**Office of the Public Defender BOS Addback Request**

**Budget  FY 2021-2023**

The Public Defender Office represents indigent clients, over 80% of whom are people of color. We provide constitutionally and statutorily mandated legal services to San Francisco’s poor, unhoused, food insecure, mentally ill, immigrant, and socioeconomically marginalized community.  We work to create equity.

We are not in a period where we have achieved advancement, equality, or equity for San Francisco’s indigent communities of color. In fact, the indigent, BIPOC communities we represent are suffering more than ever before due to the COVID-19 pandemic.  In order to offer San Francisco’s most marginalized communities the best possible legal representation and service delivery,  we want to move beyond purely “sustaining” the current budget of the Public Defender’s Office, which has historically been woefully underfunded, particularly in relation to other criminal justice agencies (the District Attorney, Police Department, and Sheriff’s Department in particular), and instead hope to move towards equality, equity, and healing for the vulnerable communities we serve.

San Francisco has made a commitment to focus on racial equity and also to shift resources from law enforcement to services that uplift Black communities, who are overrepresented in the jails, and who make up over 50 percent of our clients.  Our addback request falls squarely within those goals.

**The total amount we are requesting is $1,166,688 in year one and $1,646,106 in year two, while saving the City approximately $1.9 million each year. This budget request is made up of two complementary initiatives:**

1. **Expansion of the Pretrial Release Unit to Prevent Unnecessary incarceration and Improve Services Upon Release**

*We hope to add one attorney, two social workers, and one data analyst to our existing team of two attorneys and one investigator.*

**Expansion cost: yr1  $418,470  yr2 $591,935**

***Background on the PRU (Pretrial Release Unit)***

The Pretrial Release Unit started as a pilot program in 2017 with the goal of enhancing access to pre-arraignment legal representation for indigent arrestees.  While wealthy (most often white) arrestees have **pre-arraignment representation,** San Francisco’s indigent BIPOC didn’t have access to this until the Public Defender began this unit.

In the last four years, the PRU has done critical work to address the pervasive and well-documented racial and economic inequalities that plague the criminal legal system by meeting with clients during this pre-arraignment period.  This time period is crucial.  The DA decides whether and what charges to file.  Bail is set.  Learning what led to our client’s arrest from their perspective, and following up by locating and interviewing key witnesses and securing video surveillance, requires urgent action and attention.  Having a legal advocate and access to immediate investigation can mean the difference between being charged or not, facing felony or misdemeanor charges, , and locating or losing exculpatory evidence.

Arrestees with money to hire private counsel immediately upon (and sometimes even before) being booked into jail are more likely to be released at or before arraignment, and they can await the District Attorney’s charging decision from the comfort of their homes and communities.  In contrast, indigent arrestees are typically not assigned a public defender until arraignment, days after being booked.  The collateral consequences are as obvious as they are predictable: being held in jail can cause a person to lose their housing and/or their job, and consequently their financial stability, access to mental health and/or substance use treatment, or worst of all, custody of a child.

Pre-arraignment representation increases the likelihood of release at arraignment by providing attorneys the time needed to compile a robust case for release, which includes contacting family and community members and keeping them informed of case developments, verifying housing, employment, and community ties, and even ensuring clients have uninterrupted access to their medications.  This information is extremely important to judges when they make their decisions of whether to release a person at arraignment.

A 2018 study by the University of California, Goldman School of Public Policy revealed the PRU’s profound human - and cost-savings - impact.  Arrestees seen by a member of the PRU Unit were twice as likely to be released at arraignment, meaning that people are able to return to their families, communities, and jobs, and according to studies - that they are less likely to plead guilty, be convicted, and recidivate.  Moreover, **the PRU was projected to save the City 11,200 jail bed days per year at an annual cost of approximately $1,926,400.**

**Why Expand the PRU?**

The PRU’s current staffing level - two attorneys and one investigator - must triage on a daily basis and prioritizes meeting with the clients charged with the most serious offenses.

In 2019, there were approximately 17,000 individuals booked into the San Francisco County Jail - on felonies, misdemeanors, alleged violations of probation, post-release community supervision, or parole, or out-of-county warrants. The PRU team met face-to-face in the jail with, and conducted necessary follow-up on behalf of, approximately 3515 of these individuals, roughly 20% of all people booked into the jail, including all those who were facing serious felony charges.

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 In 2020, health and safety concerns related to the COVID-19 pandemic significantly hampered PRU’s ability to meet with clients in the jail in person. The Public Defender’s Office had limited access and ability to visit clients in person.  In collaboration with the Sheriff’s Department, we were able to pivot and establish a system to meet with clients via zoom.  However, the system has limitations, as there are only a limited number of zoom slots per day, and due to staffing issues as the Sheriff’s Department, setting up an appointment requires more than 24-hours notice.  Despite these constraints, the PRU team met with 1260 of the nearly 11,820 people booked into the jail in 2020, including all individuals charged with the most serious offenses.

**Expanding the PRU will enable us to:**

People are booked into the county jail 7-days per week, so the PRU is therefore by necessity a 7-day/week operation.  Expanding the PRU by adding one attorney, two social workers, and one data analyst will enable us to:

* Meet with approximately 50 percent of people booked into jail, versus the 20 percent we met with pre-pandemic, , over 70 percent of  whom are people of color.

* Track, identify, assess and refer clients who regularly cycle in and out of jail on low-level felony and misdemeanor charges to substance use disorder and/or mental health treatment, shelter/housing, and or other social services  By addressing the underlying issues that lead to system-involvement and connecting our indigent clients with the appropriate services in the community, we will be able to reduce recidivism, improve public safety, and tackle the racial disparities in the criminal legal system.
* Improve on the current statistics which show arrestees seen by a member of the PRU were *twice* as likely – from 14% to 28% – to be released at arraignment.

* Reduce pretrial incarceration by 44%, or an average of 9.5 days, among eligible parolees who were held in custody for alleged violation of their parole orders.

* Improve on the current statistics which show the current PRU team saves approximately 11,200 jail bed-days per year at an annual cost of approximately $1,926,400.  A data analyst would also be able to track clients who are repeatedly arrested, the services they are provided, and analyze the success of what keeps people out of the criminal legal system.

* Reduce the jail population, which is critical in light of the COVID-19 pandemic (note:  Dr. Lisa Pratt, Director of Jail Health Services, has repeatedly emphasized the importance of reducing the jail population in order to prevent the spread of the COVID-19 virus in the jail and the larger community) and the closure of the two jails at 850 Bryant Street.

* Comport with the law in light of the California Supreme Court’s ruling in the *Humphrey* case that detention prior to trial is the “carefully limited exception.”

1. **Ensuring Quality Services and Racial Equity for BIPOC Indigent Clients who have suffered disproportionately from COVID**

Public Defender clients, the poorest and most marginalized BIPOC San Franciscans, have suffered disproportionately during COVID-19, having suffered disproportionate illness, homelessness, job loss and terrible conditions of incarceration as a result of the pandemic. Our office’s ability to effectively represent these clients will have a significant impact on the quality of their lives, and the lives of their families.  This ask is about addressing deep racial inequities in our criminal legal system when it comes to the perpetual underfunding of Public Defenders, and is also about ensuring COVID recovery for our deeply vulnerable clients. We have to be able to run an office that works as a well-oiled machine in order to effectively meet the enormous need.

*The following positions will strengthen the machine of the Public Defender’s Office, to ensure strong, timely, compassionate representation for our indigent clients:*

* *2 investigators, and 4 senior upclassing of investigators  - to ensure effective investigations for indigent people, and ensure diversity in investigations staff*
* *1 Legal Process Clerical - to ensure files are prepared in a timely way so people aren’t lingering in jail unnecessarily due to paperwork*
* *1 IT position - to ensure all electronic processes and communications with clients in jail and court happens in a timely and effective way*
* *1 Senior Personnel Analyst - to support a large office whose work has been deeply affected by the changes brought on by COVID.*
* *1 Public Relations Officer - to ensure that the broader community is aware of the many services provided by the Public Defender*
* *Substituting 3 trial attorneys with head attorneys - to ensure that we are able to keep top talent, at a time when surrounding Bay area counties public defender offices’ have higher salaries than SF*

**Cost: FY21-22: $748,218, FY22-23: $1,054,171**

**Parity in Investigators Will Help Achieve Equity and Effective Representation**

Unlike the District Attorney, our office does not have the support of the Police Department to perform investigative services. On top of that, our office has less investigators per attorney than either the DA or the City Attorney. This means that San Francisco’s BIPOC residents facing criminal prosecution are at a systematic disadvantage.

**Disparity**:  Ratio of investigators to attorneys

City Attorney’s Office 1:4

District Attorney’s Office 2:3

Public Defender’s Office   1:5

From a parity perspective, the Public Defender’s Investigation Unit is underfunded and understaffed, compromising its ability to fulfill its constitutionally-mandated responsibility to conduct thorough and complete investigations on behalf of its indigent clients. Our proposal is to add 2 investigators, and remove structural impediments from our ability to attract and retain (offer opportunity for advancement) investigators, many of whom are BIPOC.  Our proposal therefore includes funding to up-class 3 investigator positions to 3 senior investigator positions.

**Closing the Information Gap** **Will Help Achieve Equity and Effective Representation**

The City’s law enforcement divisions have data analysts, and other technology support personnel to collect, gather, retrieve, compile, store, and analyze raw data from detentions, arrests, charges, prosecutions, dismissals, diversion, conviction, acquittals, and all forms of criminal justice system interaction.  With this technology support staff, the City’s law enforcement divisions are positioned to identify trends, forecast needs, present narratives, direct and develop policy, monitor improvements, and otherwise systematically evaluate service levels and service needs of the populations they interact with.  Our office, with so many staff members stretched past capacity by fulfilling multiple roles, does not have adequate human resources to achieve the data collection, gathering, retrieval, compilation, storage, and analysis of raw data which is available – to address the needs of our clients and the BIPOC residents who are detained, arrested, charged, and prosecuted.

We require the following to close the information gap and inform community leaders reducing socioeconomic disparities, and make policy and practice recommendations:

Legal Process Clerk

IT Operations Support Administrator

Senior Human Resource Analyst

**Public Relations Officer**

The City’s law enforcement divisions’ communications/public relations personnel organize and direct communications plans to inform the public about the work of those departments; broaden and strengthen the community’s understanding of critical services that those departments provide; and shape the narrative of their policies to ensure visibility and success. The Public Defender’s Office requires equal access to the resources, expertise, knowledge, and experience as the City’s law enforcement divisions to reach, inform, and educate BIPOC residents concerning the legal services provided by our office, policies we implement, and lead community outreach and education efforts to ensure visibility and success.  Our budget therefore proposes funding for a Public Information Officer.

**Substituting 3 Trial Attorneys with Head Attorneys**

The ratio of management level attorneys in the City’s three public law offices is  skewed in favor of the City Attorney’s Office and the District Attorney’s Office, and against the Public Defender’s Office. The disparity in the total number of  management level attorney positions (13% management attorneys in the Public Defender’s Office vs. 21.5% in the City Attorney’s office and 16% in the District Attorney’s office) inhibits the Public Defender’s ability to recruit and retain the most experienced attorneys, increase the number of promotional opportunities to BIPOC attorneys, and mentor, coach, and sponsor Public Defender attorneys into leadership roles.  The Public Defender’s Office therefore seeks to up-class three attorney positions (8177) to Head Attorney positions (8182).  This change will make the ratio of management level attorneys to all attorneys 16%, and therefore take an important step towards parity in the management level attorney positions in the City’s public law offices.  This change will improve the office’s ability to expand opportunities for leadership development, especially for Black and Latinx attorneys, and other attorneys of color.