File No. 101103

Committee Item No. 3
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee **Date:** September 29, 2010

Board of Supervisors Meeting **Date** _____

Cmte	Board	
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☐	☐	**Resolution**
☒	☐	**Ordinance**
☐	☐	**Legislative Digest**
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OTHER **(Use back side if additional space is needed)**

☐ ☐ _____
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Completed by: Victor Young **Date:** September 24, 2010
Completed by: Victor Young **Date:** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

FILE NO. 101103 ORDINANCE NO.

RO#10037
SA#37

[Appropriating $2,200,000 of General Fund Reserve for Indigent Defense Expenses in the Superior Court for FY2009-2010]

Ordinance appropriating $2,200,000 of General Fund Reserve to fund indigent defense expenses associated with increased felony caseloads in the Superior Court for FY2009-2010, requiring a two-thirds affirmative vote of all members of the Board of Supervisors per San Francisco Charter Section 9.113.

Note: Additions are *single-underline italics Arial*; deletions are ~~*strikethrough italics Arial*~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The use of funding outlined below is herein de-appropriated to reflect the funding available for Fiscal Year 2009-2010.

USES De-Appropriation

Fund	Index Code	Subobject	Description	Amount
1G AGF AAA – GF-Non-Project-Controlled	*CON1GAGFAAA	098GR	Unappropriated General Fund Reserve – Designated	$2,200,000
Total USES De-Appropriation				**$2,200,000**

Section 2. The uses of funding outlined below are herein appropriated in the Subobject 02699 Court Fees and Other Compensation – Other Fees, and reflects the projected uses of funding to support indigent defense expenses for the Superior Court for Fiscal Year 2009-2010.

USES Appropriation

Fund	Index Code	Subobject	Amount
1G AGF AAA – GF-Non-Project-Controlled	115038	02699 Court Fees and Other Compensation – Other Fees	$2,200,000
Total USES Appropriation			**$2,200,000**

Section 3. The Fiscal Year 2009-2010 Annual Appropriation Ordinance includes the rejection of $2,701,680 for Court Fees and Other Compensation – Other Fees by the Mayor and the Board of Supervisors, which is subject to appropriation in this legislation. Pursuant to Charter Section 9.113, the funding of any item previously rejected by the Mayor or the Board of Supervisors in consideration of the annual budget shall require a two-thirds vote of all members of the Board of Supervisors for approval. Therefore, this appropriation is subject to a two-thirds affirmative vote of all members of the Board of Supervisors.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

FUNDS AVAILABLE
BEN ROSENFIELD
Controller

By: _____

Date: 08/03/2010

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

File 101103

Bos-11
COB, Leg Dep

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

400 McAllister Street, Room 205
San Francisco, CA 94102-4512
Phone: 415-551-4000
FAX: 415-551-5712

JAMES J. MCBRIDE
PRESIDING JUDGE

CLAIRE A. WILLIAMS
COURT EXECUTIVE OFFICER

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
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BY _____ Ak

July 29, 2010

Mayor Gavin Newsom
City and County of San Francisco
City Hall, Room 200
1 Dr. Carlton B. Goodlett Place
San Francisco. CA 94102

Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco. CA 94102

Re: Retroactive FY 2009-10 Supplemental Appropriation Request for Indigent Defense

Dear Mayor Newsom and Supervisors:

The Superior Court of California, County of San Francisco respectfully requests a retroactive supplemental appropriation in the amount of $2,200,000 to fund expenditures incurred from providing constitutionally mandated indigent legal representation in adult criminal, juvenile delinquency, and probate cases.

This request is based on Fiscal Year 2009-10 bills that have been submitted by the Court-established deadline of July 26, 2010. To date, only 21% of the bills received by the deadline have been reviewed, and a total of $467,000 has been approved. The Court has accounted for the bills received by the deadline and projects that once all bills have been reviewed, a total of $2,200,000 will be approved for payment. To avoid payment of Fiscal Year 2009-10 bills in the new fiscal year, a retroactive supplemental appropriation is needed.

In Fiscal Year 2009-10, the Court experienced an unprecedented increase in caseload, due primarily to Public Defender unavailability. Felony caseload rose by almost 40%, and misdemeanor caseload rose by more than 200%. These increases are the primary drivers of the increased costs of indigent defense.

If you have further questions regarding this supplemental appropriation request, please contact Michael Yuen, the Court's Chief Financial Officer, at 415-551-5727.

Office of the Mayor
City & County of San Francisco

Gavin Newsom

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Mayor Gavin Newsom
RE: Appropriating $2,200,000 of General Fund Reserve for Indigent Defense Expenses in the Superior Court for FY09-10
DATE: August 10, 2010

Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is the ordinance appropriating $2,200,000 of General Fund Reserve to fund indigent defense expenses associated with increased felony caseloads in the Superior Court for Fiscal Year 2009-2010, requiring a two-thirds affirmative vote of all members of the Board of Supervisors per San Francisco Charter Section 9.113.

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Starr Terrell (415) 554-5262.

1 Dr. Carlton B. Goodlett Place, Room 200, San Francisco, California 94102-4641
gavin.newsom@sfgov.org • (415) 554-6141

101103

Sincerely,

Claire A. Williams
Court Executive Officer

Attachments

cc: Mr. Leo Levenson, Director – Budget & Analysis Division, Office of the Controller, City and County of San Francisco
Ms. Rebekah Krell, Senior Fiscal & Policy Analyst, Mayor's Office of Public Policy and Finance, City and County of San Francisco
Hon. James J. McBride, Presiding Judge, Superior Court of California, County of San Francisco
Hon. Katherine Feinstein, Assistant Presiding Judge, Superior Court of California, County of San Francisco
Hon. Charles F. Haines, Supervising Judge – Criminal Division, Superior Court of California, County of San Francisco
Mr. T. Michael Yuen, Chief Financial Officer, Superior Court of California, County of San Francisco

REQUEST FOR SUPPLEMENTAL APPROPRIATION

DEPARTMENT: CRT **DIVISION:** 06 **DATE:** 7/28/10

To the Mayor:

Request is hereby made for supplemental appropriation from the following appropriation(s) or fund(s) in the amount(s) indicated;

APPROPRIATION NUMBER	DESCRIPTION OF APPROPRIATION OR FUND	AMOUNT
FUND TYPE/FUND/SUB-FUND DEPT-DIV-SEC INDEX CHAR/SUB-OBJ	1G AGF AAA GEN01 *CON1GAGFAAA 098/098GR	$2,200,000

to the credit of the following appropriation(s) or fund(s) in the amount(s) indicated:

APPROPRIATION NUMBER	DESCRIPTION OF APPROPRIATION OR FUND	AMOUNT
FUND TYPE/FUND/SUB-FUND DEPT-DIV-SEC INDEX CHAR/SUB-OBJ	1G AGF AAA CRT06 115038 021-02699	$2,200,000

There are no surpluses in any of this department's appropriations available for transfer for the requested purpose(s). Complete detail as to the necessity for THIS appropriation is stated in attached letter.

APPLICABLE BOXES MUST BE CHECKED

☐ This request included capital projects (s.o. 06700 OR 06700); a separate copy has been sent to the Chair, Capital improvement Advisory Committee.

☒ These funds have not been previously requested.

☐ Some of these funds were previously requested by:
( ) *Supplemental Appropriation* or ( ) *Budget Estimate* and were
( ) *reduced* or ( ) *denied* by The Mayor, or The Board of Supervisors.

CERTIFIED AS TO FACTS AND AMOUNTS AS ABOVE STATED, AND

RECOMMENDED: _____ **(Department Head)**
CLAIRE A. WILLIAMS, COURT EXECUTIVE OFFICER

APPROVED: _____ **(Board or Commission)**

Recorded Controller's Budget Division

By: _____ Date: _____ Request No. _____

FOR MAYOR'S USE

To the Controller:

The above request meets with my approval; as indicated above. You are hereby requested to prepare the necessary appropriation ordinance.

APPROVED:
Gavin Newsom BY: _____ DATE: _____

FORM 0.10 (revised 7/30/96)

Current Year Projection

General Fund - Projected 09/10

Indigent Defense		July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	Projected June	Projected TOTAL
		Actuals in FAMIS												
026xx	Attorney Fees	$ 728,277	$ 1,687,795	$ 540,935	$ 453,112	$ 297,879	$ 460,346	$ 493,964	$ 612,505	$ 349,808	$ 656,290	$ 522,822	$ 3,025,304	$ 9,829,037
026xx	Investigators	$ 103,369	$ 138,523	$ 100,104	$ 100,930	$ 97,871	$ 109,911	$ 83,962	$ 109,819	$ 50,662	$ 172,929	$ 121,613	$ 68,109	$ 1,257,802
026xx	Witnesses & Legal Support	$ 163,245	$ 132,846	$ 70,363	$ 75,880	$ 114,473	$ 84,188	$ 99,860	$ 61,047	$ 99,762	$ 137,258	$ 103,369	$ 89,942	$ 1,232,233
	SubTOTAL	$ 994,891	$ 1,959,164	$ 711,402	$ 629,922	$ 510,223	$ 654,445	$ 677,786	$ 783,371	$ 500,232	$ 966,477	$ 747,804	$ 3,183,355	$ 12,319,072
	Bar Association Contract	$ 45,758	$ 45,758	$ 45,758	$ 45,758	$ 45,758	$ 45,758	$ 45,758	$ 45,758	$ 45,758	$ 45,758	$ 45,758	$ 45,758	$ 549,097
	TOTAL, Indigent Defense Expenditures													$ 12,868
	Budget	$ 10,669,169	$ 9,674,278	$ 7,715,114	$ 7,003,712	$ 6,373,790	$ 5,863,567	$ 5,209,122	$ 4,531,336	$ 3,747,965	$ 3,247,733	$ 2,281,256	$ 1,533,452	$ 10,668,169
	Balance	$ 9,674,278	$ 7,715,114	$ 7,003,712	$ 6,373,790	$ 5,863,567	$ 5,209,122	$ 4,531,336	$ 3,747,965	$ 3,247,733	$ 2,281,256	$ 1,533,452	$ (1,649,903)	$ (2,200,000)