

# **Public Defense Pilot Program**

## **PROPOSAL PACKAGE COVER SHEET**

**Submitted by:**

**SAN BERNARDINO COUNTY**

**Date Submitted:**

**JANUARY 12, 2022**

## Proposal Checklist

A completed proposal package for the Public Defense Pilot Program includes the following:

	Required Items:	✓
1	Cover Sheet (previous page) <ul style="list-style-type: none"> <li>Insert Applicant Name and Date of Submission</li> </ul>	
2	Proposal Checklist (current page) <ul style="list-style-type: none"> <li>Signed by the authorized signatory with a digital signature <b><u>OR</u></b> a wet signature in blue ink.</li> </ul>	
3	Applicant Information Form <ul style="list-style-type: none"> <li>Signed by the authorized signatory with a digital signature <b><u>OR</u></b> a wet signature in blue ink.</li> </ul>	
4	Proposal Narrative <ul style="list-style-type: none"> <li>3 pages or less</li> </ul>	
5	Proposal Budget <ul style="list-style-type: none"> <li>Complete BSCC Budget template</li> </ul>	
6	Project Work Plan	
	Optional:	
	Governing Board Resolution <b>Note:</b> <i>The Governing Board Resolution is due prior to contract execution but is not required at the time of proposal submission.</i>	

**I have reviewed this checklist, placed a check mark next to each item, and verified that all required items are included in this proposal packet.**

**X**

\_\_\_\_\_  
Applicant Authorized Signature (see Applicant Information Form, Part L, next page)

## Applicant Information Form

A. APPLICANT San Bernardino County		B. TAX IDENTIFICATION NUMBER	
NAME OF APPLICANT San Bernardino County Public Defender		TAX IDENTIFICATION #: 95-6002748	
STREET ADDRESS 172 W. Third Street, Second Floor	CITY San Bernardino	STATE CA	ZIP CODE 92415
MAILING ADDRESS (if different)	CITY	STATE	ZIP CODE
<b>C. PROJECT TITLE:</b>	Indigent Defense Program		
<b>D. PROJECT SUMMARY (100-150 words):</b>			
<p>San Bernardino County Public Defender proposes to create three distinct indigent defense units, each with dedicated full-time staff, to represent clients with interests affected by Penal Code sections 1170(d)(1), 1170.95 and 3051. The Second Look Unit will pursue claims on behalf of indigent clients serving extreme sentences. The Homicide Resentencing Unit will pursue resentencing on behalf of indigent clients currently sentenced on designated homicide, attempted homicide and manslaughter cases. The Franklin/Youth Offender Unit will represent youth offenders entitled to reconsideration of their currently imposed criminal sentence and expertly pursue mitigation at the earliest opportunity in currently charged youth offender cases.</p>			
<b>E. GRANT FUNDS REQUESTED:</b>		<b>F. Penal Code(s) Addressed:</b>	
\$ 2,633,005.70		1170(d)(1), 1170.95 & 3051	
<b>G. PROJECT DIRECTOR:</b>			
NAME Kellie Byward	TITLE Chief Deputy Public Defender	TELEPHONE NUMBER (909) 918-2268	
STREET ADDRESS 412 Hospitality Lane, Third Floor		FAX NUMBER	
CITY San Bernardino	STATE CA	ZIP CODE 92415	EMAIL ADDRESS kbyward@pd.sbcounty.gov
<b>H. FINANCIAL OFFICER:</b>			
NAME Diana Lovelace	TITLE Chief of Administration	TELEPHONE NUMBER (909) 382-3950	
STREET ADDRESS 172 W. Third Street, Second Floor		FAX NUMBER	
CITY San Bernardino	STATE CA	ZIP CODE 92415	EMAIL ADDRESS dlovelace@pd.sbcounty.gov
PAYMENT MAILING ADDRESS (if different)		CITY	STATE ZIP CODE
<b>I. DAY-TO-DAY PROGRAM CONTACT:</b>			
NAME Kellie Byward	TITLE Chief Deputy Public Defender	TELEPHONE NUMBER (909) 918-2268	
STREET ADDRESS 412 Hospitality Lane, Third Floor		FAX NUMBER	
CITY San Bernardino	STATE CA	ZIP CODE 92415	EMAIL ADDRESS kbyward@pd.sbcounty.gov

**J. DAY-TO-DAY FISCAL CONTACT:**

NAME	TITLE	TELEPHONE NUMBER	
Celia McDonald	Staff Analyst II	(909) 382-3944	
STREET ADDRESS		FAX NUMBER	
172 W. Third Street, Second Floor			
CITY	STATE	ZIP CODE	EMAIL ADDRESS
San Bernardino	CA	92415	cmcdonald@pd.sbcounty.gov

**K. AUTHORIZED SIGNATURE**

By signing this application, I hereby certify that I am vested by the Applicant with the authority to enter into contract with the BSCC, and that the grantee and any subcontractors will abide by the laws, policies and procedures governing this funding.

NAME OF AUTHORIZED OFFICER	TITLE	TELEPHONE NUMBER	EMAIL ADDRESS
Thomas W. Sone	Public Defender	(909) 382-3950	tsone@pd.sbcounty.gov
STREET ADDRESS	CITY	STATE	ZIP CODE
172 W. Third Street, Second Floor	San Bernardino	CA	92415
EMAIL ADDRESS			
tsone@pd.sbcounty.gov			
APPLICANT'S SIGNATURE (Signed by the authorized signatory with a digital signature <u>OR</u> a wet signature in blue ink.)			DATE
X			1/12/2022

\*Authorized Signature: Must be a representative with the authority to sign documents and obligate the applicant\*

**CONFIDENTIALITY NOTICE**

All documents submitted as a part of the Public Defense Pilot Program are public documents and may be subject to a request pursuant to the California Public Records Act. The BSCC, as a state agency, may have to disclose these documents to the public. The BSCC cannot ensure the confidentiality of any information submitted in or with this proposal. (Gov. Code, §§ 6250 et seq.)

## Proposal Narrative

The Proposal Narrative section may not exceed **three (3) numbered** pages and must be submitted in Arial 12-point font with one-inch margins on all four sides and at 1.5-line spaced.

## **Indigent Defense Program - Proposal Narrative**

### **Introduction**

The San Bernardino County Public Defender (SBCPD) is cognizant that meaningful criminal justice reform requires legislative initiatives, appropriate funding, and dedicated resources to defend constitutional rights by pursuing litigation. The State Legislature's success in driving reforms to criminal sentencing and parole reflects a commitment and responsible approach to decarceration. By making funding available, through the Public Defense Pilot Program (PDPP), the Legislature supplements local efforts to bring to fruition the goal of reform for some categories of criminal cases. SBCPD has developed the Second Chance Program to advance and effectuate these reform efforts. By creating three distinct units, SBCPD seeks to create meaningful change within San Bernardino County.

### **PC 1170(d)(1) "Second Look" Unit**

Because San Bernardino County underutilizes the resentencing reduction provision of Penal Code (PC) section 1170(d)(1), the Legislature's commitment to reform has not been fully realized. Exciting new amendments to 1170 require appointment of counsel, a meaningful hearing, timeframes, and a presumption in favor of resentencing. The court must also consider whether the defendant has experienced trauma, was a victim of intimate partner violence or human trafficking prior to the time the offense was committed, or if the defendant was under age 26. SBCPD expects these changes to drastically increase the number of petitions granted and the resources required to prepare and litigate contested hearings.

PC 1170(d) also authorizes the district attorney to request reduction of a sentence. SBCPD regularly receives letters from clients in California Department of Corrections and Rehabilitation (CDCR) custody requesting assistance in sending mitigation materials to the San Bernardino County District Attorney (DA) in support of a PC 1170(d) sentence reduction request. With existing resources, SBCPD has only been able to send one comprehensive mitigation and 1170(d) request to the DA's office thus far.

The PDPP grant will permit the SBCPD's "Second Look" Unit, consisting of two attorneys and one office assistant, to (1) present evidence of relevant mitigation, including expert testimony, at hearings on CDCR-initiated resentencing requests, and (2) prepare and submit comprehensive mitigation packets in support of 1170(d) resentencing requests to the DA's office in appropriate cases. These efforts will implement the Legislature's goal to provide a "second" look at extreme and disproportionate sentences.

### **Homicide Resentencing Unit - PC 1170.95**

Since 2018, SBCPD has received 162 PC section 1170.95 felony murder resentencing petitions, of which approximately 80 cases are pending because SBCPD has been unable to devote full-time attorney resources to section 1170.95 felony murder cases. When SB 775 expands section 1170.95 to include attempted murder and manslaughter on January 1, 2022, SBCPD expects the number of petitions to double. Additionally, approximately 30 cases will likely be remanded from the appellate court upon reversal of the trial court's incorrect finding that the law was unconstitutional. Since section 1170.95 cases are time- and work-intensive, requiring the same, or sometimes more, preparation than a homicide jury trial, it has become increasingly obvious that existing staff cannot handle the current and expanding case volume.

The PDPP will permit SBCPD Homicide Resentencing Unit, consisting of two attorneys, one paralegal, and one office assistant, to identify each SBCPD client entitled to resentencing and pursue the resentencing process for the hundreds of cases that are currently pending.

### **Franklin/Youth Offender Unit - PC 3051**

In 2016, the SBCPD received a list of approximately 2,800 San Bernardino County youth offender clients who will qualify for a section PC 3051 hearing. CDCR records indicate that approximately 400 of San Bernardino County clients are still in need of a *Franklin* hearing. SBCPD's section 3051 objectives are to: (1) increase the number of section 3051 submissions by 30-40 cases each year, and (2) dedicate attorneys, well-trained in developments in adolescent brain development, to handle youth offender cases at the earliest opportunity.

To achieve these objectives, the SBCPD will add three attorneys and one office assistant to the current *Franklin* Unit to continue to prepare clients for their youth offender parole hearing. SBCPD will add a sentencing/mitigation expert to prepare and submit *Franklin* mitigation to the court or the Board of Parole Hearings. SBCPD does not currently employ mitigation experts or other staff who can diagnose clients for mental and or developmental disabilities. To complete the additional 30-40 cases, SBCPD will utilize outside mitigation experts to assist with these cases. SBCPD will designate one attorney, certified in juvenile law, to represent youth offenders at the earliest opportunity. Currently, SBCPD only has juvenile attorneys handle cases until the case is transferred to adult court. The proposal will ensure vertical representation of a youth offender by a specially trained attorney who can continue to gather evidence on increased growth and maturity to assure the client has a meaningful opportunity for release consistent with the aims of *Miller v. Alabama* and section 3051.

### **Conclusion**

SBCPD is confident that its Second Chance Program will achieve meaningful change for many San Bernardino County clients, their families and our communities and further the Legislature's goals for criminal justice reform.



## Proposal Budget

Applicants must provide a 12-month budget covering **March 1, 2022 to March 1, 2023**. To access the Public Defense Pilot Program Budget Microsoft Excel Template, click [here](#).

# Publi Defense Pilot Program - Project Budget and Budget Narrative

Name of Applicant: San Bernardino County Public Defender

12-Month Budget: March 1, 2022 to March 1, 2023.

The total amount of funding each county is eligible to receive is provided on the Funding Allocation tab. Please request the **full amount** of funding next to your county name.

Note: Rows 8-15 will auto-populate based on the information entered in the budget line items (Salaries and Benefits, Services and Supplies, etc.)

Budget Line Item	Total
1. Salaries and Benefits	\$2,145,000.00
2. Services and Supplies	\$77,005.13
3. Professional Services or Public Agency Subcontracts	\$126,000.00
4. Non-Governmental Organization (NGO) Subcontracts	\$0.00
5. Equipment/Fixed Assets	\$0.00
6. Other (Travel, Training, etc.)	\$21,700.00
7. Indirect Costs	\$263,300.57
<b>TOTAL</b>	<b>\$2,633,005.70</b>

## 1a. Salaries and Benefits

Name and Title	(Show as either % FTE <u>or</u> Hourly Rate) & Benefits	Total
TBD/Deputy Public Defender IV	7.0 Full-Time Equivalents	\$1,683,500.00
TBD/Paralegal	1.0 Full-Time Equivalent	\$108,500.00
TBD/Office Assistant III	3.0 Full-Time Equivalents	\$208,500.00
TBD/Mitigation Expert	1.0 Full-Time Equivalent	\$144,500.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
<b>TOTAL</b>		<b>\$2,145,000.00</b>

## 1b. Salaries and Benefits Narrative:

SBCPD will dedicate seven full-time attorney positions, one full-time paralegal position, three full-time office assistants and one mitigation expert to its Indigent Defense program. The program will consist of three separate units that will identify sentencing mitigation factors, utilizing recent legislative amendments within PC § 1170(d), § 1170.95 and § 3051 to seek just sentencing of SBCPD clients. The units will consist of experienced and knowledgeable professionals to help achieve meaningful change for indigent clients.

## 2a. Services and Supplies

Description of Services or Supplies	Calculation for Expenditure	Total
Office Expenses	Pay warrants, phone service, and other misc. office supplies.	\$20,560.49
Technical Access & Equipment	Desktop, tablet, and automated systems access.	\$38,444.64
Support Documents	Transcripts, transcriptions, other misc. documents	\$18,000.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
<b>TOTAL</b>		<b>\$77,005.13</b>

## 2b. Services and Supplies Narrative:

Services and supplies required to perform daily tasks, contact clients and other involved parties, and access relevant automated systems.

3a. Professional Services		
Description of Professional Service(s)	Calculation for Expenditure	Total
Sentencing/Mitigation Specialists	Estimated contract price for mitigation reports.	\$126,000.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
TOTAL		\$126,000.00
3b. Professional Services Narrative		
Contract with sentencing and mitigation specialists to develop and/or prepare mitigation reports, as needed.		
4a. Non-Governmental Organizations (NGO) Subcontracts		
Description of Subcontract	Calculation for Expenditure	Total
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
TOTALS		\$0.00
4b. Non-Governmental Organizations (NGO) Subcontracts Narrative		
Enter narrative here. You may expand cell height if needed.		
5a. Equipment/Fixed Assets		
Description of Equipment/Fixed Asset	Calculation for Expense	Total
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
TOTALS		\$0.00
5b. Equipment/Fixed Assets Narrative		
Enter narrative here. You may expand cell height if needed.		
6a. Other (Travel, Training, etc.)		
Description	Calculation for Expense	Total
Staff Travel	Anticipated case-related travel.	\$8,500.00
Staff Training	Specialized mitigation training.	\$13,200.00
		\$0.00
		\$0.00

		\$0.00
		\$0.00
<b>TOTAL</b>		<b>\$21,700.00</b>
<b>6b. Other (Travel, Training, etc.) Narrative:</b>		
<i>Estimated costs to ensure staff can travel as needed and receive specialized training on stages of adolescent brain developmen, identifying mitigation factors, and changes to felony murder rule.</i>		
<b>7a. Indirect Costs</b>		
Indirect costs may be charged to grant funds by choosing <b>either</b> Option 1) or 2) listed below:		Total
1) Indirect costs will be charged as Grantee's federally approved Negotiated Indirect Cost Rate (NICR): Enter NICR Percentage <b>and</b> Amount:	0.00%	\$0.00
2) Indirect costs will be charged as the Federal De Minimis (10% of Modified Total Direct Cost):		\$263,300.57
<b>TOTAL</b>		<b>\$263,300.57</b>
<b>7b. Indirect Costs Narrative:</b>		
<i>SBCPD will utilize the Federal De Minimis (10% of Total Direct Costs) charge to maximize grant funds for the provision of services under the Indigent Defense Program.</i>		
<i>Before submission, please verify that you have requested the full amount of funding your county is eligible to receive.</i>		

## Project Work Plan

This Project Work Plan identifies measurable goals and objectives, activities and services, the responsible parties and a timeline. Completed plans should (1) identify the project's **top goals and objectives** (minimum of two); (2) identify how the top goals will be achieved in terms of the activities, responsible staff/partners, and start and end dates; and (3) provide goals and objectives with a clear relationship to the need and intent of the grant. Please provide a project workplan in the below fields.

<b>(1) Goal:</b>	PC § 1170(d)(1): Increase resentencing for SBPCPD clients.		
Objectives (A., B., etc.)	A. Advocate on behalf of client in resentencing hearings and present evidence of relevant mitigation. B. Prepare and submit 15 resentencing requests to the district attorney. C.		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date
1. Review client resentencing requests. 2. Review client records, relevant evidence, circumstances surrounding original sentencing, and subsequent rehabilitation. 3. Utilize mitigation experts to support resentencing requests.	Kellie Byward	March 1, 2022 – February 28, 2023.	

<b>(2) Goal:</b>	PC § 1170.95: Obtain relief for SBPCPD clients prosecuted and convicted under felony murder theory.		
Objectives (A., B., etc.)	A. Identify SBPCPD clients convicted of attempt homicide for eligibility under natural and probable consequences doctrine. B. Dedicate experienced attorneys to litigate and complete resentencing process under § 1170.95. C.		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date

1. Review cases for § 1170.95 issues. 2. Train and educate staff on amendments to felony murder rule. 3. Complete 10 § 1170.95 evidentiary hearings.	Kellie Byward and Yarrow Neubert	March 1, 2022 – February 28, 2023.
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<b>(3) Goal:</b>	PC § 3051: Provide continuity of representation to youth offenders from the first court hearing through the Franklin hearing.		
Objectives (A., B., etc.)	A. Implement vertical representation of eligible clients, beginning at earliest opportunity. B. Prepare 30 Franklin mitigation reports for SBCPD youth offender clients in prison. C.		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date
1. Utilize mitigation experts to support department efforts. 2. Train and educate staff on the stages of adolescent brain development and how to develop a record of youth-related mitigation factors. 3.	Daniel Edber, Kathryn Perez and Ann Manos	March 1, 2022 – February 28, 2023.	

<b>(4) Goal:</b>	N/A		
Objectives (A., B., etc.)	A. B. C.		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date
1. 2. 3.			