLS in the design and development of the program and its ongoing operation.
 - Collaborate with WLS in a comprehensive assessment of the program at the six month interval using performance measures which include:
 - Reduced jail days
 - Reduced court continuances
 - Reduced caseloads in the DA, PD and APD offices
 - Reduced transportation costs at the SO
 - Earlier resolution of cases

While staff has not undertaken an RFP process for the reasons noted above, staff was able (as directed by the County Manager) to determine that there might be limited interest from private attorneys in developing the program. Staff is currently seeing somewhat less interest from private attorneys in public defense which was the case in the recent RFP process to select a new Appointed Counsel Administrator as only two proposals were received and one was from the current provider. In the Conflict Counsel program, at least three attorneys have resigned recently and it is becoming more difficult to retain new counsel.

The Board's direction to contract with WLS will significantly reduce the otherwise protracted process to retain another provider. This will facilitate an expedited startup of the program capitalizing on the expertise and experience of WLS and their non-profit structure to deliver these services at the most affordable cost.

In summary, staff and the DA request Board direction, to develop a pilot program for the proposed ECR program with WLS and return with the completed business plan and operating agreement for future consideration by the Board.

This concept clearly has proven, both here and in many other jurisdictions, that ECR provides overall a better level of swift and certain criminal justice. Finally, with the elimination of these cases, the system resources can be better invested in adjudicating more serious offenses.

FISCAL IMPACT

Costs would be posted to the Conflict Counsel FY 11-12 budget C101010, GL 710839 Court Appointed Attorneys. Funding would not to exceed \$100,000 for a six-month pilot program and will require a transfer from Contingency if savings are not sufficient to cover the pilot program costs.

RECOMMENDATION

Accept the update on the Early Case Resolution program and provide possible direction to staff regarding a contract for a pilot program.

POSSIBLE MOTION

Motion to accept the update on the Early Case Resolution program and provide possible direction to staff regarding a contract for a pilot program.
