



24-5365

**DATE:** April 16, 2024 (Item No. {{item.number}})  
**TO:** Board of Supervisors  
**FROM:** Molly O’Neal, Public Defender  
**SUBJECT:** 2023-2024 Racial Justice Act for All Implementation Grant

### **RECOMMENDED ACTION**

Consider recommendations relating to the Racial Justice Act for All Implementation Grant.

Possible action:

- a. Ratify Grant Application submitted by the Office of the Public Defender to the State Office of the State Public Defender relating to funds to provide legal services for clients who are unable to afford legal representation to address retroactive Racial Justice Act claims in the amount of \$375,000 for period February 15, 2024 to February 15, 2026.
- b. Approve Request for Appropriation Modification No. 177 – \$375,000 increasing estimated revenue and expenditure appropriations in the Office of the Public Defender and transferring \$89,974 from the Office of the Public Defender budget to the Office of the County Counsel budget, relating to the Racial Justice Act for All Implementation Grant. (4/5 Vote)

### **FISCAL IMPLICATIONS**

On December 21, 2023, the Office of the State Public Defender notified the Office of the Public Defender (PDO) that the County has been awarded \$375,000 for the 2023-2024 Racial Justice Act for All Implementation Grant for the period of February 15, 2024 to February 16, 2026. The Office of the Public Defender would manage the grant funding and implement the programming while working in partnership with the Office of the Alternate Defender (ADO) and the Independent Defense Counsel Office (IDO).

### **REASONS FOR RECOMMENDATION AND BACKGROUND**

Assembly Bill 2542 (AB 2542) took effect on January 1, 2021. AB 2542, known as the California Racial Justice Act (RJA), was groundbreaking legislation that allows the defense to challenge pending criminal charges, where racial discrimination or bias, direct or implicit, played a role in the prosecution. The defense must evaluate several potential avenues for relief. This includes demonstrating bias or racial animus by attorneys, expert witness, police, jurors, or judges, or identifying disproportionate impacts in prosecution or sentencing.

Assembly Bill 256 (AB 256), otherwise known as retroactive RJA, expanded protection retroactively to anyone currently serving a sentence for a felony offense in jail, state prison, or juvenile detention can file claims for violations of the RJA, beginning on January 1, 2023. This includes the approximate 3,000 Santa Clara County residents currently incarcerated in state prison who have already begun requesting legal services from the Public Defender. Then effective January 1, 2025, anyone who was convicted of a felony or committed to the Department of Juvenile Justice, who are *no longer* incarcerated, can file violation claims. Finally, effective, January 1, 2026, anyone convicted of a felony can file a violation claim.

As with any new legislation all defense attorneys are required to be versed in new law to meet their ethical competency standards. However, the RJA is both a novel and complex area of litigation. To obtain relief, the defense is required to file a written motion with supporting citation to facts and expert opinion, and ultimately litigate an evidentiary hearing while overcoming increasingly higher evidentiary burdens at each stage of the proceedings. At the evidentiary hearing, the court considers evidence presented by both parties, including but not limited to statistical evidence, aggregate data, body worn camera footage, court transcripts, 911 calls, expert testimony, and the sworn testimony of witnesses.

The PDO, on behalf of the three County indigent defense offices, submitted a grant application to properly effectuate the spirit of the Racial Justice Act by providing quality legal representation to all clients that seek retroactive relief. The PDO was notified of the grant award in December 2023. Table 1 below provides the project budget which will support a portion of the costs for two senior attorney positions that will serve as lead attorneys for indigent clients who may have retroactive RJA claims in cases that will be handled by the Public Defender, Alternate Defender, or Independent Defender offices in the county. The PDO and ADO lead attorneys will manage the intake, review, analysis, data tracking, and training to indigent defense attorneys handling claims under the Act, as well as represent clients in such cases. Contracted service providers available through the IDO panel will represent clients in RJA cases. This new grant will not cover the majority of the mandated work required by AB 2542, but it will provide a small relief of resources for the stated work.

**Table 1: Project Budget (February 15, 2024 to February 16, 2026)**

	<i>Salaries and Benefits</i>	<i>Services and Supplies</i>	<i>Total Allocation</i>
<i>PDO</i>	.25 FTE Attorney IV or approximately \$174,874	\$2,614 for training and related costs	\$177,488
<i>ADO</i>	.15 FTE Attorney IV or approximately \$104,924	\$2,614 for training and related costs	\$107,538
<i>IDO</i>		<ul style="list-style-type: none"><li>• Contract panel attorneys for approximately \$87,360</li><li>• \$2,614 for training and related costs</li></ul>	\$89,974
	<b>Total</b>		<b>\$375,000</b>

### **CHILD IMPACT**

The recommended action will have no/neutral impact on children and youth.

### **SENIOR IMPACT**

The recommended action will have no/neutral impact on seniors.

### **SUSTAINABILITY IMPLICATIONS**

The recommended action will have no/neutral sustainability implications.

### **CONSEQUENCES OF NEGATIVE ACTION**

Failure to approve the recommended action would prevent the PDO, ADO and IDO from receiving \$375,000 in grant funding to provide quality legal representation for Santa Clara County clients seeking retroactive relief under the Racial Justice Act.

### **STEPS FOLLOWING APPROVAL**

Upon approval, the Clerk of the Board is requested to send email notification to Hong Cao at [hong.cao01@pdo.sccgov.org](mailto:hong.cao01@pdo.sccgov.org).

### **ATTACHMENTS:**

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