

Item 3
File 10-1103

Department(s):
Superior Court

EXECUTIVE SUMMARY

Legislative Objective

- The requested General Fund supplemental appropriation of \$2,200,000 would fund indigent defense expenses for the Superior Court's Indigent Defense Program for FY 2009-2010.

Key Points

- Both Federal and State law require the City to provide legal representation to indigent persons charged with a crime but unable to afford a private attorney. In San Francisco, the Public Defender's Office provides representation to such persons. However, the Public Defender's Office refers cases to the Superior Court's Indigent Defense Program if the Public Defender's Office has a conflict of interest, such as representing more than one individual in a case in which multiple defendants are charged with a crime.
- In the FY 2009-2010 budget, the Board of Supervisors approved \$7,410,594 for the Superior Court's Indigent Defense Program. Subsequently, the Public Defender began referring additional new referrals to the Indigent Defense Program due to insufficient staffing resources at the Public Defender's Office. On March 9, 2010, the Board of Supervisors approved a supplemental appropriation of \$3,257,575 for the Indigent Defense Program (File 10-0059), increasing the total Indigent Defense Program budget from \$7,410,594 to \$10,668,169, in order to provide sufficient funding to meet the increased estimated FY 2009-2010 Indigent Defense Program costs due to (a) increased referrals as a result of conflicts of interest, and (b) additional new referrals due to the Public Defender's Office having insufficient staff to handle all of its caseload.
- Subsequent to the approval of the \$3,257,575 supplemental appropriation in FY 2009-2010, case referrals to the Indigent Defense Program have exceeded the level anticipated, such that actual Indigent Defense Program expenditures in FY 2009-2010 were \$12,856,946, or \$2,188,777 more than previously estimated expenditures of \$10,668,169. Therefore the Budget and Legislative Analyst recommends reducing the proposed supplemental appropriation by \$11,223, from the requested \$2,200,000 to the needed \$2,188,777.
- Pursuant to Section 3.15 of the City's Administrative Code, approval of the proposed resolution requires a two-thirds vote of the Board of Supervisors because the resolution would authorize an increase the Indigent Defense budget which had been previously reduced by the Board of Supervisors in the annual budget process.

Fiscal Impact

- The currently needed monies of \$2,188,777 would be funded from the General Fund Reserve, reducing the General Fund Reserve, which, as of the writing of this report, has a balance of \$18,179,540 to \$15,990,763.

Recommendations

- Amend the proposed ordinance to reduce the proposed requested supplemental appropriation by \$11,223, from \$2,200,000 to the needed amount of \$2,188,777.
- Approve the proposed ordinance, as amended.

MANDATE STATEMENTS/ BACKGROUND

Mandate Statements

In accordance with Section 9.105 of the City's Charter, subject to the Controller's certification of the availability of funds, the Board of Supervisors or the Mayor may initiate amendments to the annual appropriations ordinance, which must be subsequently approved by the Board of Supervisors.

According to Section 3.15 of the City's Administrative Code, approval of a supplemental appropriation ordinance, which results in an increase to a budget which had been previously reduced by the Board of Supervisors, requires approval by two-thirds vote of the Board of Supervisors.

The United States and California constitutions mandate that all defendants are entitled to legal representation when arrested for a crime, regardless of ability to pay. The Sixth Amendment to the United States Constitution has been interpreted to guarantee the right of all indigent defendants to legal counsel (or attorney representation). California Penal Code Section 987.2 provides that in any case in which a person desires but is unable to employ counsel, assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the county general fund.

Background

In order to comply with the Federal and State mandates as discussed above, the City and County of San Francisco provides legal representation for indigent defendants who are unable to afford private counsel. Such legal representation is provided through two primary entities: (1) the Public Defender's Office and (2) the Superior Court's Indigent Defense Program. The Public Defender's Office refers cases to the Indigent Defense Program when the Public Defender's Office has a conflict of interest as defined by law, such as when there are multiple defendants in a case or when the Public Defender's Office has a previous relationship with the defendant or a witness.

The Superior Court has an agreement with Bar Association of San Francisco (BASF) to (a) provide appropriately qualified and insured private attorneys and (b) schedule these attorneys for Superior Court appointments to represent indigent defendants in criminal proceedings and juveniles in delinquency proceedings, for cases referred to the Indigent Defense Program by the Public Defender. Under that agreement with the Superior Court, BASF has provided administrative oversight of the Indigent Defense Program, including the review and data entry of all bills from private attorneys, private investigators and expert witnesses appointed by the Superior Court in criminal and juvenile delinquency proceedings.

In the City's FY 2009-2010 budget, the Board of Supervisors approved \$7,410,594 for the Superior Court's Indigent Defense Program. Subsequent to the approval of the Indigent Defense Program budget, in addition to cases referred to the Indigent Defense Program in which the Public Defender had a conflict of interest, the Public Defender's Office also referred cases to the

Indigent Defense Program when, according to the Public Defender, the Public Defender's Office did not have sufficient resources and related staff to provide representation for such cases.

According to Mr. Michael Yuen, Chief Executive Officer for the Superior Court, the Public Defender's Office does not provide information regarding the reason that each case is referred by the Public Defender to the Indigent Defense Program. Therefore, the number of cases which are referred due to a conflict of interest as compared to the number of cases which are referred due to insufficient revenues and related staff unavailability in the Public Defender's Office, cannot be determined by the Superior Court.

On March 9, 2010, the Board of Supervisors approved a supplemental appropriation of \$3,257,575 for the Indigent Defense Program (File 10-0059), increasing the total Indigent Defense Program budget by approximately 44 percent from \$7,410,594 to \$10,668,169, in order to provide sufficient funding to meet the estimated FY 2009-2010 Indigent Defense Program costs due to (a) increased conflict of interest referrals, and (b) case referrals due to staff unavailability in the Public Defender's Office.

However, the number of actual cases referred by the Public Defender's Office to the Superior Court's Indigent Defense Program exceeded the level anticipated at the time of the prior FY 2009-2010 supplemental appropriation. As a result, actual FY 2009-2010 Indigent Defense Program expenditures from July 1, 2009 through June 30, 2010 were \$12,856,946, or \$2,188,777 more than the previously approved FY 2009-2010 expenditures of \$10,668,169.

Table 1 below, based on data provided by Mr. Yuen, shows historical expenditures and case load information related to the Indigent Defense Program for the past five fiscal years.

Table 1: Historical Expenditures

	FY 2005-2006	FY 2006-2007	FY 2007-2008	FY 2008-2009	FY 2009-2010	Increase From FY 2005-2006 to FY 2009-2010
Total Expenditures	\$7,451,372	\$7,033,290	\$9,562,418	\$8,816,386	\$12,856,946	72.54%
Total Cases	6,868	6,616	8,574	7,501	10,567	53.86%
Average Cost Per Case	\$1,085	\$1,063	\$1,115 ¹	\$1,175	\$1,217	12.17%

As shown in Table 1 above, the average cost per case has increased 12.17 percent from FY 2005-2006 to FY 2009-2010. During the same period, the number of cases referred by the Public Defender's Office to the Superior Court's Indigent Defense Program has increased 53.86 percent and the total expenditures incurred by the Superior Court's Indigent Defense Program has increased 72.54 percent. As noted above, the Public Defender's Office does not provide information to the Superior Court regarding the reason that each case is referred to the Indigent Defense Program, such that the Superior Court does not know the number of cases which are

¹ According to Mr. Yuen, the cost per case increase from FY 2006-2007 to FY 2007-2008 was partially due to a rate increase of 15 percent approved for the FY 2007-2008 rates paid to the private attorneys under the agreement between the Superior Court and the Bar Association of San Francisco. Mr. Yuen noted that the FY 2007-2008 rate increase was the first increase in ten years, and was intended to provide equitable rates when compared to other Indigent Defense programs in the State.

referred by the Public Defender's Office to the Superior Court's Indigent Defense Program due to conflicts of interest of the Public Defender's Office as compared to those cases which are referred to the Indigent Defense Program by the Public Defender due to staff unavailability and related insufficient resources of the Public Defender's Office.

The Superior Court's Indigent Defense Program expenditures are funded through the City's General Fund.

Mr. Yuen stated that the Superior Court has no control over the number of cases referred by the Public Defender's Office to the Indigent Defense Program, and the number of referrals is a function of (a) criminal activity, (b) Police Department enforcement, (c) District Attorney prosecutions, (d) conflicts of interest of the Public Defender, and (e) insufficient staffing levels in the Public Defender's Office.

Notably, during the Board of Supervisors review of the Public Defender's FY 2010-2011 budget, the Public Defender received a General Fund addback of \$1,501,749 and stated that he would not refer any additional cases to the Indigent Defense Program in FY 2010-2011 due to staff unavailability.

DETAILS OF PROPOSED LEGISLATION

The Superior Court is now requesting a supplemental appropriation of \$2,200,000 to cover the budgetary shortfall in the FY 2009-2010 Indigent Defense Program. However, as shown in Table 2 below, the actual total additional needed expenditures for the Superior Court's Indigent Defense Program to cover the FY 2009-2010 budgetary shortfall is \$2,188,777, or \$11,223 less than the subject requested supplemental appropriation of \$2,200,000.

Therefore the Budget and Legislative Analyst recommends reducing the requested second supplemental appropriation by \$11,223, from \$2,200,000 to \$2,188,777.

Table 2: Actual FY 2009-2010 Expenditures

July 2009 ²	\$994,891
August 2009 ¹	1,959,164
September 2009	711,402
October 2009	629,922
November 2009	510,223
December 2009	654,445
January 2010	677,786
February 2010	783,371
March 2010	500,232
April 2010	966,477
May 2010	747,804
June 2010	3,172,132
Subtotal	\$12,307,849
BASF Administration Costs	549,097
Total	\$12,856,946
Less Previously Appropriated Funds for FY 2009-2010	10,668,169
Required Additional Funding	\$2,188,777

According to Mr. Yuen, and as shown in Table 2 above, June expenditures historically exceed those of other months because in June, the Bar Association of San Francisco private attorneys are required by the Superior Court to submit invoices for representation services provided for all open cases at the end of the fiscal year, regardless of the case status. In contrast, during months other than June, the private attorneys only submit invoices (a) at the end of a preliminary hearing (a hearing to determine if a case will move forward to a trial), and (b) at the end of the trial.

FISCAL IMPACT

The additional amount needed of \$2,188,777 would be funded with monies from the General Fund Reserve, reducing the General Fund Reserve balance, which, as of the writing of this report has a balance of \$18,179,540, to \$15,990,763.

POLICY CONSIDERATIONS

Approval of the requested FY 2009-2010 Supplemental Appropriation requires a two-thirds vote of the Board of Supervisors

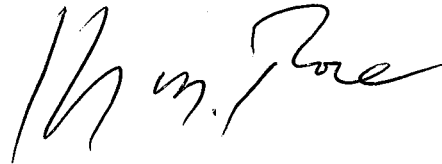
In accordance with Section 3.15 of the City's Administrative Code, approval of a supplemental appropriation ordinance resulting in an increase to a budget which was previously reduced by the Board of Supervisors requires a two-thirds vote of the Board of Supervisors.

² According to Mr. Yuen, July and August of 2009 include expenditures for services provided in FY 2008-2009 but not paid until the beginning of FY 2009-2010 due to budgetary constraints in FY 2008-2009.

The proposed ordinance, net of the reduction of \$11,223 as recommended by the Budget and Legislative Analyst, would increase the budget of the Superior Court's Indigent Defense Program for FY 2009-2010 by \$2,188,777. The Budget and Legislative Analyst notes that the Superior Court's FY 2009-2010 Indigent Defense Program was reduced by \$1,209,997 by the Board of Supervisors. Therefore, approval of the proposed ordinance requires a two-thirds vote of the Board of Supervisors.

RECOMMENDATIONS

1. Amend the proposed ordinance to reduce the proposed appropriation by \$11,223, from the requested \$2,200,000 to the actual amount required of \$2,188,777.
2. Approve the proposed ordinance, as amended.



Harvey M. Rose

cc: Supervisor Avalos
Supervisor Mirkarimi
Supervisor Elsbernd
President Chiu
Supervisor Alioto-Pier
Supervisor Campos
Supervisor Chu
Supervisor Daly
Supervisor Dufty
Supervisor Mar
Supervisor Maxwell
Clerk of the Board
Cheryl Adams
Controller
Greg Wagner