





GEORGE GASCÓN  
District Attorney

August 5, 2016

Honorable Supervisor Mark Farrell  
Budget and Finance Committee Chair  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

Melissa Whitehouse  
Acting Budget Director  
Mayor's Office of Policy and Finance  
City Hall, Room 200  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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BOARD OF SUPERVISORS  
SAN FRANCISCO  
2016 AUG 29 PM 2:26

RE: Release of Budget and Finance Committee Reserve & Mayor Reserve

In accordance with the provisions of the Adopted Annual Appropriation Ordinance for Fiscal Year ending June 30, 2017 and FY ending June 30, 2018, I am hereby requesting the release of both the Budget and Finance Committee Reserve and the Mayor Reserve in the amount of \$1,873,872 appropriated for the newly created Independent Investigations Bureau (IIB). My Office fully intends to begin the recruitment process to immediately staff this unit and have them appropriately trained to be readily available to respond to any officer involved shooting and in-custody death as well as provide much needed resources to close out pending cases. If you are in need of any additional information to allow for the release of these reserves, please contact Eugene Clendinen of my Office at (415) 553-1895 or [Eugene.Clendinen@sfgov.org](mailto:Eugene.Clendinen@sfgov.org). I thank you in advance for your review and release of these reserves as I am eager to get started in addressing this important need for the City.

Sincerely,

  
George Gascón  
District Attorney

<p><b>Item 8</b> <b>File 16-0958</b></p>	<p><b>Department:</b> District Attorney's Office (District Attorney)</p>
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**EXECUTIVE SUMMARY**

**Legislative Objectives**

The District Attorney's Office (DA's Office) is requesting the Budget and Finance Committee of the Board of Supervisors to release the \$1,873,872 placed on Budget and Finance reserve in FY 2016-17 for the DA's new Independent Investigation Bureau.

**Key Points**

- The DA's Office proposes to staff a new Independent Investigation Bureau to conduct independent investigations of potential crimes committed by sworn personnel. The proposed new bureau would be broken down into two areas: 1) SFPD Officer-Involved Shootings/In-Custody Deaths and Police Misconduct; and 2) Conviction Review, with a total of 14 full-time equivalent (FTE) positions.
- The DA's Office currently has a backlog of 20 open SFPD officer-involved shooting and in-custody death cases. On average, it takes 445 days to close a case. To date, San Francisco has never prosecuted a police officer for an officer-involved shooting or in-custody death.
- Since 1997, there has been an average of six officer-involved shootings and two in-custody deaths each year.
- The DA's Office has identified 4,267 cases in need of review due to new Brady material.
- The DA's Office does not track how many hours of staff time it takes investigate or review a case, so it is unknown how much time it will take for proposed staff to close cases.

**Fiscal Impact**

- The requested release of \$1,873,872 would be used for the salary and fringe benefits for 9.23 FTEs (14 positions) in the new bureau for the remainder of FY 2016-17.
- The Budget and Legislative Analyst recommends: (1) adding Attrition Savings and associated fringe benefits of \$233,797 to account for an estimated one-month delay in hiring; and (2) reducing salaries by a 9 percent Step Adjustment, or \$121,225, based on the Step Adjustments included in the DA's Office approved FY 2016-17 budget.

**Recommendations**

- Request the DA's Office to submit to the Budget and Finance Committee and to the Budget and Legislative Analyst during the FY 2017-18 budget review process:
  - Documentation on Independent Investigation Bureau staffing needs based on actual staff hours expended on case reviews and investigations, and
  - A long-term staffing plan for the Independent Investigation Bureau for addressing changes in caseload over time.
- Reduce the requested amount of \$1,873,872 by \$355,095 to \$1,518,777. Continue to reserve \$355,095 on Budget and Finance Committee reserve.
- Release of the Budget and Legislative Analyst recommended amount of \$1,518,777 on reserve is a policy decision for the Board of Supervisors given that it is not known if the proposed staffing level of 14 positions is appropriate for the projected workload.

**MANDATE STATEMENT**

Administrative Code Section 3.3(e) provides for the committee of the Board of Supervisors having jurisdiction over the budget (Budget and Finance Committee) to place funds on reserve. These funds may be released by the Budget and Finance Committee.

**BACKGROUND****Technical Adjustment for Independent Investigation Bureau**

At the June 22, 2016 Budget and Finance Committee meeting, the Mayor's Acting Budget Director submitted a technical adjustment to the proposed FY 2016-18 budget, appropriating \$1,873,872 in FY 2016-17 and \$2,535,792 in FY 2017-18 to create the Independent Investigation Bureau in the District Attorney's Office (DA's Office). The proposed Independent Investigation Bureau would be a new unit in the DA's Office with 14 full-time equivalent (FTE) positions when fully staffed.

The Board of Supervisors placed \$1,873,872 for FY 2016-17 and \$2,535,792 for FY 2017-18 in Independent Investigation Bureau appropriations on Budget and Finance Committee Reserve, pending submission to the Budget and Finance Committee of justification and budget details of the use of these funds.

**Justification for Independent Investigation Bureau**

The San Francisco Police Department (SFPD) is currently the lead investigator on officer-involved shooting cases involving their own employees and the DA's Office assists in the investigation. The President's Task Force on 21<sup>st</sup> Century Policing<sup>1</sup> recommends that law enforcement agencies should have policies that mandate external and independent criminal investigations in cases of officer-involved shootings or in-custody deaths.

The DA's Office proposes to staff a new Independent Investigation Bureau to conduct independent investigations of all potential crimes committed by sworn personnel in the SFPD. DA Bureau staff would operate independently from the rest of the DA's Office where investigators and attorneys routinely work alongside police officers. Currently, the DA's Office places investigators and attorneys on standby for one-week periods on a rotating basis. If an SFPD officer-involved shooting occurs, the two DA investigators and one attorney on duty that week are called to the scene. The new investigation procedures for the DA's Office with respect to the SFPD are still being determined as part of a Memorandum of Understanding that is currently under negotiation.

The DA's Office is currently working through a backlog of 20 open SFPD officer-involved shooting and in-custody death cases, with the oldest case dating to September 2014. On average, it takes 445 days to close a case. To date, San Francisco has never prosecuted a police officer for an officer-involved shooting or in-custody death.

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<sup>1</sup> President's Task Force on 21st Century Policing. 2015. Final Report of the President's Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services.

The proposed new DA Independent Investigation Bureau would be broken down into two areas: 1) SFPD Officer-Involved Shootings/In-Custody Deaths and Police Misconduct; and 2) Conviction Review, with a total of 14 full-time equivalent (FTE) positions, as shown in Table 1 below.

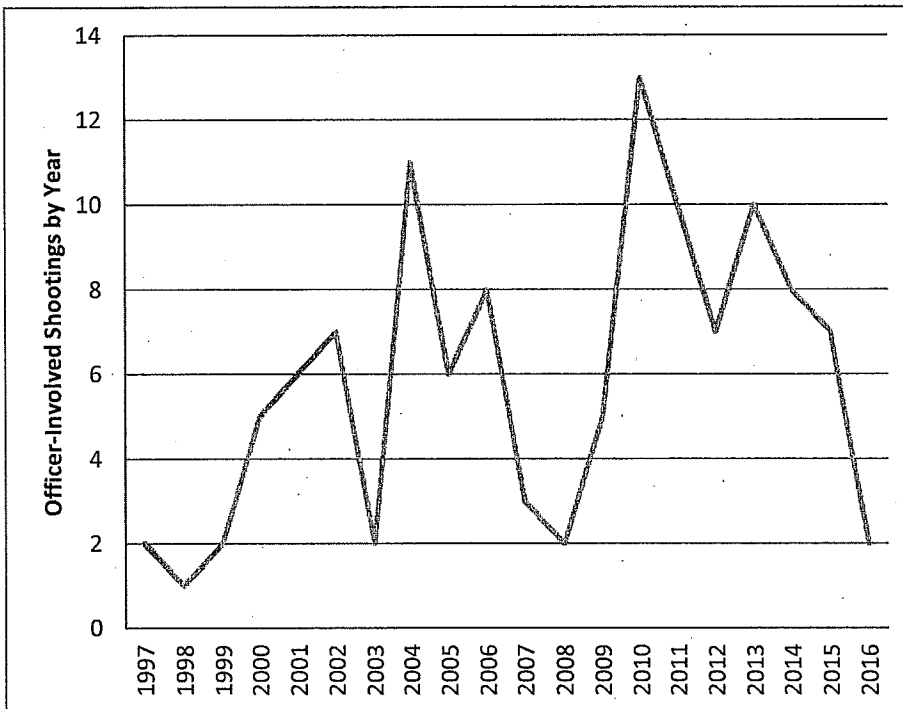
**Table 1: DA Independent Investigation Bureau Staffing**

Function	Staffing for DA's Office
SFPD Officer-Involved Shootings/In-Custody Deaths Police Misconduct	1 Managing Attorney 3 Assistant District Attorneys 1 Assistant Chief DA Investigator 4 DA Investigators 1 DA Investigative Assistant
Conviction Review	2 Assistant District Attorneys 1 DA Investigator 1 DA Investigative Assistant
<b>Total</b>	<b>14 FTEs</b>

*Officer-Involved Shootings/In-Custody Deaths and Police Misconduct*

Since 1997, the number of SFPD officer-involved shootings in San Francisco has ranged from one to 13 per year, with an average and median of about six shootings per year, as shown in Table 2 below. The DA's Office has based Independent Investigation Bureau staffing on the historic average workload of six SFPD officer-involved shooting cases per year and two in-custody death cases per year. The DA's Office does not track how many hours of staff time it takes to close an officer-involved shooting or in-custody death case, so the time that it will take for proposed staff to close cases has not been estimated.

**Table 2: Officer-Involved Shootings by Year**



Year	OIS
1997	2
1998	1
1999	2
2000	5
2001	6
2002	7
2003	2
2004	11
2005	6
2006	8
2007	3
2008	2
2009	5
2010	13
2011	10
2012	7
2013	10
2014	8
2015	7
2016	2
<b>Total</b>	<b>117</b>
<b>Mean</b>	<b>5.85</b>
<b>Median</b>	<b>6</b>

Source: District Attorney's Office

**Conviction Review**

The DA's Conviction Review team would be charged with reviewing previously closed cases where new Brady material<sup>2</sup> is discovered. Based on recent challenges to cases, the DA's Office has identified 4,267 cases in need of review. As mentioned above, the DA's Office does not collect data on how much time staff spend on cases; therefore, the Budget and Legislative Analyst's Office has not been able to estimate how many hours each case takes to review and how long it would take to work through the backlog. It is also unknown at which rate additional cases with Brady material will be added to the backlog.

**DETAILS OF PROPOSED LEGISLATION**

The DA's Office is requesting the Budget and Finance Committee of the Board of Supervisors to release the \$1,873,872 placed on Budget and Finance Committee reserve in FY 2016-17 for the DA's Independent Investigation Bureau.

**FISCAL IMPACT**

The requested release of \$1,873,872 of Budget and Finance Committee reserve would be used for the salary and fringe benefits for 9.23 FTEs (14 positions) in the new DA Independent Investigation Bureau for the remainder of FY 2016-17. The 9.23 FTEs assumes that two

<sup>2</sup> Brady material consists of information and evidence favorable to a defendant in a criminal trial that could affect the guilt, innocence, or punishment of the defendant.

positions would start on September 26, 2016, seven positions would start on October 24, 2016, and five positions would start on December 5, 2016. The requested cost of \$1,873,799<sup>3</sup> for the salary and fringe benefits in FY 2016-17 for the new DA Independent Investigation Bureau are shown in Table 3 below.

**Table 3: Cost of Salary and Fringe Benefits – FY 2016-17**

Job Class	Proposed Salary Step	Number of Positions	Annual Salary at Proposed Step	Proposed Hire Date	Proposed FTE in FY 2016-17	Proposed Salary in FY 2016-17	Fringe Benefits	Proposed Salary and Fringe Benefits
<i>Conviction Review</i>								
8177 Attorney	16	2	\$195,234	Oct 24	1.38	\$269,288	\$96,648	\$365,936
8132 DA Investigative Asst	4	1	74,022	Oct 24	0.69	51,050	22,584	73,634
8550 DA Investigator	6	1	115,908	Dec 5	0.57	66,614	30,556	97,170
<i>Officer Involved Shooting Prosecution</i>								
8149 Asst Chief DA Investigator	6	1	\$134,186	Sep 26	0.77	\$102,825	\$47,166	\$149,990
8177 Attorney	14	1	177,112	Oct 24	0.69	122,146	43,838	165,984
8550 DA Investigator	6	2	115,908	Dec 5	1.15	133,228	61,111	194,339
8182 Head Attorney	16	1	209,742	Sep 26	0.77	160,722	50,242	210,963
<i>Police Misconduct</i>								
8177 Attorney	14	1	\$177,112	Oct 24	0.69	\$122,146	\$43,838	\$165,984
8177 Attorney	16	1	195,234	Oct 24	0.69	134,644	48,324	182,968
8132 DA Investigative Asst	4	1	74,022	Oct 24	0.69	51,050	21,441	72,491
8550 DA Investigator	6	2	115,908	Dec 5	1.15	133,228	61,111	194,339
<b>TOTAL</b>		<b>14</b>	<b>\$1,584,388</b>		<b>9.23</b>	<b>\$1,346,940</b>	<b>\$526,859</b>	<b>\$1,873,799</b>

Given that the release of reserves cannot be approved until September 28, 2016 at the earliest, it is not possible for the DA's Office to hire any positions in September. Also, according to Mr. Eugene Clendinen, DA's Office Chief Administrative and Financial Officer, there is no official status/progress in hiring the requested positions until the Budget and Finance Committee releases the reserved funds and the Department can officially process and post the positions. Therefore, the Budget and Legislative Analyst recommends adding Attrition Savings and associated fringe benefits of \$233,797 to account for an estimated one-month delay in hiring each of the new positions.

The salary and fringe benefits in the DA's Office proposal shown above in Table 3 also reflect hiring the new positions at or near the highest possible step for the job class, including for the deep 16-step 8177 Attorney job class. It is unlikely that every new hire would be placed in the highest salary step where there is no room for advancement, so the Budget and Legislative Analyst recommends reducing salaries of \$1,346,940 by a 9 percent Step Adjustment, or \$121,225, based on the Step Adjustments included in the DA's Office approved FY 2016-17 budget.

<sup>3</sup> The estimated cost of salary and fringe benefits in FY 2016-17 is \$73 less than \$1,873,872 on reserve for FY 2016-17.

These recommendations of the Budget and Legislative Analyst would result in salary and fringe benefit costs in FY 2016-17 of \$1,518,777 as shown in Table 4 below, or \$355,095 less than the requested amount of \$1,873,872.

**Table 4: Budget and Legislative Analyst Recommendation for Salary and Fringe Benefits – FY 2016-17**

Total Salaries	\$1,346,940
Total Fringe Benefits	526,859
Salaries and Fringe Benefits	\$1,873,799
Step Adjustment (9 percent of salaries)	(121,225)
Attrition Savings and Associated Fringe Benefits (1 month per position)	(233,797)
Recommended Reduction	(\$355,022)
<b>TOTAL</b>	<b>\$1,518,777</b>

## POLICY CONSIDERATION

### Future Caseload Uncertain

As the number of officer-involved shootings varies year to year, the associated caseload for investigative teams at the DA's Office could fluctuate significantly. The City is also seeking to reduce or eliminate the incidence of SFPD officer-involved shootings through SFPD reforms and the need for investigators could be diminished over time, assuming SFPD reforms prove effective. Since the Independent Investigation Bureau would operate independently from the rest of the DA's Office, staff of the new Bureau would not be able to assist with other investigations during times with low caseload.

### The DA's Office does not Collect Data on Staff Time Spent on Cases

As discussed above, the DA's Office is not able to provide estimates of how many hours it takes to investigate SFPD officer-involved shootings or in-custody deaths, or to review a case with newly provided Brady material because the DA's Office does not track time spent on specific cases. Since information on the number of hours to investigate and process a case is not available, it is not known if the proposed staffing level of 14 positions is appropriate for the projected workload.

The DA's Office should: (1) track staff time spent on individual cases to determine case staffing needs, and (2) develop a long-term plan to account for changes in work load dues to variations in the number of officer-involved shootings and success of SFPD reforms. The staffing needs and long-term staffing plan should be provided to the Budget and Legislative Analyst's Office as part of the FY 2017-18 budget review process.



**RECOMMENDATIONS**

1. Request the DA's Office to submit to the Budget and Finance Committee and to the Budget and Legislative Analyst during the FY 2017-18 budget review process:
  - a. Documentation on Independent Investigation Bureau staffing needs based on actual staff hours expended on case reviews and investigations, and
  - b. A long-term staffing plan for the Independent Investigation Bureau for addressing changes in caseload over time.
2. Reduce the requested amount of \$1,873,872 by \$355,095 to \$1,518,777. Continue to reserve \$355,095 on Budget and Finance Committee reserve.
3. Release of the Budget and Legislative Analyst recommended amount of \$1,518,777 on reserve is a policy decision for the Board of Supervisors given that it is not known if the proposed staffing level of 14 positions is appropriate for the projected workload.

