

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**FY 2010-11 STAFF BUDGET BRIEFING**

**JUDICIAL DEPARTMENT**

**JBC Working Document - Subject to Change  
Staff Recommendation Does Not Represent Committee Decision**

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November 11, 2009**

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**FY 2010-11 BUDGET BRIEFING  
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE**

**JUDICIAL DEPARTMENT**

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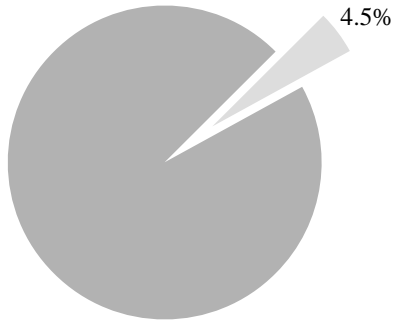
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**FY 2010-11 Budget Committee Staff Budget Briefing  
Judicial Department**

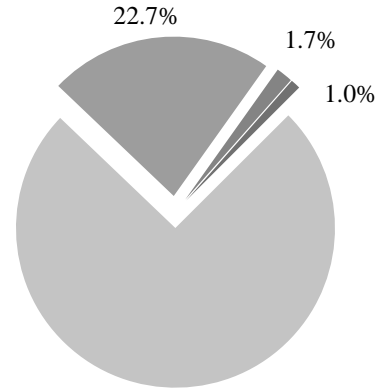
**GRAPHIC OVERVIEW**

**Department's Share of Statewide General Fund**



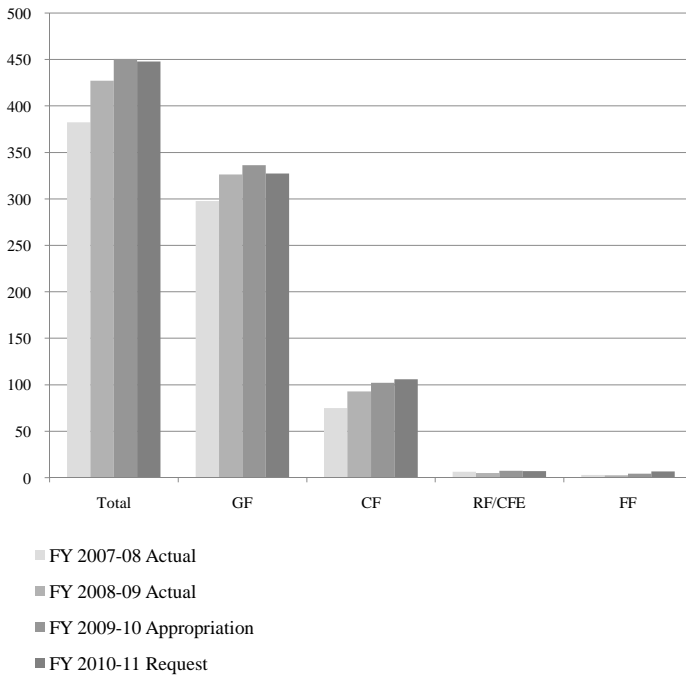
- Judicial Department
- Statewide General Fund

**Department Funding Sources**

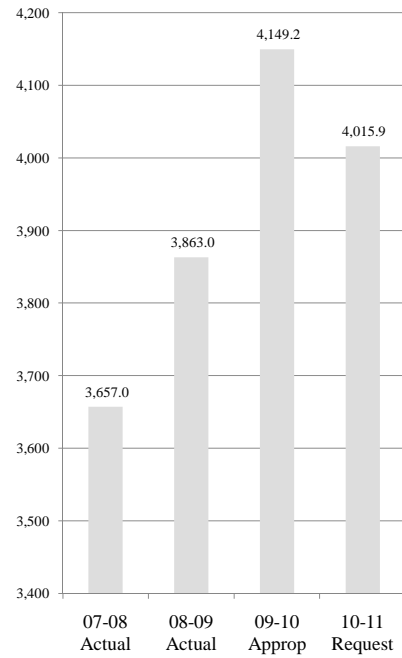


- General Fund
- Cash Funds
- Reappropriated Funds
- Federal Funds

**Budget History  
(Millions of Dollars)**

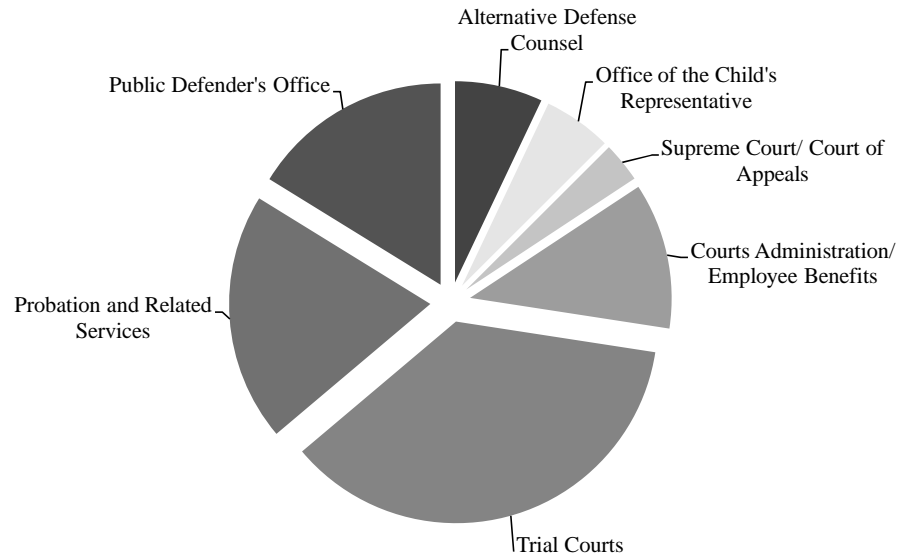


**FTE History**

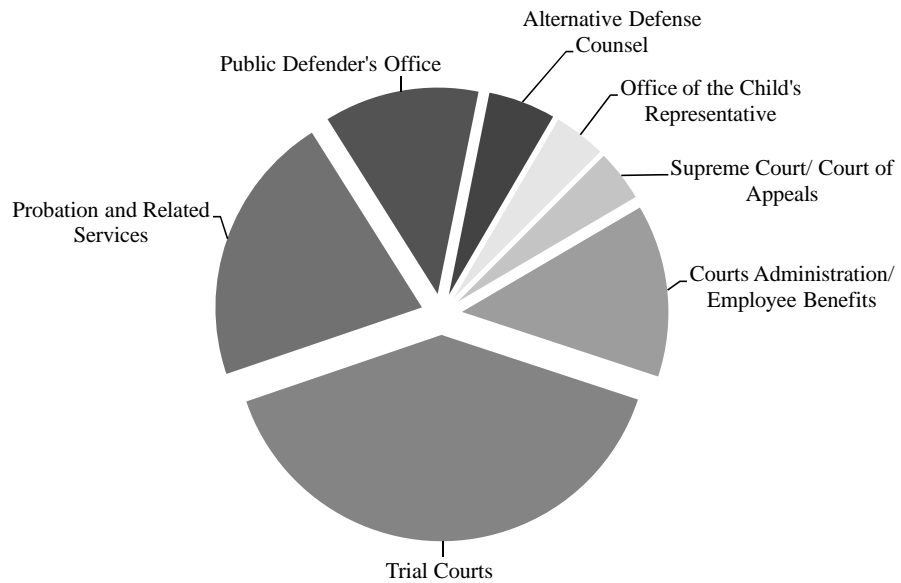


Unless otherwise noted, all charts are based on the FY 2009-10 appropriation.

### Distribution of General Fund by Division



### Distribution of Total Funds by Division



**FY 2009-10 Joint Budget Committee Staff Budget Briefing  
Judicial Department**

**DEPARTMENT OVERVIEW**

**Key Responsibilities**

The Colorado Judicial Branch is a fair and impartial system of justice that: protects constitutional and statutory rights and liberties; assures equal access; and provides fair, timely and constructive resolution of cases. Colorado's Judicial Branch consists of the Supreme Court, the Court of Appeals, district courts, the Denver Probate and Juvenile Courts, county courts, and municipal courts. The components of the state Judicial Department are described below; municipal courts and Denver's county courts are not part of the state system and are funded by their respective local governments.

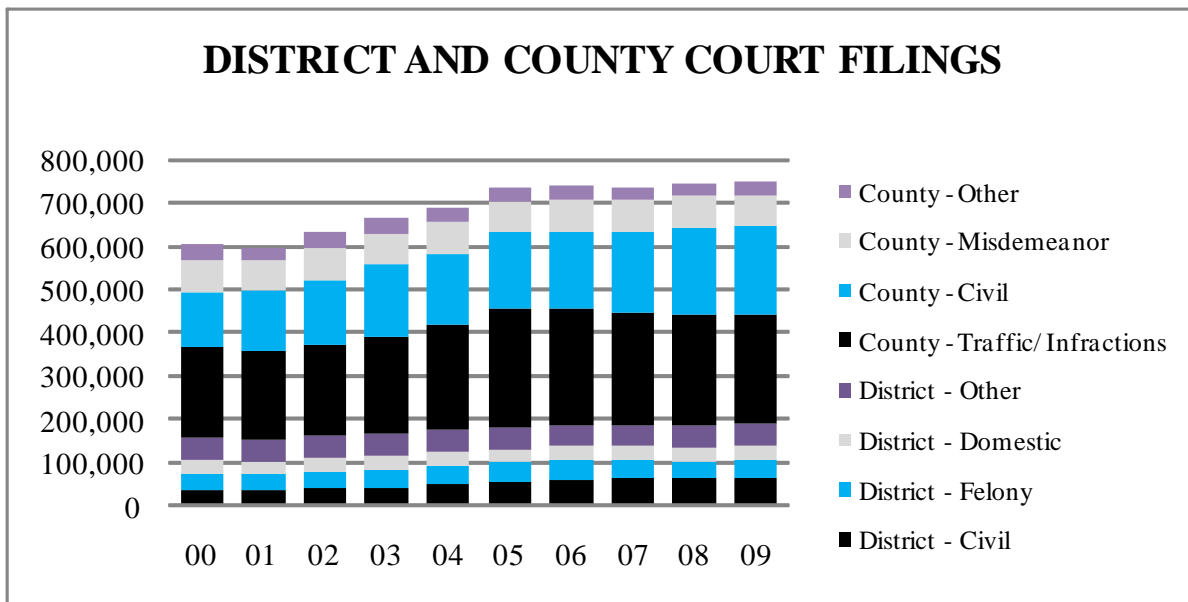
- ▶ The *Supreme Court* and *Court of Appeals* provide appellate review of decisions of trial courts as well as those of several state agencies. The Supreme Court is also responsible for overseeing the regulation of attorneys and the practice of law. The Chief Justice, selected by the justices of the Court, is the executive head of the Department.
- ▶ Trial courts consist of district courts and county courts. *District courts* preside over criminal, civil, domestic, and water cases; hear appeals from county and municipal courts; and review decisions of administrative boards and agencies. *County courts* handle civil actions involving less than \$15,000, misdemeanor cases, civil and criminal traffic infractions, felony complaints, and cases involving domestic violence. County courts also hear appeals from municipal courts.
- ▶ The Department is also charged with enhancing public safety by preparing presentence investigation reports for the courts, supervising juvenile and adult offenders who are sentenced to *probation*, and providing victim notification and assistance.
- ▶ The *State Court Administrator*, who is appointed by the justices of the Supreme Court, oversees the daily administration of the Department and provides administrative and technical support to the courts.
- ▶ The *Public Defender's Office* provides legal representation for indigent defendants in criminal and juvenile delinquency cases in which actual incarceration is a likely penalty. The Office of *Alternate Defense Counsel* oversees the provision of legal representation for indigent defendants when the Public Defender's Office is precluded from doing so because of an ethical conflict of interest. Both offices are independent agencies.
- ▶ The *Office of the Child's Representative*, also an independent agency, oversees the provision of legal services to children entitled to legal representation at state expense, and is responsible for ensuring quality representation.

## Factors Driving the Budget

Fiscal year 2009-10 funding for this department consists of 74.6 percent General Fund, 22.7 percent cash funds, 1.7 percent reappropriated funds, and 1.0 percent federal funds. Cash funds that support court operations primarily come from various docket fees and surcharges established in statute. The Probation program also receives cash funds from individuals sentenced to probation who pay fees that support their supervision and treatment. Attorney licensing fees are used by the Supreme Court to regulate the practice of law in Colorado.

The main factor driving the budget for the Judicial Branch is caseload. Judges, magistrates, probation officers, public defenders, and staff can only manage a certain number of cases per year. As the caseload grows, so does the need for resources if the Branch is to continue fulfilling its constitutional and statutory duties in a timely and professional manner. Caseload is generally driven by population changes, changes in the State's economic climate (which affect both the crime rate and the proportion of clients requiring state-funded representation), and changes in state laws and sentencing provisions. Caseload is also impacted by the types of cases filed, as some cases require more time and resources than others.

## Case Filings and the Need for Court Staff



In FY 2008-09, approximately 757,000 cases were filed in the state court system, including 562,000 (74 percent) in county courts, 191,000 (25 percent) in district courts, 2,800 in the Court of Appeals, and 1,600 in the Supreme Court. The above graph depicts the number of cases filed annually in county and district courts since FY 1999-00.

The total number of county and district case filings has increased by nearly 24 percent over the last ten years (with a compound annual growth rate of 2.4 percent), with the most significant growth occurring from FY 2000-01 through FY 2004-05. At the district court level, the most significant increase occurred in civil cases concerning foreclosures and tax liens; the number of such cases filed increased by over 20,000, more than doubling over ten years. These cases now account for nearly one in five cases filed at the district court level. At the county court level, the most significant increase has occurred in civil cases, which increased by nearly 76,000 (60 percent). Civil cases now account for over 36 percent of cases filed at the county court level.

To respond to these caseload increases, the General Assembly periodically increases the number of judges within the state court system. For example, H.B. 07-1054 increased the number of judges over a three year period, including: increasing the number of court of appeals judges from 19 to 22; increasing the number of district court judges from 118 to 150; and increasing the number of county court judges from 84 to 92. Of course, the addition of 43 judges requires funding for the judges as well as the associated court support staff (e.g., law clerks, court reporters, judicial assistants, etc.), along with additional staff required by the State Public Defender and the Attorney General's Office. House Bill 07-1054 was thus estimated to require a total increase of 307.2 FTE from FY 2007-08 through FY 2009-10. Funding was provided for the first two fiscal years to add 28 judgeships, as scheduled. For FY 2009-10, in light of the revenue shortfall, a limited amount of funding was provided based on delaying the remaining 15 judgeships until the end of FY 2009-10.

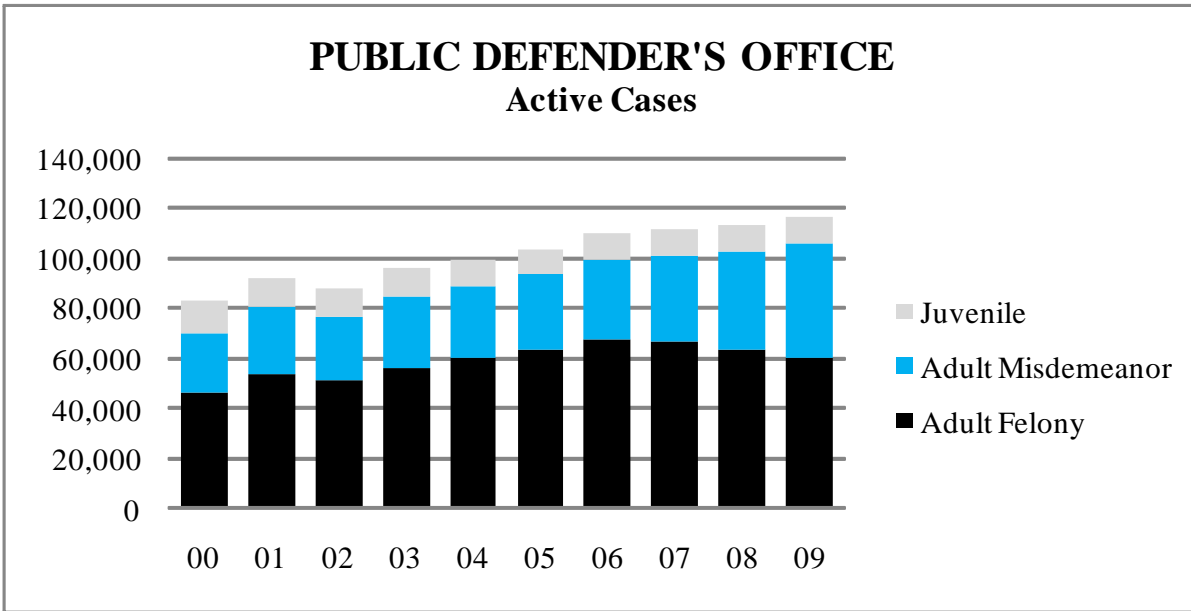
### **Caseload Impacts Unique to Independent Agencies**

Each of the three independent agencies are affected by changes in the number of cases filed differently, based on the clients they are charged with representing. Each of these agencies is discussed below.

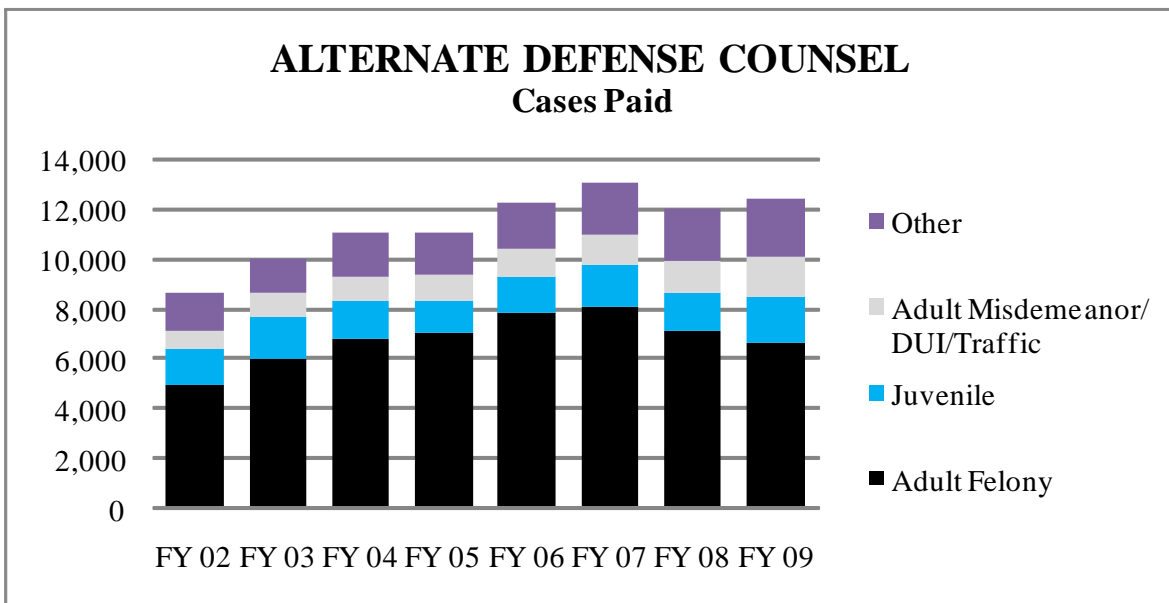
The *Public Defender's Office* represents criminal defendants who have inadequate resources to pay for their own defense. The Public Defender's Office' caseload is affected by the number and types of cases filed, as well as the proportion of clients who require state-funded representation. As in the court system, more complicated cases consume more resources than simpler cases: felonies cost more to defend than misdemeanors, and homicides cost more to defend than assaults or robberies.

As illustrated in the graph on the following page, the number of cases requiring public defender involvement has increased annually since FY 2001-02. From FY 2001-02 through FY 2005-06, the number of felony cases requiring pre-trial and trial involvement (the primary factor driving public defender attorney staffing needs) increased by more than 8,000 (34 percent). Since FY 2005-06 the number of felony cases requiring pre-trial and trial involvement has actually declined, while adult misdemeanor cases requiring pre-trial and trial involvement has increased by more than 47 percent (from 22,085 to 32,510).

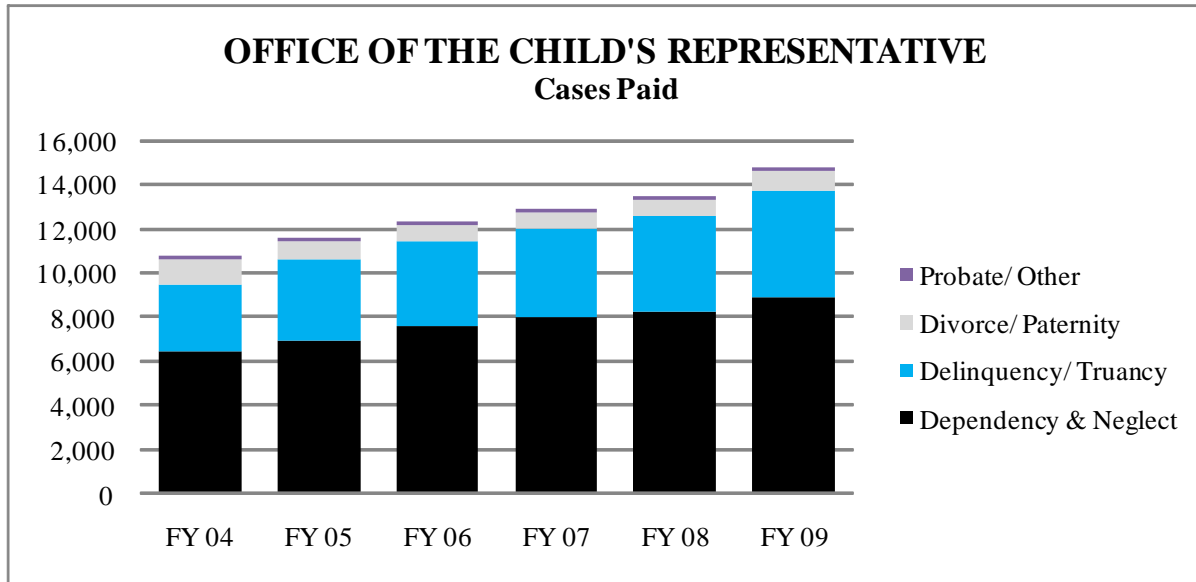




The *Office of the Alternate Defense Counsel (OADC)* contracts with private attorneys to represent indigent defendants in cases where the Public Defender has an ethical conflict of interest. Similar to the Public Defender, certain types of cases (e.g., death penalty cases and other cases involving violent crimes) are more expensive than others; these types of cases require more hours of attorney time and the OADC pays a higher hourly rate for these types of cases. As illustrated in the graph below, OADC caseload growth from FY 2001-02 through FY 2005-06 was primarily driven by increases in the number of felony cases. In FY 2007-08, the OADC caseload declined, primarily due to reductions in the number of felony and juvenile cases.



The *Office of the Child's Representative (OCR)* is responsible for providing legal representation for children involved in the court system due to abuse or neglect, delinquency, truancy, high conflict divorce, alcohol or drug abuse, mental health issues, and probate matters. OCR expenditures are primarily driven by the number of cases involving abuse or neglect, as these account for the most court appointments and they require the most attorney time (other than probate cases). The graph below illustrates recent caseload changes.

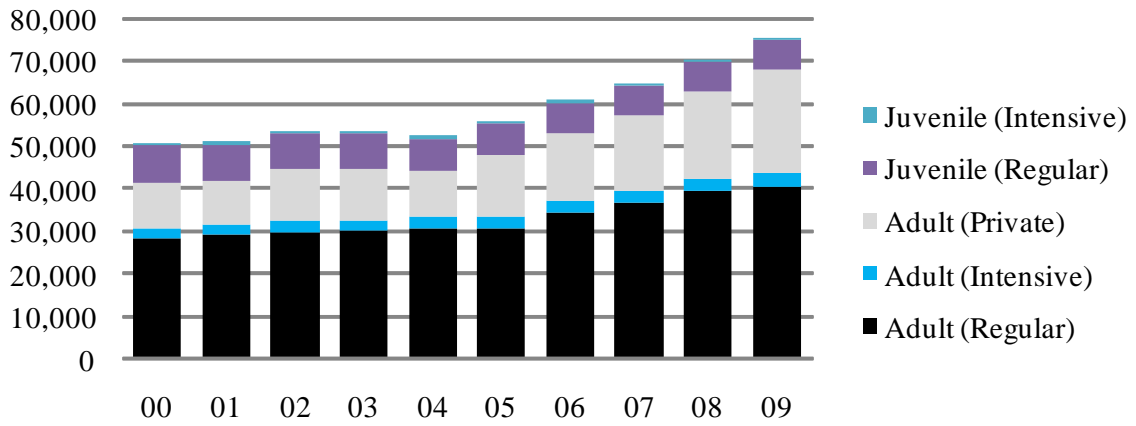


### Probation and Related Services Caseload

Individuals sentenced to probation, as an alternative to incarceration, remain under the supervision of the court. Failure to meet the terms of probation set forth in the court's sentencing order may result in incarceration. Managed by the chief probation officer in each judicial district, 1,200 employees prepare assessments, provide pre-sentence investigation services to the courts, and supervise offenders sentenced to probation. Supervision services are provided based on each offender's risk of re-offending.

Funding for probation services is primarily driven by the number and types of offenders sentenced to probation and statutory requirements concerning the length of required supervision. The number of offenders under supervision has increased significantly since June 2004. In particular, the number of adult offenders increased by nearly 24,000 (54 percent). While more than half of this growth is related to DUI/DWAI and other offenders who are supervised by private providers, the number of adult offenders supervised by state staff increased by more than 10,000 (31 percent). As the number of offenders grows, so does the need for probation officers to adequately supervise offenders. From FY 2003-04 to FY 2008-09, the number of FTE appropriated for probation increased from 950 to 1,204 (27 percent). The graph on the following page depicts changes in the number of adults and juveniles under supervision since 2000.

## PROBATION Clients on Supervision June 30



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Judicial Department**

**DECISION ITEM PRIORITY LIST**

<b>Decision Item</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>Total</b>	<b>FTE</b>
JUD-1	(\$16,932,392)	(\$402,902)	(\$20,269)	\$0	(\$17,355,563)	(266.0)
<p><b>Personal Services and Operating Expense Reductions</b></p> <p><b>Various Line Items.</b> The Department has implemented a statewide FTE reduction plan that includes the following reductions planned for FY 2010-11: \$7,407,811 and 154.0 FTE for Trial Courts; \$6,942,701 and 94.0 FTE for Probation; \$682,031 and 10.0 FTE for the Supreme Court and Court of Appeals; \$536,214 and 5.0 FTE for Integrated Information Services; \$317,206 and 3.0 FTE for Courts Administration; and \$1,469,600 for associated Health, Life and Dental benefit costs. These reductions would result in a 4.9 percent reduction in appropriations to the Department (excluding the three independent agencies), and a 7.5 percent reduction in FTE (9.0 percent in non-judge staff). <i>Statutory authority: Sections 13-3-101 and 106, C.R.S.</i></p>						
JUD-1	0	(2,893,627)	0	0	(2,893,627)	(43.0)
<p><b>Further Delay New Judges</b></p> <p><b>Trial Courts.</b> Existing FY 2009-10 appropriations are based on delaying the final 15 new judgeships created through H.B. 07-1054 by 10 to 12 months. The Department now proposes further delaying these new judgeships, filling 14 of them on January 1, 2011, and the final one (in the 1<sup>st</sup> judicial district) on July 1, 2011. <i>Statutory authority: Section 13-5-102 through 123, and 13-6-202, C.R.S.</i></p>						
JUD-1	(1,000,000)	2,923,498	0	0	1,923,498	19.0
<p><b>Implement Public Access System and Develop E-filing System</b></p> <p><b>Courts Administration, Integrated Information Services.</b> The Department requests a net increase of \$1.9 million and 19.0 FTE to implement the Public Access System (PAS); cash funds were appropriated in FY 2008-09 for the purpose of developing the PAS. Implementation of this in-house PAS will provide continuity for users once the existing vendor contract expires, reduce public user fees, and result in General Fund savings related to information technology infrastructure costs. <i>Statutory authority: Sections 13-3-101 and 106, and 13-32-114, C.R.S.</i></p>						
JUD-1	(1,000,000)	1,950,000	0	0	950,000	0.0
<p><b>Provide Courthouse Furnishings</b></p> <p><b>Courts Administration.</b> The Department requests \$950,000 to furnish new and remodeled courthouse facilities that are anticipated to be completed in 14 judicial districts in FY 2010-11. The Department proposes eliminating the existing General Fund appropriation, and instead utilizing cash funds made available through further delay of the new judgeships authorized in H.B. 07-1054. <i>Statutory authority: Sections 13-3-104 and 108, C.R.S.</i></p>						

Decision Item	GF	CF	RF	FF	Total	FTE
JUD-1	294,868	132,240	0	0	427,108	0.0
<p><b>Leased Space</b></p> <p><b>Courts Administration, Administrative Special Purpose.</b> The Department's leases for space in the Penn Center and in Denver West expired in June 2009. The Department negotiated a new lease in the Denver Newspaper Agency building, allowing for a consolidation of staff and a significant cost savings compared to the option of remaining in the Penn Center. The source of cash funds is parking fees paid by employees. <i>Statutory authority: Section 13-3-101 and 106, et seq., C.R.S.</i></p>						
JUD-2	0	0	0	0	0	0.0
<p><b>Separate Line Item for Problem-Solving Courts</b></p> <p><b>Trial Courts.</b> The Department requests a change in the Long Bill structure to separately identify appropriations associated with adult drug courts. The request simply shifts existing resources from the Personal Services and Operating line items to a new line item. <i>Statutory authority: Article VI, Section 9 (1) of the Colorado Constitution; and Section 13-5-101, et seq., C.R.S.</i></p>						
JUD-3	0	675,000	0	0	675,000	0.0
<p><b>Courthouse Security Grants</b></p> <p><b>Courts Administration, Courthouse Security.</b> The Department requests an increase in spending authority from the Court Security Cash Fund to increase grant awards to counties. <i>Statutory authority: Section 13-1-201, et seq., C.R.S.</i></p>						
PD-NP	(2,329,539)	0	0	0	(2,329,539)	0.0
<p><b>Targeted One-time Personal Services Reductions</b></p> <p><b>Public Defender.</b> The Public Defender submitted a non-prioritized decision item including several one-time reductions in funding, including a reduction in Personal Services and related line items. This reduction is based on waiting four months to hire 40.1 FTE to address the public defender impact of adding 28 judgeships in FY 2007-08 and FY 2008-09. Another 34.5 FTE associated with the remaining 15 new judgeships would be delayed until FY 2011-12. This proposal thus reduces the staffing request associated with H.B. 07-1054 from 74.6 FTE to 26.7 FTE, a reduction of 47.9 FTE that is not reflected in this decision item request. <i>Statutory authority: Section 21-1-101, et seq., C.R.S.</i></p>						
PD-NP	(822,156)	0	0	0	(822,156)	0.0
<p><b>Targeted One-time Operating Reductions</b></p> <p><b>Public Defender.</b> The Public Defender submitted a non-prioritized decision item including several one-time reductions in funding, including: Operating Expenses (\$241,319); Automation Plan (\$221,433); Mandated Costs (\$182,672); and Capital Outlay (\$176,732). <i>Statutory authority: Section 21-1-101, et seq., C.R.S.</i></p>						

Decision Item	GF	CF	RF	FF	Total	FTE
PD-NP	(10,704)	0	0	0	(10,704)	0.0
<p><b>Adjust Centrally-appropriated Line Items</b></p> <p><b>Public Defender.</b> The Public Defender submitted anticipated adjustments to centrally appropriated line items (vehicle lease payments) as a decision item. <i>Statutory authority: Section 21-1-101, et seq., C.R.S.</i></p>						
OADC-1	864,171	0	0	0	864,171	0.0
<p><b>Conflict of Interest Contracts</b></p> <p><b>Alternate Defense Counsel.</b> The Office requests an additional \$864,171 for conflict of interest contracts, based on anticipated changes in the number and mix of cases in which OADC counsel is appointed. This request primarily includes increases in the number of attorney hours required in death penalty cases. <i>Statutory authority: Section 21-2-101, et seq., C.R.S.</i></p>						
OCR-1	1,023,898	0	0	0	1,023,898	0.0
<p><b>Address Caseload and Workload Increases</b></p> <p><b>Office of the Child's Representative.</b> The Office requests additional funding to cover a projected 2.8 percent caseload increase and a 0.2 percent increase in the average cost per case. <i>Statutory authority: Section 13-91-101, et seq., C.R.S.</i></p>						
OCR-2	8,887	0	0	0	8,887	0.0
<p><b>Replace IT Equipment</b></p> <p><b>Office of the Child's Representative.</b> The Office requests an additional \$8,887 to replace one server and three computers. <i>Statutory authority: Section 13-91-101, et seq., C.R.S.</i></p>						
OCR-3	27,765	0	0	0	27,765	0.5
<p><b>Add Assistant Billing Administrator</b></p> <p><b>Office of the Child's Representative.</b> The Office requests funding to add 0.5 FTE billing administrator to address workload increases associated with processing and paying bills. <i>Statutory authority: Section 13-91-101, et seq., C.R.S.</i></p>						
<b>Total</b>	<b>(\$19,875,202)</b>	<b>\$2,384,209</b>	<b>(\$20,269)</b>	<b>\$0</b>	<b>(\$17,511,262)</b>	<b>(289.5)</b>

**FY 2010-11 Joint Budget Committee Staff Budget Briefing  
Judicial Department**

**OVERVIEW OF NUMBERS PAGES**

The following table highlights changes contained in the Department's FY 2010-11 budget request, as compared with the FY 2009-10 appropriation. For additional detail, see the numbers pages in Appendix A.

**Summary of Requested Changes, FY 2009-10 to FY 2010-11**

<b>Category</b>	<b>GF</b>	<b>CF</b>	<b>RF</b>	<b>FF</b>	<b>Total</b>	<b>FTE</b>
FY 2009-10 Appropriation	\$336,357,516	\$102,306,844	\$7,608,876	\$4,430,420	\$450,703,656	4,149.2
FY 2010-11 Request	327,648,469	106,134,027	7,403,404	6,814,742	448,000,642	4,015.9
Increase / (Decrease)	(\$8,709,047)	\$3,827,183	(\$205,472)	\$2,384,322	(\$2,703,014)	(133.3)
Percentage Change	-2.6%	3.7%	-2.7%	53.8%	-0.6%	-3.2%

**Requested Changes, FY 2009-10 to FY 2010-11**

<b>Description</b>	<b>GF</b>	<b>CF</b>	<b>RAF</b>	<b>FF</b>	<b>Total</b>	<b>FTE</b>
Add final 15 judgeships and associated court staff, as well as public defender staff (H.B. 07-1054) <sup>1</sup>	\$4,874,213	\$5,335,917	\$0	\$0	\$10,210,130	141.2
Employee benefits <sup>2</sup>	3,158,705	75,165	0	0	3,233,870	0.0
Federal grant to expand capacity of existing adult drug courts (JUD)	0	0	0	2,386,053	2,386,053	15.0
Court appointed counsel caseload/ cost increases (OADC-DI #1; OCR-DI #1)	1,888,069	0	0	0	1,888,069	0.0

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<sup>1</sup> Includes the following: \$4,874,213 and 74.6 FTE for the Public Defender's Office; \$4,485,917 and 66.6 FTE for Trial Courts; and \$850,000 for courthouse furnishings.

<sup>2</sup> Includes changes related to the following employee benefits: health, life, and dental; short-term disability, PERA amortization equalization disbursement (AED) and supplemental AED, and workers' compensation.

Description	GF	CF	RAF	FF	Total	FTE
Implement public access system and begin development of e-filing system (JUD-DI #1)	(1,000,000)	2,923,498	0	0	1,923,498	19.0
Furnish courthouses (JUD-DI #1)	(1,000,000)	1,950,000	0	0	950,000	0.0
Increase spending authority for courthouse security grants (JUD-DI #3)	0	675,000	0	0	675,000	0.0
Restore 1.82 percent reduction in base personal services funding (PDO only)	673,907	0	0	0	673,907	0.0
Leased space (JUD-DI #1)	294,868	132,240	0	0	427,108	0.0
Add staff for billing functions (OCR-DI #3)	27,765	0	0	0	27,765	0.5
Personal services reductions (JUD-DI #1)	(16,932,392)	(402,902)	(20,269)	0	(17,355,563)	(266.0)
Targeted one-time reductions (PDO Non-prioritized DI)	(3,151,695)	0	0	0	(3,151,695)	0.0
Further delay new judgeships (JUD-DI #1)	0	(2,893,627)	0	0	(2,893,627)	(43.0)
Annualize FY 09-10 DIs, budget reductions, & prior year legislation <sup>3</sup>	3,213,618	(3,976,350)	20,269	0	(742,463)	0.0

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<sup>3</sup> Includes the following: the elimination of \$3,100,000 added for courthouse furnishings for FY 2009-10; the elimination of \$1,659,091 provided for capital outlay in FY 2009-10 for H.B. 07-1054, H.B. 08-1407, and several decision items; the restoration of \$3,254,059 in personal services funding for department administration, the courts, and probation; and the addition of \$762,569 to pay the 12<sup>th</sup> month of salary for new probation and public defender staff added in FY 2009-10.



<b>Description</b>	<b>GF</b>	<b>CF</b>	<b>RAF</b>	<b>FF</b>	<b>Total</b>	<b>FTE</b>
Apply 0.2 percent personal services base funding reduction (administration, courts, and probation only)	(372,304)	(72,483)	0	0	(444,787)	0.0
Judicial Heritage Program reduction	0	0	(245,916)	0	(245,916)	0.0
District Attorneys' mandated costs	(78,428)	0	0	0	(78,428)	0.0
Other <sup>4</sup>	(305,373)	80,725	40,444	(1,731)	(185,935)	0.0
Total requested changes	(8,709,047)	3,827,183	(205,472)	2,384,322	(2,703,014)	(133.3)

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<sup>4</sup> Other changes include: OCR-DI #2 for \$8,887 to replace a server and three workstations; leased space escalators; indirect cost adjustments; changes in grant funding; vehicle lease payments; risk management; and an increase in cash funds spending authority for Probation.

**FY 2010-11 Joint Budget Committee Staff Budget Briefing  
Judicial Department**

**BRIEFING ISSUE**

**ISSUE: Implementing the Public Access System and Developing an E-Filing System**

The Department has completed development of an in-house public access system, and seeks spending authority to implement the system before FY 2010-11.

**SUMMARY:**

- ❑ Over the last ten years, the Department has partnered with vendors to develop and implement a public access system (PAS) and an e-filing system (EFS). Both systems are supported entirely by user fees. These systems provide cost-effective services to the general public and attorneys, respectively, and they have positively affected court staff workloads.
- ❑ In response to a request from the General Assembly, the Judicial Department studied the feasibility of bringing both systems in-house and concluded that it should do so. The development of the PAS would be financed with existing user fees received by the Department for its information technology infrastructure; the operations of the PAS and the development of the EFS would then be supported with revenues collected from PAS users (these fees are currently collected and retained by the vendor).
- ❑ The General Assembly authorized the Department to spend cash funds in FY 2008-09 to develop the PAS, but no spending authority was provided for either system for FY 2009-10. The Department has completed development of the PAS. The Department is prepared to implement this system in FY 2009-10, and proposes using a portion of the revenue to reduce General Fund expenditures by \$1.0 million beginning in FY 2010-11.

**RECOMMENDATION:**

Staff recommends that the Committee approve the Department's proposal to implement its PAS and develop an in-house EFS. The Department plans to reduce user fees upon implementation, as well as reduce General Fund expenditures related to its information technology infrastructure beginning in FY 2010-11. Thus, this plan will assist the General Assembly in addressing projected revenue shortfalls. In addition, implementation of both in-house systems will provide both the Department and users with several less tangible benefits, including the ability to offer e-filing services in criminal cases, improve infrastructure stability, and migrate from an image-based system to one that utilizes e-forms, thereby reducing the need for network capacity.

## **DISCUSSION:**

### **BACKGROUND INFORMATION - DEVELOPMENT OF CURRENT SYSTEMS**

Over the last ten years, the Judicial Department has partnered with vendors to develop and implement two web-based information technology systems:

1. A public access system (PAS) to all non-protected court data; and
2. An e-filing system (EFS) for attorneys.

The costs associated with software development, database and application servers, help desk support, and training for over 20,000 attorneys, state agencies, and the general public have been supported by fees charged to users accessing the systems. The development of each system is described below.

#### Public Access System

The Department deployed a unified, statewide court and probation case management system called ICON (i.e., the Integrated Colorado On-line Network) by the end of 1997. Prior to the deployment of ICON, the State Court Administrator's Office handled requests for data on a case-by-case basis. With the deployment of ICON, the number of requests from government agencies, background search companies, the public, and media increased substantially, quickly overwhelming the State Court Administrator's Office.

Lacking the resources and expertise to develop a web-based system to efficiently respond to these requests, the Department issued a request for proposal (RFP) for a vendor-based solution in October 1999. The project was awarded to Acxiom, and the "CoCourts" system went live in November 2000. This system provides access to court case data, but not to the associated documents. All judicial officers and Department staff, as well as approved governmental entities, were provided free access to the system; all other users were charged an access fee. A second RFP was issued in November 2004, and Lexis/CourtLink was awarded a five-year contract in August 2005. This contract was scheduled to expire on June 30, 2009, with the possibility of one final year renewal until June 30, 2010. In addition to providing more timely, accessible data to the public, the PAS has benefitted the courts by reducing the number of phone and walk-in inquiries, and reducing paper costs.

The Department is in the process of developing a new case management system in-house to replace ICON. The new system is called jPOD (i.e., Judicial Paper On Demand). This system has been deployed in the Supreme Court and the Court of Appeals, and will be incrementally deployed statewide by the end of 2011.

The current PAS is supported by user fees collected by the vendor. In addition, since FY 2003-04, the Department has required the vendor to collect a cost recovery fee on the Department's behalf. The Department is required to use this fee revenue to cover the direct and indirect costs of hardware replacement and other expenses required to maintain the equipment and network connections

necessary for the use of the Department's computer information systems by the public and other agencies. Access fees, established through a Chief Justice Directive (CJD 08-02), are as follows:

- Individuals pay between \$5.00 and \$6.75 for single searches, including a \$0.75 cost recovery fee for Judicial. In addition, other vendors (e.g., Background Information Systems and Acxiom) pay LexisNexis approximately \$2.50 per name search to allow their customers system access; this fee is negotiated between the exclusive agent (LexisNexis) and the third party vendor.
- Private probation agencies pay a set up fee of \$750, and \$2.50 per month per active client under supervision.
- Other agencies pay an annual fee of \$750 for up to three devices, and \$250 for each additional device.

### E-Filing System

For the last two decades, courts have been aware of the high costs of receiving, storing, retrieving, copying, and mailing documents. Lacking the resources and expertise to develop an electronic document management system, the Department issued an RFP for a vendor-based solution in December 1998. The project was awarded to Law Plus (which subsequently merged with JusticeLink, and then CourtLink). The EFS was piloted in July 2000, and implemented statewide in district courts by February 2001. Shortly after the first vendor contract renewal in September 2001, LexisNexis acquired CourtLink. The EFS was implemented statewide for county courts (for limited case types) in early 2007. Most recently, the EFS was implemented for the Court of Appeals (in July 2008), and should be available to the Supreme Court by June 2010. The current contract with LexisNexis expires in August 2011.

While the Supreme Court does not require attorneys to use the EFS, it allows local district and county courts to mandate e-filing. As of September 2008, over 95 percent of all civil filings in district courts that could be e-filed were. The current system is supported by user fees paid directly to the vendor. In addition, since FY 2003-04, the Department has required the vendor to collect a cost recovery fee on the Department's behalf. Access fees, established through a Chief Justice Directive (CJD 08-02), are as follows:

- District Courts: \$6.00 per e-filing transaction, including a \$1.00 cost recovery fee to Judicial; \$7.50 per online service, including a \$1.00 cost recovery fee to Judicial.
- County Courts: \$6.85 per case, including a \$0.85 cost recovery fee to Judicial; \$6.35 per online service, including a \$0.85 cost recovery fee to Judicial.
- Court of Appeals: \$6.00 per e-filing transaction, including a \$1.00 cost recovery fee to Judicial; \$6.00 per online service, including a \$1.00 cost recovery fee to Judicial.

The Department indicates that Colorado has the only statewide EFS that is fully integrated with its case management system. The associated fees, detailed above, are among the lowest of those jurisdictions that charge a fee for such a service. This system has made it easier and cheaper for attorneys to file cases, reduced costs associated with managing paper, increased the speed and reliability of retrieving documents, reduced the number of lost documents, and reduced the time required to distribute court orders. The EFS has also reduced court staff workload, allowing them to focus on other operational needs of the courts.

## **2008 REQUEST FOR INFORMATION/ FEASIBILITY STUDY**

The following request for information was included in Joint Budget Committee Chairman Buescher's April 21, 2008 letter to the Chief Justice:

- 1 Judicial Department, Integrated Information Services --** The Department is requested to contract with an outside party to study the feasibility of providing its public access and e-filing programs in-house and to report its findings to the Joint Budget Committee by November 1. It is the intent of the Committee that this effort be funded with existing appropriations.

The Judicial Department responded to this letter on May 1, indicating that the Department would not be able to absorb the estimated costs of engaging an outside contractor to conduct the feasibility study (\$250,000), as requested. The Department proposed conducting the study in-house and contracting with an outside vendor to review and certify the study. Absent a response from the Committee, the Department proceeded with the in-house study.

The Department conducted cost-benefit analyses of the various alternatives to determine the feasibility of developing the PAS and EFS in-house. The Department's analysis of revenues and costs (both tangible and intangible) associated with each system is summarized below.

### Public Access System

The easier of the two systems to develop, the Department anticipated that a web-based PAS could be implemented in-house within nine months (by November 1, 2009). Due to the time frames associated with existing contracts, the Department's analysis assumed that the new system would be implemented in January 2009. While the Department would require an estimated \$750,000 and 5.0 FTE (for six months) in FY 2008-09 to implement the system, the Department projected that the PAS would generate net revenues of over \$900,000 in FY 2009-10, and nearly \$2.7 million in FY 2010-11. These projections assumed: (a) the cost recovery fee would be eliminated upon implementation; and (b) the fee paid by individuals accessing the system directly would be reduced by 50 percent upon implementation.

The Department also described several non-tangible benefits of developing an in-house PAS. Such a system is anticipated to allow the Department:

- to reduce user fees (i.e., eliminate cost recovery fees and reduce the fee per single name search);

- more control over the development and deployment of application fixes and presentation enhancements;
- an opportunity to provide more information on-line, further reducing phone calls and paper requests for information from court clerks and other staff;
- to improve PAS availability through a more stable technical infrastructure;
- to reduce system complexity by eliminating a vendor serving as an exclusive agent for the Department;
- to implement a true disaster recovery methodology in the event of a primary system failure; and
- to improve the security of personal identifying information.

### E-Filing System

The more complex of the two systems, the Department anticipated that this system could be implemented in-house within three years. The complexity and duration of this project would require a more significant up-front investment. Specifically, development of an EFS was projected to require nearly \$6 million over three years. Upon implementation, however, the EFS is anticipated to generate significantly more revenue. Specifically, even if fees are reduced by 50 percent, the Department anticipated generating net revenues of \$3.1 million in the first year. These projections assumed: (a) the cost recovery fee would be eliminated upon implementation; and (b) the fee paid by users would be reduced by 50 percent upon implementation.

The Department also described several non-tangible benefits of developing an in-house EFS. Such a system is anticipated to allow the Department:

- to reduce attorney user fees (i.e., eliminate cost recovery fees and reduce filing fees);
- to increase control over the development and deployment of application fixes and enhancements (e.g., adding criminal, juvenile, and mental health cases<sup>5</sup>);
- an opportunity to interface more directly with the new case management system (jPOD);
- to migrate from an image-based system to one that utilizes e-forms, thereby reducing the need for network capacity;

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<sup>5</sup> Please note that e-filing is free for government agencies. Thus, a private vendor has little incentive to enhance the system to include criminal cases.

- to improve EFS availability through a more stable technical infrastructure; and
- to implement a true disaster recovery methodology in the event of a primary system failure.

#### Migrating Both Systems In-House

The Department also prepared an analysis of the revenues and costs of developing and implementing in-house versions of both systems. The Department expects to achieve some economies of scale if it develops both systems, particularly in terms of hardware and staffing costs.

#### National Center for State Courts Critique

The Department requested that the National Center for State Courts (NCSC) review its feasibility study and cost-benefit analyses. The NCSC indicated that the Department's proposal to bring both systems in-house is "clearly and completely" superior to continuing to contract with outside vendors to operate both systems. The NCSC provided the following comments with respect to its conclusions:

- The Department has a long history of managing technology development, implementation, and operation (including the case management system and an integrated justice system).
- Colorado is currently in a position of risk with respect to its relationship with LexisNexis. The vendor's inability to develop applications and its lack of adequate safeguards for court documents must be addressed before a crisis occurs.
- The two existing issues of excessive unscheduled downtime and the lack of disaster planning alone justify a change in direction.

The NCSC concluded that it supports the Department's recommendation that it begin immediately to bring both systems in-house. This conclusion "seems clear, obvious, and difficult to dispute".

#### Department Recommendation

The Department recommended that it be authorized to develop and deploy both a PAS and an EFS in-house. To minimize risks, the Department recommended that it be authorized to begin work on the PAS in January 2009 (requiring a mid-year appropriation of cash funds and FTE). The Department recommended that it be authorized to begin work on the EFS once the PAS is launched statewide. The Department recommended that it be authorized to utilize net revenues generated from the PAS to support the development of the EFS. The Department suggested that it may be prudent to wait to reduce user fees until after both projects have been successfully implemented and actual revenues can be projected with more certainty.

#### **GENERAL ASSEMBLY ACTIONS LAST SESSION**

Last December, the Joint Budget Committee voted to direct the Department to move ahead with plans to develop systems. Subsequently, the Committee sponsored and the General Assembly passed S.B. 09-190, authorizing the Department to spend \$722,296 cash funds in FY 2008-09 to begin

developing these systems. This funding was intended to allow the Department to hire five individuals in the latter part of FY 2008-09 and to begin acquiring hardware and software.

The source of funds was the Judicial Department Information Technology Cash Fund (IT Cash Fund). The IT Cash Fund, established through a JBC-sponsored bill in 2008, allows the Department to retain fees and cost recoveries related to IT services, including providing public access to court records and e-filing services. The Department planned to use moneys in this fund for routine asset maintenance activities, including building up the fund balance to cover costs of significant infrastructure investments (e.g., an estimated \$700,000 to replace a mainframe computer in FY 2010-11). Pursuant to Section 13-32-114 (2), C.R.S., moneys in this fund may be appropriated to the Department "for any expenses related to the department's information technology needs". Conceptually, moneys from the Fund would be used to launch the new PAS. Once implemented, PAS revenues would be used to cover ongoing PAS operating costs, cover the costs of developing a new EFS, and "pay back" the seed money so that the Department is in a position to maintain its existing IT infrastructure in the future.

Subsequently, the FY 2009-10 Long Bill was introduced, authorizing the Department to spend a total of \$2,594,733 cash funds to implement the PAS and begin development of the EFS. This funding was to support an additional ten staff positions, as well as hardware and software expenditures associated with the e-filing project. Ultimately, however, all of this funding was eliminated from the bill.

## **PROJECT STATUS**

Through utilizing the funds provided for FY 2008-09 and redirecting some existing staff resources, the Department completed development of the PAS by November 1, as planned. The Department is thus prepared to implement an in-house PAS that will result in \$1.0 million General Fund savings by allowing the Department to refinance a portion of its information technology infrastructure costs. In addition, the Department proposes reducing costs for PAS users by eliminating the cost recovery fee and reducing the cost for single users by 34 percent.

In addition to these savings, the revenue from the PAS would allow for the development of an EFS at no General Fund cost to the State and no additional cost to system users. Once operational (by 2013), the EFS would bring in approximately \$7.7 million in net revenues to the State.

The following three tables summarize the Department's most recent projections of revenues and expenditures associated with developing both systems. Table 1 provides details concerning the PAS, Table 2 provides details concerning an e-forms based EFS, and Table 3 provides a summary of the revenues and expenditures associated with developing and implementing both systems.



**TABLE 1**  
**Cost Benefit Analysis: Public Access System (PAS)**

<b>Description</b>	<b>FY 10 a/</b>	<b>FY 11</b>	<b>FY 12</b>	<b>FY 13</b>	<b>FY 14</b>	<b>FY 15</b>
<b>Projected PAS Revenues:</b>						
CoCourts (Acxiom, 3rd party vendor)	\$494,400	\$2,036,928	\$2,098,036	\$2,160,977	\$2,225,806	\$2,292,580
Background Information Services (3rd party vendor)	451,913	1,861,880	1,917,736	1,975,268	2,034,526	2,095,562
Single search	37,732	155,456	160,120	164,923	169,871	174,967
Cost recovery fees	<u>1,069,955</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Total PAS Revenues</b>	<b>2,054,000</b>	<b>4,054,264</b>	<b>4,175,892</b>	<b>4,301,168</b>	<b>4,430,203</b>	<b>4,563,109</b>
<b>Projected PAS Costs:</b>						
Staff salaries and benefits	541,219	837,532	862,658	888,537	915,193	942,649
FTE	11.0	11.0	11.0	11.0	11.0	11.0
Hardware acquisition	70,413	0	0	479,202	70,413	0
Software acquisition	76,296	0	0	0	0	0
Hardware maintenance		4,068	4,068	4,068	0	4,068
Software maintenance	14,572	30,302	38,102	45,902	30,302	38,102
Networking	5,700	9,000	9,900	10,890	11,979	13,177
Consultant services	10,000	10,000	0	0	0	0
Travel	20,000	22,000	24,200	26,620	29,282	32,210
Training users	40,000	44,000	48,400	53,240	58,564	64,420
Existing expenses funded through cost recovery fees	384,352	1,469,404	1,513,486	1,558,891	1,605,658	1,653,828
Leased space		0	0	0	0	0
Credit card fees	6,236	6,442	6,654	6,874	7,101	7,335
Operating	49,260	<u>30,206</u>	<u>33,227</u>	<u>36,549</u>	<u>40,204</u>	<u>44,224</u>
<b>Total PAS costs</b>	<b>1,218,048</b>	<b>2,462,954</b>	<b>2,540,695</b>	<b>3,110,773</b>	<b>2,768,696</b>	<b>2,800,013</b>
<b>Net PAS Revenues</b>	<b>835,952</b>	<b>1,591,310</b>	<b>1,635,197</b>	<b>1,190,395</b>	<b>1,661,507</b>	<b>1,763,096</b>

a/ Please note that both revenues and costs are likely overstated for FY 2009-10. These projections assume that PAS would be implemented April 1, 2010, and staff would be hired January 1, 2010. The Department is required to provide at least 180 days notice to the current vendor if it wishes to end the contract prior to its scheduled June 30, 2010 expiration. Thus, the earliest that the Department could implement PAS at this point is May 2010.

**TABLE 2**  
**Cost Benefit Analysis: E-Filing System (EFS)**

<b>Description</b>	<b>FY 10</b>	<b>FY 11</b>	<b>FY 12</b>	<b>FY 13</b>	<b>FY 14</b>	<b>FY 15</b>
<b>Projected EFS Revenues:</b>						
District court filings	\$0	\$0	\$0	\$2,412,482	\$5,066,212	\$5,319,523
District court service	0	0	0	1,853,585	3,892,528	4,087,154
County court filings	0	0	0	855,644	1,796,852	1,886,695
County Court service	0	0	0	934	1,961	2,059
Court of Appeals filings	0	0	0	10,502	22,054	23,157
Court of Appeals service	0	0	0	9,364	19,665	20,648
Cost recovery fees a/	<u>1,224,732</u>	<u>1,285,969</u>	<u>1,350,268</u>	<u>708,890</u>	<u>0</u>	<u>0</u>
<b>Total EFS revenues a/</b>	<b>1,224,732</b>	<b>1,285,969</b>	<b>1,350,268</b>	<b>5,851,401</b>	<b>10,799,272</b>	<b>11,339,236</b>
<b>Projected EFS Costs:</b>						
Staff salaries and benefits	169,140	643,656	727,650	1,149,228	1,320,951	1,585,955
FTE	4.0	8.0	9.0	17.0	17.0	20.0
Hardware acquisition	321,665	85,000	0	353,831	0	0
Software acquisition	129,788		0	23,400	0	0
Hardware maintenance	0	30,450	30,450	30,450	0	30,450
Software maintenance	0	48,840	48,840	84,075	84,075	84,075
Consultant services	30,000	20,000	20,000	30,000	30,000	0
Furniture/phones/equipment	14,000	14,000	3,500	28,000	0	10,500
Travel	30,000	33,000	36,300	39,930	43,923	48,315
Training Users	30,000	33,000	36,300	72,600	79,860	87,846
Existing expenses funded through cost recovery fees	1,224,732	1,285,969	1,350,268	708,890	1,488,670	1,563,103
Operating	<u>20,000</u>	<u>22,000</u>	<u>24,200</u>	<u>34,460</u>	<u>36,146</u>	<u>39,760</u>
<b>Total EFS costs</b>	<b>1,969,325</b>	<b>2,215,915</b>	<b>2,277,508</b>	<b>2,554,864</b>	<b>3,083,625</b>	<b>3,450,004</b>
<b>Net EFS Revenues a/</b>	<b>(744,593)</b>	<b>(929,946)</b>	<b>(927,240)</b>	<b>3,296,537</b>	<b>7,715,647</b>	<b>7,889,232</b>

<b>TABLE 3</b>						
<b>Cost Benefit Analysis Summary: Public Access System and E-Filing System</b>						
<b>Description</b>	<b>FY 10</b>	<b>FY 11</b>	<b>FY 12</b>	<b>FY 13</b>	<b>FY 14</b>	<b>FY 15</b>
<b>Projected Revenues:</b>						
Public Access System	\$2,054,000	\$4,054,264	\$4,175,892	\$4,301,168	\$4,430,203	\$4,563,109
E-Filing System	<u>1,224,732</u>	<u>1,285,969</u>	<u>1,350,268</u>	<u>5,851,401</u>	<u>10,799,272</u>	<u>11,339,236</u>
<b>Total revenues</b>	<b>3,278,732</b>	<b>5,340,233</b>	<b>5,526,160</b>	<b>10,152,569</b>	<b>15,229,475</b>	<b>15,902,345</b>
<b>Projected Costs:</b>						
Public Access System	1,218,048	2,462,954	2,540,695	3,110,773	2,768,696	2,800,013
PAS FTE	11.0	11.0	11.0	11.0	11.0	11.0
E-Filing System	1,969,325	2,215,915	2,277,508	2,554,864	3,083,625	3,450,004
EFS FTE	<u>4.0</u>	<u>8.0</u>	<u>9.0</u>	<u>17.0</u>	<u>17.0</u>	<u>20.0</u>
<b>Total costs</b>	<b>3,187,384</b>	<b>4,678,880</b>	<b>4,818,214</b>	<b>5,665,648</b>	<b>5,852,332</b>	<b>6,250,028</b>
<b>FTE</b>	15.0	19.0	20.0	28.0	28.0	31.0
<b>Net Revenues</b>	<b>91,348</b>	<b>661,353</b>	<b>707,946</b>	<b>4,486,921</b>	<b>9,377,143</b>	<b>9,652,317</b>

As indicated above, the financial benefit of developing both systems sequentially is that the net revenues generated by the PAS eliminate the need for new resources to develop the EFS. In addition, the Department points out that this approach would allow them to combine the records access and e-filing services into a single application, thereby allowing an individual to review data on a register of actions and then be directed to the relevant documents (rather than requiring two separate searches).

#### **STAFF ANALYSIS AND RECOMMENDATION**

Last December, the Joint Budget Committee voted to authorize the Department to move ahead with the development of in-house public access and e-filing systems. The Committee subsequently sponsored appropriations bills to provide resources to begin work on the PAS in the latter half of FY 2008-09, and to implement the PAS and begin development of an EFS in FY 2009-10. The Department never requested General Fund moneys for either system, and the Department committed to reducing user fees upon implementation. The Department anticipated that once both systems were implemented, the General Assembly could consider using revenues generated through both systems to further reduce user fees, continue to improve information technology supporting the state court system, or reduce Department General Fund expenditures related to information technology.

While the General Assembly approved funding for the PAS FY 2008-09, it eliminated the funding for both systems in FY 2009-10. These incongruent actions put the Department in the difficult position of needing to spend the resources made available in FY 2008-09 responsibly and plan for vendor contracts due to expire in June 2010 (PAS) and in August 2011 (EFS), without the spending authority necessary to complete the PAS project or begin the EFS project in FY 2009-10. The Department has chosen to redirect existing staff resources to ensure that the FY 2008-09 investment

in PAS resulted in a complete, functioning system. This system was completed as planned by November 1, 2009.

In order to implement the PAS, the Department will need cash funds spending authority to pay for the costs of administering and operating the system and supporting system users. In order to ensure a smooth transition, the Department would like to hire the necessary staff at least one month prior to the system going live. The Department will need to provide at least 180 days notice to the current vendor if it wishes to end the contract prior to its scheduled June 30, 2010 expiration. Thus, the earliest that the Department could implement PAS at this point is May 2010.

The Department has submitted a comprehensive plan to reduce its General Fund expenditures in FY 2010-11 and subsequent fiscal years. One component of this plan involves the PAS and EFS projects. Specifically, through Decision Item #1, the Department proposes the following:

- The Department will implement the in-house PAS prior to the end of FY 2009-10. The Department will hire the necessary staff to operate and administer the system and provide user support at least one month prior to the system going live to ensure continuity for users. The Department will eliminate cost recovery fees currently charged to PAS users upon system implementation. In addition, the Department will reduce single user fees by 34 percent upon implementation. System operations will be fully supported by PAS revenues.
- Beginning in FY 2010-11, the Department will use \$1.0 million of PAS revenues to support existing Department information technology infrastructure costs, thereby reducing the Department's General Fund expenses by \$1.0 million.
- Remaining PAS revenues will be used to develop an in-house EFS. Project development is anticipated to take about three years. The Department will eliminate cost recovery fees currently charged to EFS users upon system implementation. By FY 2013-14, the Department estimates that annual revenues generated by both PAS and EFS will total about \$9 million. These revenues could be reduced through decreases in user fees, used to continue to improve information technology supporting the state court system, or used to reduce Department General Fund expenditures related to information technology.

Consistent with staff recommendations last year, staff recommends that the Committee approve the Department's proposal to implement its PAS and develop an in-house EFS. The Department's feasibility study indicates that it can develop these systems without any General Fund support and without raising user fees. In fact, the Department plans to reduce user fees upon implementation, as well as reduce its General Fund expenditures related to its information technology infrastructure beginning in FY 2010-11. Thus, this plan will assist the General Assembly in addressing projected revenue shortfalls. In addition, implementation of both in-house systems will provide both the Department and users with several less tangible benefits:

- The Department will have more control over the development and deployment of application fixes and presentation enhancements. For example, the Department has developed a PAS that

includes several user-friendly features that reduce search time, provide search results in a much more readable and easier to navigate format, and provides an automated process for a user to secure a new password should he/she forget it (this is expected to reduce the need for help desk support by up to 50 percent).

With respect to the EFS, the Department plans to offer e-filing services to more users by adding modules for Supreme Court, Court of Appeals, small claims, criminal, juvenile, and mental health cases, including pro se clients. While government agencies that use e-filing services will not generate additional fee revenue, access to e-filing services will likely create efficiencies and reduce operational costs for these agencies.

- The Department can improve PAS availability through a more stable technical infrastructure, and implement a true disaster recovery methodology in the event of a primary system failure.
- The Department can improve the security of personal identifying information and track who is accessing suppressed information. For example, the Department has developed a PAS that clearly notifies government users when they are accessing suppressed information. The system can also produce several management reports that allow the administrator to track which agencies and individuals are accessing suppressed information. Finally, the system will not retain a user's credit card information after logout, thereby reducing system vulnerability and the potential for this sensitive information to be breached.
- The Department will have an opportunity to structure PAS and EFS in ways that more directly interface with one another and with the new case management system (jPOD). For example, the Department hopes to allow a user to use the PAS to search for a particular case, and then directly link to case documents.
- The Department intends to migrate from an image-based system to one that utilizes e-forms, thereby reducing the need for network capacity.

In order to maximize potential General Fund savings, staff recommends that the Department be allowed to implement PAS as soon as possible and appropriate to ensure continuity and quality services for system users. While staff agrees with the Department's plan to eliminate cost recovery fees associated with each system upon system implementation, staff recommends that the Department maintain other existing user fees until the costs of developing the associated in-house system are recouped and the Department has some direct experience on which to base its revenue projections. This approach would reduce the financial risks associated with these projects, and ensure that the Department has the equipment and staff resources to maintain these, and other existing systems.

**FY 2010-11 Joint Budget Committee Staff Budget Briefing  
Judicial Department**

**BRIEFING ISSUE**

**INFORMATIONAL ISSUE: OADC and OCR Efforts to Reduce State Expenditures**

This issue brief provides an overview of various efforts by the Office of the Alternate Defense Counsel and the Office of the Child's Representative to reduce state expenditures.

**SUMMARY:**

- The Office of the Alternative Defense Counsel (OADC) and the Office of the Child's Representative (OCR) provide legal representation services through contracts with individuals around the state. In light of the revenue shortfall, both agencies have initiated efforts to reduce expenditures.
- Both agencies have limited mileage reimbursement for attorneys and reduced presumptive contractor fee maximums for certain case types. Both agencies are experimenting with alternative methods of providing representation, such as using state staff for certain functions or geographic areas and paying a flat rate for certain case types.
- The OADC is reducing contractor costs by: contracting with document management and paralegal professionals to reduce discovery costs, working with district attorneys to move toward paperless discovery, and providing a brief and motions bank for use by contract attorneys.
- The OCR is working with judicial districts to reduce discretionary appointments in juvenile delinquency and truancy cases. In order to reduce costs associated with domestic relations cases, the OCR has established a screening process to confirm the indigency status of parties, and is supporting a pilot program in the 17<sup>th</sup> judicial district to reduce the need for state-paid child and family investigators.

**DISCUSSION:**

Three independent agencies within the Judicial Branch are responsible for providing quality legal representation services. These agencies cannot control the number and types of cases filed or the number of cases in which their employees or contractors are appointed to provide representation. These agencies, primarily supported by General Fund appropriations, currently account for 29 percent of General Fund appropriations to the Judicial Department.

The largest of the agencies, the State Public Defender's office, provides legal representation through employees located in regional offices around the state. The State Public Defender's financial challenge is to secure sufficient staff and resources to ensure that his office can meet its constitutional and statutory mandates to provide legal services to indigent persons accused of crime

that are commensurate with those available to non-indigents (i.e., ensuring that caseloads are low enough to allow attorneys to provide competent representation).

The other two agencies, the Office of the Alternate Defense Counsel (OADC) and the Office of the Child's Representative (OCR), provide representation through contracts with individuals around the state<sup>6</sup>. In general, the OADC and OCR pay an hourly rate for contractor services. For these agencies, the financial challenge is to secure sufficient resources to pay hourly rates that attract a sufficient number of qualified attorneys and ensure prompt payment for billings received from appointed attorneys. In response to the current revenue shortfall, both the OADC and the OCR have initiated a number of efforts to reduce their expenditures. These efforts, outlined in each agency's FY 2010-11 budget request, are summarized below.

### **Office of the Alternate Defense Counsel (OADC)**

The OADC reviews each contractor bill for reasonableness and accuracy. In an effort to increase the quality and efficiency of OADC contract attorneys, the OADC has implemented several measures to reduce billable contractor hours and associated ancillary costs. These measures include the following:

1. In July 2009, the OADC changed its payment policy to only reimburse investigators and paralegals for case work mileage; attorneys will no longer receive *mileage reimbursement*. This change is anticipated to reduce OADC expenses by \$410,000 in FY 2009-10.
2. In August 2009, the OADC began reducing by 10 percent any attorney contractor fee which exceeds the OADC's *maximum contractor fee guidelines*. The OADC has also adjusted its maximum guidelines for lower level appellate and post-conviction cases.
3. The OADC contracts with *document management and paralegal professionals* who specialize in organization and distribution of discovery in voluminous cases such as those involving the Colorado Organized Crime Control Act, a statewide grand jury, or the death penalty. This effort has allowed the OADC to take several thousand pages of paper discovery (costing a minimum of \$0.10/page to reproduce) and reduce it to one or two compact disks (which cost very little to reproduce).
4. The OADC is coordinating *cost reduction methods for electronic discovery* charged by individual district attorney offices across the state. Recently, a small number of district attorney offices proposed changing to paperless discovery. These projects are in the planning or pilot stages, but it is hoped that they will decrease discovery costs for all appointed counsel.

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<sup>6</sup> Please note that in El Paso County, the OCR employs attorneys to provide representation services through a centralized office rather than through contracted services. This office was established in response to S.B. 99-215, which directed the Judicial Department to pilot alternative methods of providing guardian ad litem services.

5. In August 2009, the OADC launched a *post-conviction pilot project* to contain the costs of these cases. This pilot project includes three components: (a) the OADC in-house paralegal creates an electronic indexed record; (b) the electronic record is then reviewed in-house and the case is triaged based on specific guidelines; and (c) when appropriate, a case is then contracted out for a flat fee (rather than an hourly rate) using a short list of OADC contractors with specialized training in post-conviction work.
6. In an attempt to counteract the rising cost of *DNA testing* related to litigation in “actual innocence” cases, the OADC applied for a federal post-conviction DNA grant. While the OADC did not receive a grant, it has arranged to meet with the Colorado Attorney General (whose office did receive such a grant) to discuss DNA testing in pending OADC post-conviction cases. The OADC is also working toward having criminal defense lawyers who are specially trained in DNA science involved in cases involving DNA testing, rather than training every lawyer in DNA testing procedures and outcomes.
7. The OADC continues an *in-house appellate project* that streamlines the OADC appellate cases from inception through transmittal of the record on appeal.
8. The OADC sought and secured passage of H.B. 08-1264, granting OADC contract attorneys *free access to electronic court records* through the public access system. The OADC continues to train its contract attorneys to access and appropriately use this system.
9. In order to increase the quality and efficiency of OADC contract attorneys, the OADC developed a *brief and motions bank* for its contract attorneys. It continues to gather briefs and motions to upload to the bank, plans to add transcripts of experts and police officers, and is researching the viability of linking to court appellate opinions. The OADC continues to train contractors to access and use the bank.

### **Office of the Child’s Representative (OCR)**

For the last year, the OCR has worked proactively to achieve efficiencies without compromising the safety or well-being of children its attorneys represent. Last December the OCR hosted mandatory meetings with contract attorneys in the front range to discuss rapidly increasing costs and garner suggestions for efficiencies. The OCR staff also met with judicial officers in Denver and other metro area jurisdictions. Based on these meetings, the OCR made the following changes:

- The OCR temporarily eliminated mileage reimbursement for metro area attorneys (this reimbursement was reinstated July 1, 2009);
- The OCR limited hourly reimbursement for travel time;
- The OCR reduced presumptive billing maximums, and increased staff scrutiny of all requests exceeding these thresholds;
- The OCR developed a procedure to track requests and decisions by judicial district and individual attorney;
- The OCR suspended its application process for new attorneys in the Spring of 2009; and



- The OCR formalized a program to enable rural GALs to contact a front range attorney to conduct follow-up home and placement visits (thereby reducing both the number of hours billed and mileage).

In addition, the OCR initiated measures related to specific case-types and jurisdictions. These initiatives are described below.

#### *Juvenile Delinquency Cases*

The OCR conducted an analysis of appointments in juvenile delinquency cases, which revealed a significant increase in appointments in Denver and Arapahoe counties. The OCR met with attorneys in both counties to institute immediate changes which require staff approval for GALs to continue on cases after sentencing. In addition, OCR worked with the Joint Budget Committee to introduce and pass legislation (S.B. 09-268) to require the court to make specific findings that the appointment of a GAL in certain delinquency cases is necessary to serve the child's best interests, and clarify when the appointment of a GAL in delinquency cases terminates. The OCR prepared forms for judicial officers in these districts to specify the reason for the appointment, and it has subsequently limited the number of attorneys on the juvenile delinquency list in the 18<sup>th</sup> judicial district.

#### *Truancy Cases*

Pursuant to Section 22-33-108 (5), C.R.S., court proceedings are initiated to compel compliance with the compulsory attendance laws after the parent and the child have been given written notice by the attendance officer of the school district that proceedings will be initiated if the child does not comply. The Court may order that a child attend school or that a parent take reasonable steps to assure the child's attendance, and may order the child and parent to follow an appropriate treatment plan. Failure to follow the court order can result in sanctions including community service, incarceration in a juvenile detention facility, and fines or confinement in county jail until the order is complied with. Previously Section 19-1-11 (2) (b), C.R.S., authorized a Court to appoint a GAL in a truancy proceeding, but it did not set forth any guidance for such appointments.

The number of truancy cases in which a GAL is appointed increased by 233 from FY 2004-05 to FY 2007-08 (83 percent); OCR annual expenditures increased from \$68,983 to \$169,856 over the same time period. The OCR worked with the Joint Budget Committee to introduce and pass legislation (S.B. 09-268) to limit the court's discretion to appoint a GAL in a truancy case to those cases in which extraordinary and exceptional circumstances exist. The OCR worked with judicial officers in Denver to understand the reasons for their appointments of GALs, and the OCR shared the information it gathered with staff from the Colorado Department of Education (CDE). The OCR also worked with CDE staff to identify those school districts that would be most impacted by the limitations set forth in S.B. 09-268, and to identify potential organizations to provide alternatives to GAL services.

#### *Domestic Relations Cases*

Pursuant to Section 14-10-116.5, C.R.S., the Court may appoint an individual to serve as a child and family investigator (CFI) in a domestic relations case that involves allocation of parental responsibilities. The CFI is required to investigate, report, and make recommendations in the form

of a written report filed with the Court. The CFI may be called to testify as a witness regarding his/her recommendations. In addition, pursuant to Section 14-10-116, C.R.S., the Court may appoint an attorney to serve as a child's legal representative (CLR) in any domestic relations proceeding that involves the allocation of parental responsibility.

The OCR pays for attorney appointments as CFIs and CLRs in domestic relations cases. In these types of cases, a determination that the appointment will be state-paid requires an indigency finding. Courts are currently making this finding based on the parties' completion of a Judicial Department form requiring self-reported information related to income and assets; documentation is not required to verify the reported information.

After four years of decline, the number of domestic relations cases in which an OCR attorney was appointed increased by more than 25 percent in FY 2008-09. The OCR conducted an audit of front range jurisdictions' domestic relations files, which indicated potential problems with up to 40 percent of indigency findings (e.g., incomplete/non-existent financial data, inaccurate financial information as indicated by subsequent documentation, and parties who had hired their own private counsel who were determined to be indigent for purposes of paying for CFI/CLR services).

The OCR worked with the Joint Budget Committee to introduce and pass legislation (S.B. 09-268) to clarify that both parties' income and assets should be considered for appointments that take place while the parties are still married. The OCR has also hired an indigency screener to engage in a process that is similar to the screening process conducted by the State Public Defender's office. This screening process will enable more thorough review and verification of parties' reported income and asset data. The OCR anticipates that this initiative will reduce its expenditures related to domestic relations cases by about one-third (\$265,000), which will cover the costs of the screener and allow OCR to cover some of the increased costs in other cases.

Finally, as authorized by Long Bill footnote #34a, the OCR is utilizing a portion of its FY 2009-10 appropriation for Court Appointed Counsel to fund a pilot program for the purpose of evaluating alternatives to the appointment of CFIs and CLRs in domestic relations cases. The OCR has contracted with the 17<sup>th</sup> judicial district to support the district's Early Neutral Assessment (ENA) pilot program. This pilot program has shown promising results for the effective resolution of domestic relations cases. For more information about this pilot program, see Appendix C-11.

#### *Establishment of a Denver Guardian Ad Litem (GAL) Office*

In El Paso County, the OCR employs attorneys to provide representation services through a centralized office rather than through contracted services. This office was established in response to S.B. 99-215, which directed the Judicial Department to pilot alternative methods of providing guardian ad litem services. This office provides direct accountability, continual mentoring for newer attorneys, consistent training, and effective representation throughout all phases of a case. In FY 2008-09, this office cost approximately \$40/hour to operate, compared to the OCR hourly rate for contract attorneys of \$65/hour.

Due to the efficiencies and quality of representation provided by this model, the Joint Budget Committee has previously expressed interest in the possibility of the OCR establishing a staff office model in Denver. While this model would reduce the costs of quality representation once established, there is an initial need for funding to establish an office. The OCR recently hired a part-time staff person to take the lead in seeking outside funding to cover these start-up costs.

#### *Cornerstone Advocacy for Dependency and Neglect Cases*

The “Cornerstone Advocacy” model employed by New York’s Center for Family Representation has achieved impressive outcomes related to safe family reunification and timely permanency for children involved in the child welfare system. This model of representation requires intense advocacy within the first 60 days of a case focused on four cornerstones that are critical to successful reunification of families:

- appropriate placement;
- meaningful and frequent visitation;
- creative and accessible services; and
- supported conference participation.

This model requires more investment at the beginning of a case, but it should decrease the overall cost of a case by shortening the time to achieve safe, permanent homes for children. The OCR intends for its Denver staff office model to engage in this approach from the outset, and it will continue to promote this practice throughout the state.

#### *Partnering with Other Organizations to Promote Best Practices in Child Welfare*

In its search for creative ways to better serve children while stabilizing costs, the OCR has partnered with other organizations to leverage training resources and seek funding. For example, the OCR recently partnered with Mile High United Way to take the lead in securing a federal “Fostering Connections” grant. This grant will enable the State to provide training to professionals and stakeholders in the child welfare system about how to successfully locate family members, navigate kinship placements, and promote long-term success for youth in care.

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**BRIEFING ISSUE**

**INFORMATIONAL ISSUE: Colorado State Museum and State Justice Center Project Status**

This issue brief provides background information concerning the Judicial Heritage Complex, summarizes legislation passed last session to replace the Complex, and describes the current status of the project.

**SUMMARY:**

- Senate Bill 08-206 authorized the construction of a new Colorado History Museum as well as a new state justice center. The act authorized the State to enter into lease-purchase agreements for the development and construction of both facilities; these agreements are to be paid using moneys from the State Historical Fund, civil filing fee revenues, and lease payments received from state agencies ultimately occupying the state justice center.
- Development costs are now estimated to total \$368.3 million, including \$110.6 million for History Center Colorado and \$257.7 million for the Ralph L. Carr Justice Complex. These estimates are \$15 million *lower* than those contemplated in S.B. 08-206.
- Financing for both projects has been completed by a newly formed non-profit entity (CHS/CJC Building, Inc.) under very favorable terms as a result of combining both projects into one financing. Net debt service payments of \$18.7 million per year will be \$5.3 million *lower* than the cap of \$24.0 million established in S.B. 08-206.
- History Center construction has begun, and is anticipated to be completed in September 2011. Construction of the Justice Complex is anticipated to begin in September 2010 and be completed in April 2013. While History Center construction was delayed by a couple of months due to delays in financing, Justice Complex construction will begin and end about two years earlier than anticipated.

**DISCUSSION:**

*Background Information: Judicial Heritage Complex*

The Judicial Branch and the Colorado History Museum currently share the Judicial Heritage Complex (bordered by 13th and 14th Streets, Broadway, and Lincoln), which was constructed in 1977. A number of studies have been conducted concerning the facility needs for both entities. In November 2005, the Urban Land Institute (ULI) was engaged to conduct a review of all previous studies and render an independent conclusion. The ULI concluded the following:

- The Judicial Heritage Complex has never functioned adequately for either the Judicial Department or the Museum.
- The programmatic site needs of each operation oppose one another in many ways (mission, public access, security needs, etc.).
- The Judicial Building is not adequate to meet the space needs of its current operation, let alone accommodate for future growth.
- The Museum needs more space to accommodate visitors and the installation of more and larger exhibitions and educational programs.
- The unique site design of the Complex lends itself to a high level of vulnerability.
- The Judicial Building has a number of life, health, safety, and Americans with Disabilities Act issues that affect the operation of the courts.

The ULI recommended that the judicial facilities be expanded and remain on the Judicial Heritage Complex site, and the Museum be moved to a new site.

In March 2006, the Judicial Department and the Colorado Historical Society issued a request for proposal for management services related to their facility needs, including: feasibility studies, site procurement, financing alternatives, space programs, design and renovation or new construction management services as required, and move management. Trammell Crow Company and a team of consultants entered into a contract to provide these management services in July 2006.

In December 2006, Trammell Crow Company submitted a report concerning the feasibility of constructing a new state justice center on the site of the Judicial Heritage Complex, and procuring a new site and building for the Colorado History Museum. The study included: a review of current and future space needs for the state's legal-related agencies and the Colorado History Museum; alternative acceptable sites for the museum; project schedules for financing, design, and construction for both projects; estimates of project management, design, and construction costs for each project; and alternative financing strategies.

The feasibility study estimated total development costs of \$385.1 million, including \$112.2 million for a 241,000 GSF Museum and \$272.9 million for a 560,000 GSF state justice center. These estimates assumed that the Museum would be relocated to a new site, the Supreme Court and the Court of Appeals would be relocated to an interim leased space for 28 months, and the existing judicial and museum buildings would be demolished. The feasibility report recommended financing the projects through a series of certificates of participation (COPs).

*Senate Bill 08-206*

Senate Bill 08-206 (Shaffer; Penry/ T. Carroll; Marostica) authorized the construction of a new Colorado History Museum using moneys in the State Historical Fund and \$25 million transferred from the Judicial Department. The act authorized the Judicial Branch to increase various civil filing fees to help fund the consolidation of all justice-related state agencies into a single complex at the current Judicial Heritage Complex site. The act's legislative declaration stated that the new state justice center shall initially include the following agencies:

- Colorado Supreme Court (currently located in the Judicial Heritage Complex at 14th and Broadway/Lincoln)
- Colorado Court of Appeals (also located in the Judicial Heritage Complex)
- Judicial Department administrative offices (currently located in leased space in the Denver Post building at 101 W. Colfax)
- Alternate Defense Counsel (currently located in leased space at 1580 Logan Street)
- Office of the Child's Representative (also leasing space at 1580 Logan Street)
- Office of the State Public Defender (central administrative and appellate offices are currently located in leased space at 1290 Broadway; Denver trial office is currently in leased space in the old Denver Post building at 1560 Broadway)
- Department of Law (currently leasing space within the Capitol Complex at 1525 Sherman Street; also rents private storage space)

The project will address both the lack of adequate space and the lack of adequate safety and security measures in the current buildings. The project is also expected to benefit the State financially by allowing the State to avoid ongoing payments for privately owned leased space, and achieving greater programmatic efficiencies and decreased operating costs.

The act authorizes the State to enter into lease-purchase agreements for the development and construction of a new Museum (now known as "History Center Colorado") and a state justice center (to be known as the "Ralph L. Carr Justice Complex"). The total amount of the principal component of the lease-purchase agreements concerning the History Center may not exceed \$85 million<sup>7</sup>, the annual rental and lease-purchase payments may not exceed \$5 million, and the term may not exceed 37 years. The total amount of the principal component of the lease-purchase agreements concerning the Justice Complex may not exceed \$275 million<sup>2</sup>, the annual rental and lease-purchase payments may not exceed \$19 million, and the term may not exceed 38 years.

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<sup>7</sup> These amounts exclude "reasonable and necessary administrative, monitoring, and closing costs and interest".

Revenues from various filing fees and any lease payments received from state agencies occupying the Justice Complex are to be credited to the newly created Justice Center Cash Fund. Moneys in the Fund are subject to annual appropriation for expenses related to the design, construction, maintenance, operation, and interim accommodations for the Justice Complex. The act requires the Judicial Branch to transfer a total of \$25 million from the Justice Center Cash Fund to the newly created State Museum Cash Fund to compensate the State Historical Society for the land on which the Colorado History Museum currently resides<sup>8</sup>.

Beginning in FY 2014-15, the act requires the Executive Director of the Department of Personnel and Administration to calculate the net savings to the State by locating the Department of Law and any other executive branch agency in the Justice Complex, and requires the General Assembly to appropriate from the General Fund to the Justice Center Cash Fund the amount of net savings to repay any lease purchase obligations.

*Current Status of the Project*

Trammell Crow Company recently provided updated information related to the History Center and Justice Complex projects. These updated estimates anticipate the following total development costs (excluding the cost of financing):

History Center	\$110,638,000
Justice Complex	<u>257,688,970</u>
Total	368,326,970

These estimates are \$16.8 million lower than those contained in the December 2006 feasibility study, and \$15 million lower than those contemplated in S.B. 08-206. The Justice Complex project also now includes a 330 car parking garage that will be constructed on a site next to the History Center.

Project financing was secured in July 2009 through a single issuance for both projects totaling \$338.8 million. This issuance included two components: \$39.0 million in traditional tax-exempt COPs; and \$299.8 million in taxable Build America COPs, a new financing mechanism made available through the federal American Recovery and Reinvestment Act. Build America COPs offer lower costs to public entities because the federal government subsidizes 35 percent of the interest paid on the project. The net effective annual interest rate on these COPs is 4.24 percent, resulting in debt payments of \$18.7 million per year for 33 years (September 2012 through September 2045). These annually appropriated debt service payments are significantly lower than originally anticipated. Senate Bill 08-206 capped combined project debt service payments at \$24.0 million per year for terms not exceeding 37 years for the History Center and 38 years for the Justice Complex. Overall, the project financing will cost nearly \$215 million less than the total debt service costs anticipated when S.B. 08-206 was passed. During the term of the COPs, the new facilities will be

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<sup>8</sup> The act requires a transfer of up to \$15 million in FY 2008-09, up to \$10 million in FY 2009-10, and an remaining moneys necessary to transfer a cumulative total of \$25 million in FY 2010-11.

owned by a newly formed non-profit called CHS/CJC Building, Inc. Upon full repayment, ownership of the facilities will revert to the State.

Based on recent conversations with project management staff, the following table sets forth the anticipated project time line.

<b>Project Milestones Time line</b>	
<b>Fiscal Year</b>	<b>Milestones</b>
FY 2009-10	<ul style="list-style-type: none"> <li>• Financing for both projects completed (July 2009)</li> <li>• History Center construction began (August 2009)</li> <li>• History Center design completed (January 2010)</li> <li>• Justice Complex schematic design completed (early 2010)</li> <li>• Relocate Museum staff and store exhibits (February to April 2010)</li> <li>• Relocate Supreme Court and Court of Appeals (April 2010)</li> <li>• Demolish current museum and judicial facilities (May to September 2010)</li> </ul>
FY 2010-11	<ul style="list-style-type: none"> <li>• Justice Complex construction begins (September 2010)</li> </ul>
FY 2011-12	<ul style="list-style-type: none"> <li>• History Center construction completed (September 2011)</li> <li><input type="checkbox"/> History Center opens (to be determined)</li> </ul>
FY 2012-13	<ul style="list-style-type: none"> <li><input type="checkbox"/> Begin COP payments (September 2012)</li> <li><input type="checkbox"/> Justice Complex construction completed (April 2013)</li> </ul>

A total of \$14.0 million in new filing fee revenue was credited to the Justice Center Cash Fund in FY 2008-09 and transferred to the State Museum Cash Fund. For FY 2009-10, it is anticipated that the remaining \$11.0 million will be transferred to the State Museum Cash Fund. Remaining revenues collected in FY 2009-10 and in subsequent fiscal years will remain in the Justice Center Cash Fund to cover Justice Complex project development and financing costs.



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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests

**JUDICIAL DEPARTMENT**  
**Chief Justice Mary Mullarkey**

**(1) SUPREME COURT/COURT OF APPEALS**

The primary functions of the Supreme Court include: general supervisory control of lower courts; appellate review of lower court judgements; original jurisdiction for certain constitutional and other cases; and rule-making for the state court system. The Court of Appeals is the initial jurisdiction for appeals from district courts and certain state agencies. Cash fund sources include various fees and cost recoveries.

Appellate Court Programs		11,205,403	11,848,560	11,276,655	JUD DI #1
FTE		<u>141.8</u>	<u>146.0</u>	<u>136.0</u>	
General Fund		10,150,428	10,762,173	10,192,260	
FTE		128.3	132.5	122.5	
Cash Funds		1,054,975	1,086,387	1,084,395	
FTE		13.5	13.5	13.5	
Personal Services	9,689,358	Included in			
FTE	<u>129.9</u>	Appellate Court			
General Fund	9,629,698	Programs line			
FTE	129.9	item (above)			
Cash Funds	59,660				
Operating Expenses	<u>207,290</u>	Included in			
General Fund	147,630	Appellate Court			
Cash Funds	59,660	Programs line item			

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
Capital Outlay	0	<u>213,640</u>	0	0	
General Fund	0	0	0	0	
Cash Funds	0	213,640	0	0	
Attorney Regulation Committees - CF a/ FTE b/	6,083,891 40.5	5,527,576 40.5	4,700,000 40.5	4,700,000 40.5	
Continuing Legal Education - CF a/ FTE b/	369,682 4.0	353,169 4.0	325,000 4.0	325,000 4.0	
Law Examiner Board - CF a/ FTE b/	895,662 8.2	897,853 8.2	850,000 8.2	850,000 8.2	
Law Library - CF a/	440,131	482,316	500,000	500,000	
					<i>Request v. Approp.</i>
<b>TOTAL - Supreme Court/ Court of Appeals</b>	17,686,014	18,679,957	18,223,560	17,651,655	-3.1%
FTE	<u>182.6</u>	<u>194.5</u>	<u>198.7</u>	<u>188.7</u>	-5.0%
General Fund	9,777,328	10,150,428	10,762,173	10,192,260	-5.3%
FTE	129.9	128.3	132.5	122.5	-7.5%
Cash Funds	7,908,686	8,529,529	7,461,387	7,459,395	0.0%
FTE	52.7	66.2	66.2	66.2	0.0%

a/ These appropriations are included in the Long Bill for informational purposes as they are continuously appropriated under the Judicial Branch's constitutional authority.

b/ FTE figures for FY 2007-08 and 2008-09 reflect appropriated, rather than actual, levels.

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests

**(2) COURTS ADMINISTRATION**

**(A) Administration**

This subdivision supports the Office of the State Court Administrator, which coordinates and controls budgeting, research, data processing and management services for the Judicial Department, and provides training, technical assistance and other support services. Cash fund sources include various fees and cost recoveries. Reappropriated funds include indirect cost recoveries and a transfer from the Department of Higher Education.

Personal Services	4,935,270	5,025,436	5,435,753	5,786,570	JUD DI #1
FTE	<u>60.6</u>	<u>59.4</u>	<u>64.1</u>	<u>65.1</u>	
General Fund	3,823,254	3,914,540	3,982,836	4,228,912	
FTE	60.6	59.4	64.1	64.1	
Cash Funds	0	0	147,274	207,290	
FTE	0.0	0.0	0.0	1.0	
Cash Funds Exempt/ Reappr. Funds	1,112,016	1,110,896	1,305,643	1,350,368	
Operating Expenses	<u>368,135</u>	<u>370,918</u>	<u>371,106</u>	<u>356,106</u>	JUD DI #1
General Fund	367,984	370,396	370,106	355,106	
Cash Funds	151	522	1,000	1,000	
Capital Outlay - GF	7,042	6,220	0	0	
Judicial/Heritage Program	588,441	737,801	749,176	0	
FTE	<u>3.0</u>	<u>3.0</u>	<u>3.0</u>	<u>0.0</u>	
General Fund	317,852	504,903	503,260	0	
FTE	3.0	3.0	3.0	0.0	
Cash Funds Exempt/ Reappr. Funds	270,589	232,898	245,916	0	

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
Family Friendly Court Program	366,217	339,806	375,000	375,000	
FTE	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	
Cash Funds	339,668	339,806	375,000	375,000	
FTE	0.5	0.5	0.5	0.5	
Cash Funds Exempt/ Reappr. Funds	26,549	0	0	0	
Office of Judicial Performance Evaluation - CF	812,151	809,712	920,955	920,955	
FTE	1.0	1.7	2.0	2.0	
Courthouse Capital/ Infrastructure					
Maintenance	<u>948,680</u>	<u>1,000,000</u>	<u>4,100,000</u>	<u>2,800,000</u>	JUD DI #1
General Fund	948,680	1,000,000	1,000,000	0	
Cash Funds	0	0	3,100,000	2,800,000	
Courthouse Security - CF	344,307	1,813,352	3,194,622	3,869,622	JUD DI #3
FTE	1.0	1.0	1.0	1.0	
Family Violence Justice Grants	<u>495,000</u>	<u>746,640</u>	<u>893,430</u>	<u>893,430</u>	
General Fund	495,000	746,640	750,000	750,000	
Cash Funds	0	0	143,430	143,430	
Statewide Indirect Costs Assessment	<u>104,846</u>	<u>124,593</u>	<u>83,252</u>	<u>117,200</u>	
Cash Funds	99,438	124,593	77,832	110,292	
Cash Funds Exempt/ Reappr. Funds	5,408	0	0	3,219	
Federal Funds	0	0	5,420	3,689	

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	Actual	Actual	Appropriation	Request	Requests
Departmental Indirect Cost Assessment - CF	1,007,170	986,303	1,242,659	1,253,437	<i>Request v. Approp.</i>
<b>SUBTOTAL - Administration</b>	9,977,259	11,960,781	17,365,953	16,372,320	-5.7%
FTE	<u>65.1</u>	<u>64.6</u>	<u>70.6</u>	<u>68.6</u>	-2.8%
General Fund	5,959,812	6,542,699	6,606,202	5,334,018	-19.3%
FTE	63.6	62.4	67.1	64.1	-4.5%
Cash Funds	2,602,885	4,074,288	9,202,772	9,681,026	5.2%
FTE	1.5	2.2	3.5	4.5	28.6%
Cash Funds Exempt/ Reappr. Funds	1,414,562	1,343,794	1,551,559	1,353,587	-12.8%
Federal Funds	0	0	5,420	3,689	-31.9%

**(B) Administrative Special Purpose**

This subdivision includes centrally appropriated line items (which generally exclude funding associated with the three independent agencies) and ancillary programs. Cash fund sources include various court fees and fines, royalties from the sale of pattern jury instructions, and employee parking fees. Reappropriated funds include Victims and Witnesses Assistance and Law Enforcement funds transferred from the Trial Courts division, and federal funds transferred from the Department of Human Services.

Health, Life and Dental	<u>12,399,519</u>	<u>16,106,295</u>	<u>18,141,821</u>	<u>17,363,540</u>	JUD DI #1
General Fund	11,708,733	13,905,933	16,302,590	15,653,229	
Cash Funds	690,786	2,200,362	1,839,231	1,710,311	
Short-term Disability	<u>209,399</u>	<u>200,386</u>	<u>308,097</u>	<u>313,448</u>	
General Fund	186,059	166,112	272,515	277,956	
Cash Funds	23,340	34,274	35,582	35,492	

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
S.B. 04-257 Amortization Equalization					
Disbursement	<u>1,885,200</u>	<u>3,014,203</u>	<u>3,917,429</u>	<u>4,793,595</u>	
General Fund	1,669,756	2,592,370	3,458,308	4,244,055	
Cash Funds	215,444	421,833	459,121	549,540	
S.B. 06-235 Supplemental Amortization					
Equalization Disbursement	<u>343,055</u>	<u>1,369,816</u>	<u>2,411,398</u>	<u>3,464,196</u>	
General Fund	298,170	1,172,082	2,124,448	3,063,490	
Cash Funds	44,885	197,734	286,950	400,706	
Salary Survey					
General Fund	<u>9,530,403</u>	<u>10,285,486</u>	<u>0</u>	<u>0</u>	
Cash Funds	8,998,492	9,410,617	0	0	
	531,911	874,869	0	0	
Anniversary Increases					
General Fund	<u>1,958,269</u>	<u>2,052,664</u>	<u>0</u>	<u>0</u>	
Cash Funds	1,847,001	1,828,268	0	0	
	111,268	224,396	0	0	
Workers' Compensation - GF	1,624,563	2,071,929	1,719,774	1,795,339	
Legal Services - GF	195,616	207,517	226,140	226,140	
Hours	2,715.8	2,763.2	3,000.0	3,000.0	
Payment to Risk Management - GF	272,001	341,001	228,335	84,755	
Vehicle Lease Payments - GF	33,363	43,428	55,967	57,569	

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
Leased Space	<u>789,737</u>	<u>843,850</u>	<u>828,175</u>	<u>1,255,283</u>	JUD DI #1
General Fund	754,032	809,675 a/	788,935	1,083,803	
Cash Funds	35,705	34,175	39,240	171,480	
Lease Purchase - GF	112,766	119,878	119,878	119,878	
Administrative Purposes	<u>178,613</u>	<u>163,081</u>	<u>195,554</u>	<u>195,554</u>	
General Fund	128,804	120,515	130,554	130,554	
Cash Funds	49,809	42,566	65,000	65,000	
Retired Judges - GF	1,695,955	1,917,486 b/	1,894,006	1,894,006	
Appellate Reports Publication - GF	45,535	46,899 c/	37,100	37,100	
Child Support Enforcement	71,610	74,703	90,900	90,900	
FTE	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	
General Fund	24,254	25,321	30,904	30,904	
Cash Funds Exempt/ Reappr. Funds	47,356	49,382	59,996	59,996	
FTE	1.0	1.0	1.0	1.0	
Collections Investigators	4,100,260	4,611,106	5,069,351	5,061,322	
FTE	<u>74.7</u>	<u>72.1</u>	<u>83.2</u>	<u>83.2</u>	
General Fund	0	0	0	0	
Cash Funds	3,456,423	3,886,663	4,281,810	4,273,781	
FTE	74.7	72.1	83.2	83.2	
Cash Funds Exempt/ Reappr. Funds	643,837	724,443	787,541	787,541	

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v.</i>
					<i>Approp.</i>
<b>SUBTOTAL - Administrative Special</b>					
<b>Purpose</b>	35,445,864	43,469,728	35,243,925	36,752,625	4.3%
FTE	<u>75.7</u>	<u>73.1</u>	<u>84.2</u>	<u>84.2</u>	<u>0.0%</u>
General Fund	29,595,100	34,779,031	27,389,454	28,698,778	4.8%
Cash Funds	5,159,571	7,916,872	7,006,934	7,206,310	2.8%
FTE	74.7	72.1	83.2	83.2	0.0%
Cash Funds Exempt/ Reappr. Funds	691,193	773,825	847,537	847,537	0.0%
FTE	1.0	1.0	1.0	1.0	0.0%

a/ Includes \$20,566 transferred in from various other line item appropriations.

b/ Includes \$23,656 transferred in from various other line item appropriations.

c/ Includes \$9,800 transferred in from various other line item appropriations.

**(C) Integrated Information Services**

This subdivision provides funding to develop and maintain information technology systems used by the courts (including ICON and CICJIS), provide associated staff training, and assure data integrity. Cash fund sources include various fees and other cost recoveries. Reappropriated funds are federal funds transferred from the Department of Public Safety.

Personal Services	3,044,022	3,224,060	3,488,481	4,537,441	JUD DI #1
FTE	<u>44.9</u>	<u>43.4</u>	<u>44.9</u>	<u>57.9</u>	
General Fund	3,011,093	3,187,012	3,270,771	2,868,559	
FTE	44.9	43.4	44.9	39.9	
Cash Funds	0	37,048	0	1,451,172	
FTE	0.0	0.0	0.0	18.0	
Cash Funds Exempt/ Reappr. Funds	32,929	0	217,710	217,710	



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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
Operating Expenses	<u>226,444</u>	<u>327,888</u>	<u>227,604</u>	<u>352,254</u>	JUD DI #1
General Fund	176,444	177,888	177,604	97,604	
Cash Funds	50,000	150,000	50,000	254,650	
JAVA Conversion - GF	305,037	311,054	0	0	
FTE	4.7	5.0	0.0	0.0	
Capital Outlay	<u>7,042</u>	<u>2,765</u>	<u>0</u>	<u>0</u>	
General Fund	7,042	2,765	0	0	
Cash Funds	0	0	0	0	
Purchase of Services from Computer Center - GF	102,454	268,774	268,774	268,774	
Multiuse Network Payments - GF	285,787	334,800	334,800	334,800	
Communication Services Payments - GF	10,266	10,938	10,938	10,938	
Information Technology Infrastructure			<u>3,961,486</u>	<u>4,169,146</u>	JUD DI #1
General Fund			1,353,094	353,094	
Cash Funds			2,608,392	3,816,052	
Telecommunications Expenses	<u>479,627</u>	<u>525,527</u>	Included in		
General Fund	256,235	310,000	IT Infrastructure		
Cash Funds	223,392	215,527	(above)		

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
Hardware Replacement	<u>2,250,000</u>	<u>2,580,776</u>	Included in IT Infrastructure (above)		
General Fund	0	0			
Cash Funds	2,250,000	2,580,776			
Hardware/Software Maintenance	<u>1,174,424</u>	<u>1,178,094</u>	Included in IT Infrastructure (above)		
General Fund	1,039,424	1,043,094			
Cash Funds	135,000	135,000			
<i>Request v.</i>					
<i>Approp.</i>					
<b>SUBTOTAL - Integrated Information</b>					
<b>Services</b>	7,885,103	8,764,676	8,292,083	9,673,353	16.7%
FTE	<u>49.6</u>	<u>48.4</u>	<u>44.9</u>	<u>57.9</u>	<u>29.0%</u>
General Fund	5,193,782	5,646,325	5,415,981	3,933,769	-27.4%
FTE	49.6	48.4	44.9	39.9	-11.1%
Cash Funds	2,658,392	3,118,351	2,658,392	5,521,874	107.7%
FTE	0.0	0.0	0.0	18.0	n/a
Cash Funds Exempt/ Reappr. Funds	32,929	0	217,710	217,710	0.0%

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
<b>TOTAL - Courts Administration</b>	53,308,226	64,195,185	60,901,961	62,798,298	3.1%
FTE	<u>190.4</u>	<u>186.1</u>	<u>199.7</u>	<u>210.7</u>	<u>5.5%</u>
General Fund	40,748,694	46,968,055	39,411,637	37,966,565	-3.7%
FTE	113.2	110.8	112.0	104.0	-7.1%
Cash Funds	10,420,848	15,109,511	18,868,098	22,409,210	18.8%
FTE	76.2	74.3	86.7	105.7	21.9%
Cash Funds Exempt/ Reappr. Funds	2,138,684	2,117,619	2,616,806	2,418,834	-7.6%
FTE	1.0	1.0	1.0	1.0	0.0%
Federal Funds	0	0	5,420	3,689	-31.9%

*Request v.  
Approp.*

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	FY 2007-08	FY 2008-09	FY 2009-10	<u>FY 2010-11</u>	Change
	Actual	Actual	Appropriation	Request	Requests

**(3) TRIAL COURTS**

Trial courts consist of district courts (including water courts) and county courts. District courts have general jurisdiction over domestic, civil, and criminal cases, as well as appellate jurisdiction for decisions of county and municipal courts. County courts have jurisdiction over traffic cases and minor criminal and civil cases, as well as appellate jurisdiction for municipal courts. Cash fund sources include various court fees and cost recoveries, Crime Victim Compensation funds, and Victims and Witnesses Assistance and Law Enforcement funds. Reappropriated funds are federal funds transferred from the Departments of Public Safety and Human Services.

Trial Courts Programs		115,637,931	126,801,115	121,251,497	JUD DI #1, 2
FTE		<u>1,751.1</u>	<u>1,900.6</u>	<u>1,753.0</u>	
General Fund		93,620,721	101,923,098	95,818,950	
FTE		1,619.2	1,637.1	1,483.1	
Cash Funds		22,017,210	23,913,017	24,467,547	
FTE		131.9	263.5	269.9	
Reappropriated Funds		0	965,000	965,000	
Federal Funds		0	0	0	
Personal Services	101,784,289	Included in			
FTE	<u>1,682.5</u>	Trial Courts			
General Fund	90,667,630	Programs line			
FTE	1,550.6	item (above)			
Cash Funds	9,764,874				
FTE	131.9				
Federal Funds	1,351,785				

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
Operating Expenses	<u>6,646,246</u>	Included in Trial			
General Fund	150,877	Courts Programs			
Cash Funds	6,495,369	line item (above)			
 Problem-Solving Courts				3,380,629	JUD DI #2
FTE				<u>32.2</u>	
Cash Funds				994,576	
FTE				17.2	
Federal Funds				2,386,053	
FTE				15.0	
 Capital Outlay	<u>866,829</u>	<u>1,450,806</u>	<u>1,353,895</u>	<u>0</u>	
General Fund	141,023	0	62,724	0	
Cash Funds	725,806	1,450,806	1,291,171	0	
 Court Costs, Jury Costs, and Court- appointed Counsel (previously "Mandated Costs")	<u>13,426,103</u>	<u>15,331,788</u>	<u>15,594,352</u>	<u>15,594,352</u>	
General Fund	13,249,563	15,124,817 a/	15,109,352	15,109,352	
Cash Funds	176,540	206,971	485,000	485,000	
 Language Interpreters	3,235,466	3,390,105	3,396,568	3,389,985	
FTE	<u>25.0</u>	<u>22.3</u>	<u>20.0</u>	<u>20.0</u>	
General Fund	3,225,714	3,343,467	3,346,568	3,339,985	
FTE	25.0	22.3	20.0	20.0	
Cash Funds	9,752	46,638	50,000	50,000	

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	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>Change</b>
	<b>Actual</b>	<b>Actual</b>	<b>Appropriation</b>	<b>Request</b>	<b>Requests</b>
District Attorney Mandated Costs	<u>2,223,648</u>	<u>2,188,785</u>	<u>2,226,052</u>	<u>2,147,624</u>	
General Fund	2,092,974	2,063,785	2,101,052	2,022,624	
Cash Funds	130,674	125,000	125,000	125,000	
Sex Offender Surcharge Fund Program - GF	24,988	0	0	0	
Victim Compensation - CF b/	10,314,242	11,538,703	12,120,121	12,120,121	
Victim Assistance - CF b/	14,314,518	15,872,570	15,095,039	15,095,039	
Federal Funds and Other Grants	1,085,401	1,602,789	2,400,000	2,400,000	
FTE c/	<u>10.9</u>	<u>8.5</u>	<u>14.0</u>	<u>14.0</u>	
Cash Funds	419,650	305,991	475,000	475,000	
FTE c/	3.0	0.0	3.0	3.0	
Cash Funds Exempt/ Reappr. Funds	85,095	133,012	300,000	300,000	
FTE c/	1.8	6.0	6.0	6.0	
Federal Funds	580,656	1,163,786	1,625,000	1,625,000	
FTE c/	6.1	2.5	5.0	5.0	

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
<b>TOTAL - Trial Courts</b>	153,921,730	167,013,477	178,987,142	175,379,247	-2.0%
FTE	<u>1,718.4</u>	<u>1,781.9</u>	<u>1,934.6</u>	<u>1,819.2</u>	-6.0%
General Fund	109,552,769	114,152,790	122,542,794	116,290,911	-5.1%
FTE	1,575.6	1,641.5	1,657.1	1,503.1	-9.3%
Cash Funds	42,351,425	51,563,889	53,554,348	53,812,283	0.5%
FTE	134.9	131.9	266.5	290.1	8.9%
Cash Funds Exempt/ Reappr. Funds	85,095	133,012	1,265,000	1,265,000	0.0%
FTE	1.8	6.0	6.0	6.0	0.0%
Federal Funds	1,932,441	1,163,786	1,625,000	4,011,053	146.8%
FTE	6.1	2.5	5.0	20.0	300.0%

a/ Includes \$315,480 transferred in from various other line item appropriations.

b/ These appropriations are included in the Long Bill for informational purposes as they are continuously appropriated under the Judicial Branch's constitutional authority.

c/ FTE figures for FY 2007-08 and 2008-09 reflect appropriated, rather than actual, levels.

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests

**(4) PROBATION AND RELATED SERVICES**

This division provides supervision of offenders sentenced to probation, presentence investigations for the courts, victim notification and assistance, and community outreach programs. Cash funds are from fees paid by offenders for supervision and restitution, and various cost recoveries. Reappropriated funds include Victims and Witnesses Assistance and Law Enforcement funds transferred from the Trial Courts division, and funds transferred from other departments.

Personal Services	60,889,029	68,108,725	71,763,731	66,188,813	JUD DI #1
FTE	<u>1,031.3</u>	<u>1,081.2</u>	<u>1,139.6</u>	<u>1,045.6</u>	
General Fund	52,000,053	58,805,464	62,125,104	56,543,813	
FTE	877.4	927.3	985.7	891.7	
Cash Funds	8,888,976	9,303,261	9,638,627	9,645,000	
FTE	153.9	153.9	153.9	153.9	
Operating Expenses	<u>2,594,272</u>	<u>2,589,368</u>	<u>3,117,267</u>	<u>3,017,333</u>	JUD DI #1
General Fund	2,244,603	2,262,118	2,298,418	2,198,484	
Cash Funds	349,669	327,250	818,849	818,849	
Capital Outlay - GF	381,564	168,604	81,622	0	
Offender Treatment and Services	<u>5,769,105</u>	<u>6,750,220</u>	<u>10,932,023</u>	<u>10,932,023</u>	
General Fund	487,193	0	0	0	
Cash Funds	3,656,855	6,697,671	10,619,290	10,619,290	
Cash Funds Exempt/ Reappr. Funds	1,625,057	52,549	312,733	312,733	
Day Reporting Services - GF	n/a	n/a	393,078	393,078	



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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
Victims Grants - CFE/RF	333,988	433,029	650,000	650,000	
FTE	17.3	17.3	6.0	6.0	
S.B. 91-94 Juvenile Services- CFE/RF	1,663,595	1,629,184	1,906,837	1,906,837	
FTE	25.0	25.0	25.0	25.0	
S.B. 03-318 Community Treatment Funding - GF	2,200,000	2,200,000	2,200,000	2,200,000	
Federal Funds and Other Grants	2,895,079	3,529,754	4,850,000	4,850,000	
FTE a/	<u>34.8</u>	<u>32.3</u>	<u>33.0</u>	<u>33.0</u>	
Cash Funds	1,330,103	1,011,041	1,200,000	1,200,000	
FTE a/	6.5	2.0	2.0	2.0	
Cash Funds Exempt/ Reappr. Funds	532,778	822,563	850,000	850,000	
FTE a/	10.9	17.8	18.0	18.0	
Federal Funds	1,032,198	1,696,150	2,800,000	2,800,000	
FTE a/	17.4	12.5	13.0	13.0	

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
<b>TOTAL - Probation</b>	76,726,632	85,408,884	95,894,558	90,138,084	-6.0%
FTE	<u>1,108.4</u>	<u>1,155.8</u>	<u>1,203.6</u>	<u>1,109.6</u>	-7.8%
General Fund	57,313,413	63,436,186	67,098,222	61,335,375	-8.6%
FTE	877.4	927.3	985.7	891.7	-9.5%
Cash Funds	14,225,603	17,339,223	22,276,766	22,283,139	0.0%
FTE	160.4	155.9	155.9	155.9	0.0%
Cash Funds Exempt/ Reappr. Funds	4,155,418	2,937,325	3,719,570	3,719,570	0.0%
FTE	53.2	60.1	49.0	49.0	0.0%
Federal Funds	1,032,198	1,696,150	2,800,000	2,800,000	0.0%
FTE	17.4	12.5	13.0	13.0	0.0%

*Request v.  
Approp.*

a/ FTE figures for FY 2007-08 and 2008-09 reflected appropriated, rather than actual, levels.

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
<b>TOTAL - Judicial Department</b>	301,642,602	335,297,503	354,007,221	345,967,284	-2.3%
FTE	<u>3,199.8</u>	<u>3,318.3</u>	<u>3,536.6</u>	<u>3,328.2</u>	-5.9%
General Fund	217,392,204	234,707,459	239,814,826	225,785,111	-5.9%
FTE	2,696.1	2,807.9	2,887.3	2,621.3	-9.2%
Cash Funds	74,906,562	92,542,152	102,160,599	105,964,027	3.7%
FTE	424.2	428.3	575.3	617.9	7.4%
CFE/RF	6,379,197	5,187,956	7,601,376	7,403,404	-2.6%
FTE	56.0	67.1	56.0	56.0	0.0%
Federal Funds	2,964,639	2,859,936	4,430,420	6,814,742	53.8%
FTE	23.5	15.0	18.0	33.0	83.3%

*Request v.  
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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests

**(5) PUBLIC DEFENDER**  
**Douglas Wilson, State Public Defender**

This agency provides legal counsel for indigent defendants in criminal and juvenile delinquency cases where there is a possibility of being jailed or imprisoned. Cash funds consist of training fees paid by private attorneys, grants, and funds received from the City of Denver for contract services related to its drug court. Reappropriated funds are federal funds transferred from the Department of Public Safety.

Personal Services	32,776,520	35,641,348	38,468,649	40,989,256	PD DI-Targeted
FTE	<u>424.9</u>	<u>510.3</u>	<u>576.3</u>	<u>650.9</u>	One-time
General Fund	32,551,520	35,416,348	38,468,649	40,989,256	Reductions
FTE	420.9	506.3	576.3	650.9 a/	(TOR)
Cash Funds	225,000	225,000	0	0	
FTE	4.0	4.0	0.0	0.0	
Health, Life, and Dental - GF	1,806,462	2,642,260	3,683,543	3,998,464	PD DI-TOR
Short-term Disability	<u>31,517</u>	<u>40,831</u>	<u>54,015</u>	<u>56,896</u>	
General Fund	31,517	40,814	54,015	56,896	PD DI-TOR
Cash Funds	0	17	0	0	
S.B. 04-257 Amortization					
Equalization Disbursement	<u>282,846</u>	<u>492,072</u>	<u>690,464</u>	<u>869,869</u>	
General Fund	282,846	491,865	690,464	869,869	PD DI-TOR
Cash Funds	0	207	0	0	

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
S.B. 06-235 Supplemental Amortization					
Equalization Disbursement	<u>50,508</u>	<u>222,483</u>	<u>424,572</u>	<u>628,536</u>	
General Fund	50,508	222,386	424,572	628,536	PD DI-TOR
Cash Funds	0	97	0	0	
Salary Survey	<u>934,562</u>	<u>1,342,685</u>	<u>0</u>	<u>0</u>	
General Fund	934,562	1,331,059	0	0	
Cash Funds	0	11,626	0	0	
Anniversary Increases	<u>403,490</u>	<u>477,544</u>	<u>0</u>	<u>0</u>	
General Fund	403,490	473,418	0	0	
Cash Funds	0	4,126	0	0	
Operating Expenses	<u>1,531,800</u>	<u>1,169,809</u>	<u>1,240,001</u>	<u>1,142,466</u>	
General Fund	1,514,300	1,152,309	1,210,001	1,112,466	PD DI-TOR
Cash Funds	17,500	17,500	30,000	30,000	
Purchase of Services from Computer Center - GF	18,453	19,579	19,579	19,579	
Multiuse Network Payments - GF	235,797	0	0	0	
Vehicle Lease Payments - GF	35,189	47,764	61,392	50,688	
Capital Outlay - GF	243,405	62,760	219,576	218,316	PD DI-TOR
Leased Space/Utilities - GF	3,312,971	4,105,017	5,177,879	5,842,301	

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
Automation Plan - GF	1,087,746	1,084,390	894,768	673,335	PD DI-TOR
Contract Services - GF	462	18,000	18,000	18,000	
Mandated Costs - GF	3,143,259	2,954,166	3,567,671	3,384,999	PD DI-TOR
Grants	81,788	40,647	103,745	120,000	
FTE	<u>0.0</u>	<u>0.0</u>	<u>2.0</u>	<u>2.0</u>	
Cash Funds	0	0	96,245 b/	120,000	
FTE	0.0	0.0	2.0 b/	2.0	
Cash Funds Exempt/ Reappr. Funds	81,788	40,647	7,500	0	
FTE	0.0	0.0	0.0	0.0	
					<i>Request v.</i>
					<i>Approp.</i>
<b>TOTAL - Public Defender</b>	45,976,775	50,361,355	54,623,854	58,012,705	6.2%
FTE	<u>424.9</u>	<u>510.3</u>	<u>578.3</u>	<u>652.9</u>	<u>12.9%</u>
General Fund	45,652,487	50,062,135	54,490,109	57,862,705	6.2%
FTE	420.9	506.3	576.3	650.9 a/	12.9%
Cash Funds	242,500	258,573	126,245 b/	150,000	18.8%
FTE	4.0	4.0	2.0 b/	2.0	0.0%
Cash Funds Exempt/ Reappr. Funds	81,788	40,647	7,500	0	-100.0%

a/ The Public Defender has submitted a decision item that proposes waiting four months to hire 40.1 FTE to address the public defender impact of adding 28 judgeships in FY 2007-08 and FY 2008-09. Another 34.5 FTE associated with the remaining 15 new judgeships would be delayed until FY 2011-12. This proposal thus reduces the staffing request associated with H.B. 07-1054 from 74.6 FTE to 26.7 FTE, a reduction of 47.9 FTE that is not reflected in this decision item request. If this FTE authorization were reduced, the request would reflect 603.0 FTE, a 4.3 percent increase compared to FY 2009-10 appropriations.

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests

b/ These amounts include an increase of \$40,000 and 1.0 FTE, approved by the Joint Budget Committee 9/21/09.

**(6) ALTERNATE DEFENSE COUNSEL**

**Lindy Frolich, State Alternate Defense Counsel**

This agency provides legal representation for indigent defendants in cases where the Public Defender is precluded from doing so because of an ethical conflict of interest. Cash funds are received from private attorneys and investigators for training.

Personal Services - GF	561,708	659,819	706,089	706,089
FTE	6.5	7.5	7.5	7.5
Health, Life, and Dental - GF	34,369	47,420	62,947	71,469
Short-term Disability - GF	643	789	951	954
S.B. 04-257 Amortization Equalization Disbursement - GF	5,674	9,233	12,063	14,564
S.B. 06-235 Supplemental Amortization Equalization Disbursement - GF	1,040	4,197	7,412	10,513
Salary Survey - GF	18,422	29,321	0	0
Performance-based Pay Awards - GF	4,701	7,323	0	0
Operating Expenses	<u>75,857</u>	<u>65,840</u>	<u>67,030</u>	<u>67,030</u>
General Fund	75,857	65,840	67,030	67,030
Cash Funds	0	0	0	0

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	Actual	Actual	Appropriation	Request	Requests
Capital Outlay - GF	6,008	3,455	0	0	
Purchase of Services from Computer Center - GF	1,537	1,203	1,203	1,203	
Leased Space - GF	32,772	38,351	38,140	39,999	
Training and Conferences	<u>28,000</u>	<u>28,000</u>	<u>40,000</u>	<u>40,000</u>	
General Fund	20,000	20,000	20,000	20,000	
Cash Funds	8,000	8,000	20,000	20,000	
Conflict of Interest Contracts - GF	17,925,541	20,692,161	21,092,467	21,956,638	ADC DI #1
Mandated Costs - GF	1,549,840	1,589,848	1,663,839	1,663,839	
					<i>Request v. Approp.</i>
<b>TOTAL - Alternate Defense Counsel</b>	20,246,112	23,176,960	23,692,141	24,572,298	3.7%
FTE	<u>6.5</u>	<u>7.5</u>	<u>7.5</u>	<u>7.5</u>	0.0%
General Fund	20,238,112	23,168,960	23,672,141	24,552,298	3.7%
FTE	6.5	7.5	7.5	7.5	0.0%
Cash Funds	8,000	8,000	20,000	20,000	0.0%

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests

**(7) OFFICE OF THE CHILD'S REPRESENTATIVE**

**Linda Weirnerman, Interim Executive Director**

This agency provides legal representation for children involved in the court system due to abuse or neglect, delinquency, truancy, high conflict divorce, alcohol or drug abuse, mental health issues, and probate matters.

Personal Services - GF	1,588,608	1,666,918	1,866,763	1,883,786	OCR DI #3
FTE	25.8	26.9	26.8	27.3	
Health, Life, and Dental - GF	97,102	129,824	163,296	170,186	OCR DI #3
Short-term Disability - GF	1,828	2,017	2,636	2,916	OCR DI #3
S.B. 04-257 Amortization Equalization Disbursement - GF	16,559	23,983	33,624	37,750	OCR DI #3
S.B. 06-235 Supplemental Amortization Equalization Disbursement - GF	2,942	10,889	20,669	25,623	OCR DI #3
Salary Survey - GF	53,159	87,642	0	0	
Anniversary Increases - GF	20,344	26,554	0	0	
Operating Expenses - GF	189,705	197,235	151,042	159,929	OCR DI #2
Capital Outlay - GF	0	3,280	3,998	3,150	OCR DI #3



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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
Purchase of Services from Computer Center - GF	1,464	1,553	1,553	1,553	
Leased Space - GF	136,876	162,758	142,738	145,443	
CASA Contracts - GF	20,000	520,000	520,000	520,000	
Training - GF	37,753	32,519	38,000	38,000	
Court Appointed Counsel - GF	12,428,206	15,725,982 a/	15,409,893	16,433,791	OCR DI #1
Mandated Costs - GF	41,080	34,437	26,228	26,228	
					<i>Request v. Approp.</i>
<b>TOTAL - Office of the Child's Representative - GF</b>	14,635,626	18,625,591	18,380,440	19,448,355	5.8%
FTE	25.8	26.9	26.8	27.3	1.9%

a/ Includes over expenditure of \$118,685.

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	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Change
	Actual	Actual	Appropriation	Request	Requests
<b>JUDICIAL GRAND TOTAL</b>	382,501,115	427,461,409	450,703,656	448,000,642	-0.6%
FTE	<u>3,657.0</u>	<u>3,863.0</u>	<u>4,149.2</u>	<u>4,015.9</u>	-3.2%
General Fund	297,918,429	326,564,145	336,357,516	327,648,469	-2.6%
FTE	3,149.3	3,348.6	3,497.9	3,307.0	-5.5%
Cash Funds	75,157,062	92,808,725	102,306,844 a/	106,134,027	3.7%
FTE	428.2	432.3	577.3 a/	619.9	7.4%
Cash Funds Exempt/ Reappr. Funds	6,460,985	5,228,603	7,608,876	7,403,404	-2.7%
FTE	56.0	67.1	56.0	56.0	0.0%
Federal Funds	2,964,639	2,859,936	4,430,420	6,814,742	53.8%
FTE	23.5	15.0	18.0	33.0	83.3%

*Request v.  
Approp.*

a/ These amounts include an increase of \$40,000 and 1.0 FTE, approved by the Joint Budget Committee 9/21/09.

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**APPENDIX B: SUMMARY OF MAJOR LEGISLATION**

- ❑ **S.B. 09-068 (Morse/ McCann): Funding for Domestic Abuse Services.** Increases fees for petitions and responses in divorce proceedings by \$10 each and specifies that \$5 of this additional fee shall be deposited in the Family Violence Justice Fund. Directs the Judicial Department to use this fee revenue to award grants to qualifying organizations that provide services for or on behalf of indigent persons and their families who are married, separated, or divorced. Appropriates \$143,430 cash funds from the Family Violence Justice Fund to the Judicial Department for FY 2009-10.
  
- ❑ **S.B. 09-208 (Tapia/ Pommer): Augment FY 2008-09 General Fund Revenues.** Transfers to the General Fund a total of \$3,391,841 from various cash funds administered by the Judicial Branch, including the following amounts: (1) \$1,500,000 from the Court Security Cash Fund; (2) \$900,000 from the State Commission on Judicial Performance Cash Fund; (3) \$350,000 from the Drug Offender Treatment Fund; (4) \$250,000 from the Offender Services Fund; (5) \$200,000 from the Family-friendly Court Program Cash Fund; (6) \$151,341 from the Drug Offender Surcharge Fund; (7) an estimated \$32,500 (the fund balance) from the Dispute Resolution Fund; and (8) an estimated \$8,000 (the fund balance) from the Guardian Ad Litem Fund.
  
- ❑ **S.B. 09-256 (Romer and Bacon/ Pommer and Scanlan): Financing of Public Schools.** Requires the Department of Education to use at least half of any increase in the appropriation for the Expelled and At-risk Student Services Grant Program for FY 2009-10 (\$500,000) to award grants for the purpose of reducing the number of truancy cases requiring court involvement. Authorizes and encourages the Department to retain up to an additional 2.0 percent of any moneys appropriated for the Program to partner with organizations to reduce the number of truancy cases requiring court involvement.
  
- ❑ **S.B. 09-268 (Tapia/ Pommer): Court Appointments Involving Children.** Makes several clarifying changes concerning the appointment of state-paid professionals in court cases involving children. Clarifies that with respect to certain domestic relations cases, the court shall consider the combined income and assets of both parties before determining that a party is indigent. Requires a court to make specific findings that the appointment of a guardian ad litem (GAL) in certain delinquency cases is necessary to serve the child's best interests, and clarifies when the appointment of a GAL in delinquency cases terminates. Clarifies that the court may appoint a GAL in a truancy case when extraordinary and exceptional circumstances exist. Reduces the General Fund appropriation to the Office of the Child's Representative for court appointed counsel for FY 2009-10 by \$97,000.
  
- ❑ **S.B. 09-279 (Tapia/ Pommer): Cash Fund Transfers to Augment General Fund.** Transfers \$500,000 from the Court Security Cash Fund to the General Fund on July 1, 2009.

- ❑ **S.B. 09-286 (Morse and M. Carroll/ Levy and Merrifield): Justice Reinvestment Act.** Requires the Colorado Commission on Criminal and Juvenile Justice to study sentences in Colorado, including the following: (1) sentences related to the offense of driving under restraint; (2) sentences related to drug crimes; and (3) alternatives to incarceration for nonviolent first-time offenders. Requires the Commission to submit recommendations regarding modifications to sentences or sentencing laws by February 1, 2010.
- ❑ **H.B. 09-1132 (Murray and Priola/ Heath and Scheffel): Using Text Messaging for Unlawful Acts.** Adds text messaging and instant messaging to the list of means to commit the crimes of computer dissemination of indecent material to a child, internet luring of a child, internet sexual exploitation of a child, and harassment. Although this bill is anticipated to increase the number of offenders sentenced to sex offender intensive supervision probation, the final act excluded an appropriation to the Judicial Department.
- ❑ **S.B. 08-206 (Shaffer and Penry/ T. Carroll and Marostica): Justice Center and State Museum.** Authorizes the Judicial Branch to increase various civil filing fees to help fund the consolidation of all justice-related state agencies (all Judicial Department divisions and agencies, plus the Attorney General's office) into a single complex at the current site of the Colorado Supreme Court and the Colorado History Museum (at 13th and Broadway/Lincoln). Authorizes the construction of a new Colorado History Museum at 12th and Broadway/Lincoln using a limited amount from the State Historical Fund and moneys transferred from the Judicial Department.

Authorizes the State to enter into lease-purchase agreements for the development and construction of a state justice center (to be known as the "Ralph L. Carr Justice Complex") and the new museum. The total amount of the principal component of the lease-purchase agreements concerning the Justice Complex may not exceed \$275 million, annual payments may not exceed \$19 million, and the term may not exceed 38 years.

Creates the Justice Center Cash Fund, to consist of revenues from various filing fees and any lease payments received from agencies occupying the Justice Complex. Moneys in the Fund are subject to annual appropriation for expenses related to the design, construction, maintenance, operation, and interim accommodations for the Justice Complex. In addition, requires the Judicial Branch to transfer a total of \$25 million from the Justice Center Cash Fund to the newly created State Museum Cash Fund to compensate the State Historical Society for the land on which the Colorado History Museum currently resides.

Beginning in FY 2014-15, requires the Executive Director of the Department of Personnel and Administration to calculate the net savings to the State by locating the Department of Law and any other executive branch agency in the new state justice center, and requires the General Assembly to appropriate from the General Fund to the Justice Center Cash Fund the amount of net savings to repay any lease purchase obligations.

- ❑ **H.B. 08-1253 (White/Morse): Create Technology Cash Fund.** Creates the Judicial Department Information Technology Cash Fund, consisting of all fees and cost recoveries related to electronic filings, network access and searches of court databases, electronic searches of court records, and any other information technology services. Moneys in the Fund are subject to annual appropriation for any expenses related to the Department's information technology needs. Excludes the Fund from the 16.5 percent statutory limitation on uncommitted cash fund reserves. Has the effect of eliminating fiscal year-end reversions fees and cost recoveries to the General Fund.
- ❑ **H.B. 07-1054 (T. Carroll/Shaffer): Increase the Number of Court of Appeals, District, and County Court Judges.** In FY 2007-08, creates nine new district court judgeships. Subject to available appropriations, also creates three new judgeships on the Colorado Court of Appeals, 22 new district court judgeships, and eight new county court judgeships to be phased in during FY 2008-09 and FY 2009-10.
- ❑ **H.B. 06-1028 (T. Carroll/Mitchell): Increase the Number of Court of Appeals and County Judges.** Creates three new Colorado Court of Appeals judgeships and four new county court judgeships (located in Jefferson, Douglas, Mesa, and Weld counties).

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**APPENDIX C: UPDATE OF FY 2009-10  
LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION**

**Long Bill Footnotes**

- 2 Department of Corrections, Management, Executive Director's Office Subprogram; Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Alcohol and Drug Abuse Division; and Division of Youth Corrections; Judicial Department, Probation and Related Services; and Department of Public Safety, Division of Criminal Justice; and Colorado Bureau of Investigation** -- State agencies involved in multi-agency programs requiring separate appropriations to each agency are requested to designate one lead agency to be responsible for submitting a comprehensive annual budget request for such programs to the Joint Budget Committee, including prior year, request year, and three year forecasts for revenues into the fund and expenditures from the fund by agency. The requests should be sustainable for the length of the forecast based on anticipated revenues. Each agency is still requested to submit its portion of such request with its own budget document. This applies to requests for appropriation from the Drug Offender Surcharge Fund, the Offender Identification Fund, the Sex Offender Surcharge Fund, the Persistent Drunk Driver Cash Fund, and the Alcohol and Drug Driving Safety Program Fund, among other programs.

**Comment:** Of the funds listed, the Judicial Branch is designated as the lead agency for the Drug Offender Surcharge Fund and the Offender Identification Fund, it receives an allocation from the Sex Offender Surcharge Fund, and it administers the Alcohol and Drug Driving Safety Program and the associated Fund. The Judicial Department does not administer or receive appropriations from the Persistent Drunk Driver Cash Fund.

*Drug Offender Surcharge Fund [Section 18-19-103 (4), C.R.S.]* - This fund consists of 90 percent of drug offender surcharge revenues. These surcharges range from \$100 to \$4,500 for each conviction or deferred sentence. Moneys in the Fund are subject to annual appropriation to the Judicial Department, the Department of Corrections, the Department of Public Safety's Division of Criminal Justice, and the Department of Human Services to cover the costs associated with substance abuse assessment, testing, education, and treatment. Pursuant to Section 16-11.5-102 (3), C.R.S., these four departments are required to cooperate and develop a plan for the allocation of moneys deposited in this fund. The Judicial Department is required to submit this plan with its annual budget request.

The following table details the allocation plan submitted with the Department's FY 2010-11 budget request:

<b>Drug Offender Surcharge Fund Allocation Plan: FY 2010-11</b>			
<b>Program/Line Item</b>	<b>Purpose</b>	<b>Amount</b>	<b>% of Total</b>
<b>Corrections:</b>			
TASC Staff (4 regions)	Assessment	\$177,393	4.1%
TASC Parolee Assessments	Assessment	250,000	4.7%
TASC Parolee Treatment Services	Treatment	452,607	7.1%
OSMI Parolee Wrap Around Services	Treatment	325,127	6.1%
Research Services	Program Review/ Research	<u>40,000</u>	0.7%
<b>Subtotal: Corrections</b>		<b>1,245,127</b>	<b>23.2%</b>
<b>Human Services, Alcohol and Drug Abuse Division:</b>			
Outpatient	Treatment	837,168	16.5%
STIRRT	Treatment	383,316	7.1%
Haven (ARTS)	Treatment	46,143	0.9%
Regional Training	Training	<u>4,000</u>	0.1%
<b>Subtotal: Human Services</b>		<b>1,270,627</b>	<b>23.7%</b>
<b>Judicial, Probation and Related Services:</b>			
Assessment Staff	Assessment	806,773	15.0%
Annual Licensing Fees	Assessment	17,500	0.3%
Indirect Costs	Assessment	77,439	1.4%
Substance Abuse Treatment	Treatment	793,767	14.8%
Multi-agency Training	Training	<u>50,000</u>	4.5%
<b>Subtotal: Judicial</b>		<b>1,745,479</b>	<b>32.5%</b>
<b>Public Safety:</b>			
Div IRT (31.4 beds)	Treatment	204,855	3.8%
90-Day Female IRT Pilot	Treatment	87,291	1.6%
T.C. Peer1/ Haven	Treatment	405,077	7.5%
TC Day Treatment	Treatment	97,628	1.8%
Personal Services, Operating, and Indirect Costs	Program Review/ Research	105,586	2.3%
90-Day IRT Pilot	Program Review/ Research	197,076	2.3%
SOA-R Training	Training	<u>10,300</u>	0.2%
<b>Subtotal: Public Safety</b>		<b>1,107,813</b>	<b>20.6%</b>

<b>Drug Offender Surcharge Fund Allocation Plan: FY 2010-11</b>			
<b>Program/Line Item</b>	<b>Purpose</b>	<b>Amount</b>	<b>% of Total</b>
<b>TOTALS</b>	<b>Total Allocated</b>	<b><u>5,369,046</u></b>	<b>100.0%</b>
	Assessment	1,329,105	24.8%
	Treatment	3,632,979	67.7%
	Program Review/ Research	342,662	6.4%
	Training	64,300	1.2%

As detailed in the above table, departments are requesting appropriations totaling \$5,369,046 for FY 2010-11. Requested appropriations for FY 2010-11 are anticipated to exceed projected fund revenues by \$563,467, which is anticipated to reduce the fiscal year-end fund balance from \$1,219,733 to \$656,264 (12.2 percent of annual expenditures). The following table provides Fund cash flow trend data.

<b>Drug Offender Surcharge Fund: Revenue and Expenditure Trends</b>					
<b>Description</b>	<b>FY 07-08 Actual</b>	<b>FY 08-09 Actual</b>	<b>FY 09-10 Proj.</b>	<b>FY 10-11 Proj.</b>	<b>FY 11-12 Proj.</b>
Beginning Fund Balance	\$3,005,884	\$2,851,059	\$2,302,257	<b>\$1,219,733</b>	\$656,264
Revenue:					
Surcharges	4,715,062	4,548,711	4,594,198	4,686,082	4,826,665
Interest	<u>147,348</u>	<u>104,579</u>	<u>91,884</u>	<u>119,495</u>	<u>123,080</u>
Total Revenues	4,862,410	4,653,290	4,686,082	4,805,577	4,949,745
Expenditures:					
Corrections	995,127	995,127	1,245,127	1,245,127	1,245,127
Human Services	1,609,616	1,009,385	1,270,616	1,270,627	1,270,627
Judicial	1,584,958	2,405,908	1,043,089	1,745,479	1,745,479
Judicial - Spending Restriction			(258,039)		
Public Safety	<u>827,534</u>	<u>640,331</u>	<u>1,107,813</u>	<u>1,107,813</u>	<u>1,107,813</u>
Total Expenditures	5,017,235	5,050,751	4,408,606	5,369,046	5,369,046
Transfers		151,341	1,360,000		



<b>Drug Offender Surcharge Fund: Revenue and Expenditure Trends</b>					
<b>Description</b>	<b>FY 07-08 Actual</b>	<b>FY 08-09 Actual</b>	<b>FY 09-10 Proj.</b>	<b>FY 10-11 Proj.</b>	<b>FY 11-12 Proj.</b>
<b>Ending Fund Balance</b>	<b>2,851,059</b>	<b>2,302,257</b>	<b>1,219,733</b>	<b>656,264</b>	<b>236,963</b>
Annual Change in Fund Balance		(548,802)	(1,082,524)	(563,469)	(419,301)
<i>Fund Balance as Percent of Annual Expenditures</i>	56.8%	45.6%	27.7%	12.2%	4.4%

*Offender Identification Fund [Section 24-33.5-415.6 (1), C.R.S.]* - This fund consists of payments for genetic testing received from adult and juvenile offenders, including: certain convicted adult offenders [as required by Section 16-11-102.4, C.R.S.]; certain juveniles who are sentenced to the youthful offender system [as required by Section 18-1.3-407 (11.5, C.R.S.); and certain adjudicated offenders [as required by Section 19-2-925.6, C.R.S.]. The fee is currently \$128<sup>1</sup>.

Pursuant to S.B. 09-241, beginning October 1, 2010, every individual who is arrested or charged for a felony must provide a DNA sample to the local law enforcement agency as part of the booking process (unless the CBI already has a sample). The act imposes a surcharge of \$2.50 on defendants for each criminal action resulting in a conviction or a deferred judgment and sentence for a felony, misdemeanor, misdemeanor traffic charges, and traffic infractions. These surcharges became effective July 1, 2009, and are credited to the Offender Identification Fund.

The Judicial Department is responsible for collecting biological substance samples from offenders who are sentenced to Probation. The Department of Corrections, the Department of Human Services (Division of Youth Corrections), county sheriffs, and community corrections programs are responsible for collecting biological substance samples from offenders in their custody. The Colorado Bureau of Investigation (within the Department of Public Safety) is responsible for conducting the chemical testing of the samples, storing and preserving the samples, filing and maintaining test results, and furnishing test results to law enforcement agencies upon request.

Pursuant to S.B. 09-241, the CBI will provide test kits to local law enforcement agencies throughout the state to begin collecting DNA samples from arrestees beginning October 1, 2010. Eventually, this will decrease the number of individuals for whom Judicial and Corrections will need to collect a sample.

Moneys in the Fund are subject to annual appropriation to the Judicial Department (the State

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<sup>1</sup> This fee was established in 1996 when the DNA database for sex offenders was established. At that time, the fee was based on a cost of \$15 to \$25 for sample collection, with the remainder to cover CBI lab costs to develop the DNA profile. The Department indicates that collection costs have decreased by approximately \$5, but this decrease has likely been offset by increases in CBI lab costs.

Court Administrator) and the Department of Public Safety (the Executive Director) to pay for genetic testing of offenders. Per budget instructions issued by the Office of State Planning and Budgeting, the Judicial Department is the lead agency for reporting purposes.

<b>Offender Identification Fund: Revenue and Expenditure Trends</b>					
<b>Description</b>	<b>FY 07-08 Actual</b>	<b>FY 08-09 Actual</b>	<b>FY 09-10 Proj.</b>	<b>FY 10-11 Proj.</b>	<b>FY 11-12 Proj.</b>
Beginning Fund Balance	\$149,670	\$303,454	\$479,252	\$1,530,552	\$1,012,801
Revenue (including S.B. 09-241)	268,119	535,482	1,485,890	1,484,524	1,462,795
Expenditures:					
Corrections	4,960	4,960	4,960	4,960	24,385
Judicial	8,250	78,599	78,505	78,343	17,068
Public Safety	<u>101,125</u>	<u>276,125</u>	<u>351,125</u>	<u>1,918,972</u>	<u>1,193,711</u>
Total Expenditures	114,335	359,684	434,590	2,002,275	1,235,164
<b>Ending Fund Balance</b>	<b>303,454</b>	<b>479,252</b>	<b>1,530,552</b>	<b>1,012,801</b>	<b>1,240,432</b>
Annual Change in Fund Balance		175,798	1,051,300	(517,751)	227,631
<i>Fund Balance as Percent of Annual Expenditures</i>	<i>265.4%</i>	<i>133.2%</i>	<i>352.2%</i>	<i>50.6%</i>	<i>100.4%</i>

As detailed in the above table, departments are requesting appropriations totaling \$2,002,275 for FY 2010-11, which represents a substantial increase associated with the implementation of S.B. 09-241. While annual expenditures are anticipated to exceed revenues in FY 2010-11, overall expenditures are anticipated to decrease in subsequent years.

*Sex Offender Surcharge Fund [Section 18-21-103 (3), C.R.S.]* - This fund consists of 95 percent of sex offender surcharge revenues. These surcharges range from \$75 to \$3,000 for each conviction or adjudication. Moneys in the Fund are subject to annual appropriation to the Judicial Department, the Department of Corrections, the Department of Public Safety's Division of Criminal Justice, and the Department of Human Services to cover the direct and indirect costs associated with the evaluation, identification, and treatment and the continued monitoring of sex offenders. Pursuant to Section 16-11.7-103 (4) (c), C.R.S., the Sex Offender Management Board (SOMB) is required to develop a plan for the allocation of moneys deposited in this fund, and submit the plan to the General Assembly.

The following table details the allocation plan submitted by the SOMB on September 3, 2009. This plan mirrors the plan submitted for FY 2009-10.

<b>Sex Offender Surcharge Fund Allocation Plan: FY 2010-11</b>			
<b>Department</b>	<b>Description</b>	<b>Amount</b>	<b>% of Total</b>
Corrections	Management of sex offender data collection, including: entry of ViCAP; psychological and risk assessment test results; and demographics for use in treatment planning and research.	\$29,311	5.5%
Human Services	Training and technical assistance to county departments, the Division of Youth Corrections, and the Division of Child Welfare.	38,250	7.2%
Judicial, Probation and Related Services	Direct services, beginning with the funding for sex offender evaluations, assessments and polygraphs required by statute during the pre-sentence investigation.	302,029	56.6%
Public Safety, Division of Criminal Justice	Administration and implementation of standards. Of the total allocation, \$7,000 will be used to provide cross-system training	163,591	30.7%
<b>TOTAL</b>		<b>533,181</b>	<b>100.0%</b>

As detailed in the following table, the SOMB is requesting a continuation level of appropriations for FY 2010-11 (\$533,181). However, requested appropriations are anticipated to exceed projected fund revenues in FY 2010-11 by \$126,139. It is anticipated that the SOMB will again direct departments to restrict spending in FY 2010-11 (by a total of \$133,295, including \$75,507 for Judicial) in order to avoid exceeding available funds.

<b>Sex Offender Surcharge Cash Fund: Revenue and Expenditure Trends</b>					
<b>Description</b>	<b>FY 07-08 Actual</b>	<b>FY 08-09 Actual</b>	<b>FY 09-10 Proj.</b>	<b>FY 10-11 Proj.</b>	<b>FY 11-12 Proj.</b>
Beginning Fund Balance	\$94,147	\$81,178	\$42,469	\$47,600	\$54,756
Revenues	434,902	409,108	405,017	407,042	409,077
Expenditures:					
Corrections	24,621	24,035	29,311	29,311	29,311
Human Services	32,130	31,365	38,250	38,250	38,250
Judicial	253,704	258,272	302,029	302,029	302,029
Public Safety	137,416	134,145	163,591	163,591	163,591
Spending Restrictions			(133,295)	(133,295)	(133,295)
Total Expenditures	447,871	447,817	399,886	399,886	399,886

<b>Sex Offender Surcharge Cash Fund: Revenue and Expenditure Trends</b>					
<b>Description</b>	<b>FY 07-08 Actual</b>	<b>FY 08-09 Actual</b>	<b>FY 09-10 Proj.</b>	<b>FY 10-11 Proj.</b>	<b>FY 11-12 Proj.</b>
<b>Ending Fund Balance</b>	<b>81,178</b>	<b>42,469</b>	<b>47,600</b>	<b>54,756</b>	<b>63,947</b>
Annual Change in Fund Balance		(38,709)	5,131	7,156	9,191
<i>Fund Balance as Percent of Annual Expenditures</i>	<i>18.1%</i>	<i>9.5%</i>	<i>11.9%</i>	<i>13.7%</i>	<i>16.0%</i>

*Alcohol and Drug Driving Safety Program Fund [Section 42-4-1301.3 (4) (a), C.R.S.] - Section 42-4-1301.3, C.R.S., sets forth sentencing guidelines for persons convicted of Driving Under the Influence (DUI), persons convicted of Driving While Ability Impaired (DWAI), and persons who are habitual users of a controlled substance who are convicted of driving a vehicle. The Judicial Department is required to administer an Alcohol and Drug Driving Safety (ADDS) Program in each judicial district. This program is to provide: (1) pre-sentence and post-sentence alcohol and drug evaluations of all persons convicted of driving violations related to alcohol or drugs; and (2) supervision and monitoring of those persons whose sentences or terms of probation require completion of a program of alcohol and drug driving safety education or treatment.*

The ADDS Program Fund consists of assessments designed to ensure that the ADDS Program is self-supporting. Assessments include fees paid by individuals for alcohol and drug evaluations, as well as inspection fees paid by approved alcohol and drug treatment facilities. The evaluation fee was increased from \$181 to \$200 in FY 2007-08. Moneys in the Fund are subject to annual appropriation to the Judicial Department and the Department of Human Services' Division of Alcohol and Drug Abuse for the administration of the ADDS Program. These two departments are required to propose changes to these assessments as required to ensure that the ADDS Program is financially self-supporting. Any adjustment in the assessments approved by the General Assembly is to be "noted in the appropriation...as a footnote or line item related to this program in the general appropriations bill".

As detailed in the following table, departments are requesting appropriations totaling \$5,214,843 for FY 2010-11 – a level that is more consistent with annual fund revenues.

<b>Alcohol and Drug Driving Safety Cash Fund: Revenue and Expenditure Trends</b>					
<b>Description</b>	<b>FY 07-08 Actual</b>	<b>FY 08-09 Actual</b>	<b>FY 09-10 Proj.</b>	<b>FY 10-11 Proj.</b>	<b>FY 11-12 Proj.</b>
Beginning Fund Balance	\$557,143	\$746,859	\$693,902	\$538,256	\$492,743
Revenues	5,315,887	5,171,402	5,067,974	5,169,333	5,272,720

<b>Alcohol and Drug Driving Safety Cash Fund: Revenue and Expenditure Trends</b>					
<b>Description</b>	<b>FY 07-08 Actual</b>	<b>FY 08-09 Actual</b>	<b>FY 09-10 Proj.</b>	<b>FY 10-11 Proj.</b>	<b>FY 11-12 Proj.</b>
Expenditures:					
Human Services (via transfer from Judicial)	440,993	440,993	440,993	466,643	466,643
Judicial (excluding portion transferred to DHS)	4,685,178	4,783,366	5,282,627	4,748,203	4,748,203
Judicial Program Reductions			(500,000)		
Total Expenditures	5,126,171	5,224,359	5,223,620	5,214,846	5,214,846
<b>Ending Fund Balance</b>	<b>746,859</b>	<b>693,902</b>	<b>538,256</b>	<b>492,743</b>	<b>550,617</b>
Annual Change in Fund Balance		(52,957)	(155,646)	(45,513)	57,874
<i>Fund Balance as Percent of Annual Expenditures</i>	<i>14.6%</i>	<i>13.3%</i>	<i>10.3%</i>	<i>9.4%</i>	<i>10.6%</i>

*Persistent Drunk Driver Cash Fund [Section 42-3-303 (1), C.R.S.]* - This fund consists of penalty surcharge fees paid by persons convicted of DUI, DUI per se, or DWAI, as well as a person who is a habitual user of a controlled substance who is convicted of a misdemeanor for driving a vehicle. These surcharges range from \$50 to \$500 for each conviction. Moneys in the Fund are subject to annual appropriation to:

- to pay the costs incurred by the Department of Revenue concerning persistent drunk drivers;
- to pay for costs incurred by the Department of Revenue for computer programming changes related to treatment compliance for persistent drunk drivers; and
- to support programs that are intended to deter persistent drunk driving or intended to educate the public, with particular emphasis on the education of young drivers, regarding the dangers of persistent drunk driving.
- to pay a portion of the costs of intervention and treatment services for persistent drunk drivers who are unable to pay for such services.

The Judicial Department does not administer this Fund, nor does it expend moneys from the Fund. While fees are collected by the courts, budget instructions issued by the Office of State Planning and Budgeting identify the Department of Human Services as the lead agency for reporting purposes.

**31 Judicial Department, Supreme Court/Court of Appeals, Appellate Court Programs; Trial Courts, Trial Court Programs; Public Defender, Personal Services; Alternate Defense Counsel, Personal Services; Office of the Child's Representative, Personal Services** -- In accordance with Section 13-30-104 (3), C.R.S., funding is provided for judicial compensation, as follows:

	<u>FY 2009-10</u>
	<u>Salary</u>
Chief Justice, Supreme Court	\$142,708
Associate Justice, Supreme Court	139,660
Chief Judge, Court of Appeals	137,201
Associate Judge, Court of Appeals	134,128
District Court Judge	128,598
County Court Judge	123,067

Funding is also provided in the Long Bill to maintain the salary of the Public Defender at the level of an associate judge of the Court Appeals, and to maintain the salaries of the Alternate Defense Counsel and the Executive Director of the Office of the Child's Representative at the level of a district court judge.

**Comment:** Sections 13-30-103 and 104, C.R.S., establish judicial salaries for various fiscal years during the 1990s. These provisions state that any salary increases above those set forth in statute "shall be determined by the general assembly as set forth in the annual general appropriations bill." The General Assembly annually establishes judicial salaries through a footnote in the Long Bill.

**32 Judicial Department, Public Defender--** In addition to the transfer authority provided in Section 24-75-108 (5), C.R.S., up to 2.5 percent of the total Public Defender appropriation may be transferred between line items in the Public Defender's Office.

**Comment:** The Public Defender's Office (PDO) is in compliance with this footnote. This footnote provided the PDO with the authority to transfer up to 2.5 percent (\$1,259,974) of its total FY 2008-09 appropriation (\$50,398,945) between line items. In FY 2008-09, a total of \$540,427 (1.1 percent) was transferred between line items. The following table details the line items affected by such transfers.

Long Bill Line Item	Transfers In/ (Out)
Personal Services	\$111,500
Operating Expenses	25,927
Leased Space/ Utilities	(116,726)
Vehicle Lease Payments	(7,701)
Automation Plan	403,000
Mandated Costs	(416,000)
<b>Net Transfers</b>	<b>0</b>

**33 Judicial Department, Alternate Defense Counsel** -- In addition to the transfer authority provided in Section 24-75-108 (5), C.R.S., up to 2.5 percent of the total Alternate Defense Counsel appropriation may be transferred between line items in the Alternate Defense Counsel's Office.

**Comment:** The Office of the Alternate Defense Counsel (OADC) is in compliance with this footnote. This footnote provided the OADC with the authority to transfer up to 2.5 percent (\$579,464) of its total FY 2008-09 appropriation (\$23,178,555) between line items. In FY 2008-09, a total of \$87,726 (0.4 percent) was transferred between line items. The following table details the line items affected by such transfers.

Long Bill Line Item	Transfers In/ (Out)
Personal Services	(\$2,470)
Operating Expenses	(1,190)
Leased Space	2,361
Conflict of Interest Contracts	(84,066)
Mandated Costs	85,365
<b>Net Transfers</b>	<b>0</b>

**34 Judicial Department, Office of the Child's Representative** -- Judicial Department, Office of the Child's Representative -- In addition to the transfer authority provided in Section 24-75-108 (5), C.R.S., up to 2.5 percent of the total Office of the Child's Representative's appropriation may be transferred between line items in the Office of Child's Representative.

**Comment:** The Office of Child's Representative is in compliance with this footnote. This footnote provided the OCR with the authority to transfer up to 2.5 percent (\$465,640) of its total FY 2008-09 appropriation (\$18,625,593) between line items. In FY 2008-09, a total of \$82,160 (0.4 percent) was transferred between line items. The following table details the line items affected by such transfers.

Long Bill Line Item	Transfers In/ (Out)
Personal Services	(\$71,276)
Operating Expenses	49,073
Capital Outlay	(175)
Leased Space	24,878
Training	(5,481)
Court Appointed Counsel	(5,228)
Mandated Costs	8,209
<b>Net Transfers</b>	<b>0</b>

**34a Judicial Department, Office of the Child's Representative, Court Appointed Counsel --**

It is the intent of the General Assembly that the Office of the Child's Representative be authorized to utilize up to \$25,000 of this appropriation to fund a pilot program as authorized pursuant to Section 13-91-105 (1) (e), C.R.S., for the purpose of evaluating alternatives to the appointment of child and family investigators and child's legal representatives in domestic relations cases.

**Comment:**

*Background Information.* Under current law, the court may make two types of appointments in a domestic relations case that involves allocation of parental responsibilities:

- The court may appoint an attorney, a mental health professional, or any other individual with appropriate training and qualifications to serve as a child and family investigator (CFI). The CFI is required to investigate, report, and make recommendations in the form of a written report filed with the court; the CFI may be called to testify as a witness regarding his/her recommendations.
- The court may appoint an attorney to serve as a child's legal representative (CLR).

When the parties to the case are determined to be indigent, the Office of the Child's Representative (OCR) pays for attorney appointments. Expenditures by the OCR on appointments in domestic relations cases have increased steadily over the last four fiscal years, increasing from \$426,186 in FY 2004-05 to \$801,945 in FY 2008-09.

*Long Bill Footnote.* This footnote authorizes the OCR to utilize up to \$25,000 of the appropriation for Court Appointed Counsel to fund a pilot program for the purpose of evaluating alternatives to the appointment of CFIs and CLR's in domestic relations cases. The evaluation would determine whether the use of alternatives results in equal or better outcomes, and whether it reduces state expenditures.



*Status of Pilot Program.* The OCR is supporting a pilot program in the 17<sup>th</sup> judicial district (Adams/Broomfield) to offer Early Neutral Assessment (ENA) to parties in domestic relations cases for FY 2009-10. ENA offers trained two-person teams to help parties understand the strengths and weaknesses of their positions, assisting them to come to an early resolution.

This pilot program was initiated in 2007 by Chief Judge Bockman to determine whether this approach would provide a cost effective and quality alternative for families and the courts. The 17<sup>th</sup> judicial district received a Colorado Judicial Institute grant to bring in experts from Minnesota to train judges, magistrates, family court facilitators, domestic attorneys, mental health experts, and others.

The ENA pilot program commenced in September 2008. The district engaged an agreement with two sets of well qualified evaluators and ensured they were thoroughly trained in ENA. Each team consists of one attorney and one mental health expert, one of whom is male and the other female. When parties attend their initial status conference they often request a CFI or request a hearing to determine parenting time. When this occurs, the Family Court Facilitator identifies cases that may be appropriate for a referral to the ENA pilot. ENA is a voluntary, free, confidential process. If the parties agree that they want to attend ENA, the session is scheduled within a month of the initial status conference.

The ENA session takes three to four hours, allowing each party to be heard (with their attorneys present if they have them). The evaluator team describes their impressions of a likely outcome and realistic parenting plan. If an agreement is reached during the ENA session, they are able to get that agreement to a judge and have it read into the record immediately.

The primary benefits of ENA, as described by one of the evaluator teams, are that it's voluntary, timely, and client-driven. The process allows each parent to feel heard and talk about what is important. ENA works well for cases where there is disagreement with parenting time schedules and decision making between parties. The approach the evaluators take is that it's not *if* decisions will be made about parenting time, it's *how*. In general, it's better for children for parents to make these decisions. Even when full agreement is not reached, the number of disagreements often narrowed and communication between the parties improved.

To date there have been 36 cases referred to ENA, including 20 dissolution of marriage pre-decree cases, 11 child custody cases, and five post-decree parenting time cases. The ENA teams generally agreed on their assessments of the cases and the recommendations they made to parents. To date, 22 of 30 cases that completed ENA (73 percent) reached full agreements and five cases (17 percent) reached partial agreement. Parties in two of the cases that did not settle requested that a CFI be appointed.

Staff anticipates that OCR will collect data specific to its agreement with the district in order to determine if this approach is cost-effective at the state level.

## Requests for Information

- Judicial Department, Courts Administration** -- The Department is requested to review and analyze the impact of Colorado Supreme Court Rule 16 on state expenditures, and to determine whether amendments to Rule 16 and/or statutory changes are warranted. Specifically, the Department is requested to collect and analyze data concerning rates currently charged to state agencies by each district attorney's office for duplicating discoverable material, the methodology used by each office to calculate these rates, as well as the timing and frequency of rate changes. The Department is requested to determine the following: (a) whether existing rates are consistent with Part V (c) of Rule 16 and appropriately reimburse district attorneys' duplication costs; and (b) whether the existing process of establishing these rates allows state agencies to effectively manage their resources. Finally, the Department is requested to provide a report to the Joint Budget Committee and to the House and Senate Judiciary Committees by November 1, 2009, summarizing its findings, including any recommended rule changes and/or statutory changes.

**Comment:** The Department has not yet submitted this report, but expects it to be completed by November 11, 2009 (the date of the Department's hearing). Staff recommends including an item on the agenda requesting that the information in the report be presented during the Department's hearing. Staff has provided background information below.

*Background - Rule 16.* Colorado Supreme Court Rule 16 requires the prosecuting attorney to make available to the defense certain material and information which is within his or her possession or control<sup>2</sup>, and to provide duplicates upon request. The prosecuting attorney is to make such materials and information available as soon as practicable, but not later than 30 days before trial. The rule indicates that when some parts of such material are discoverable and other parts are not, the non-discoverable parts may be excised and the remainder made available. With regard to the cost and location of discovery, the rule indicates the following:

"The cost of duplicating any material discoverable under this rule shall be borne by the party receiving the material, based on the actual cost of copying the same to the party furnishing the material. Copies of any discovery provided to a defendant by court appointed counsel shall be paid for by the defendant. The place of discovery and furnishing of materials shall be at the office of the party furnishing it, or at a mutually agreeable location." [Rule 16, Part V (c)]

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<sup>2</sup> Rule 16 lists the following types of material and information that shall be provided: police reports; grand jury testimony transcripts; reports or statements of experts; documents, photographs or objects held as evidence; any record of prior criminal convictions of the accused; tapes and transcripts of any electronic surveillance; names and addresses of witnesses; and written or recorded statements of the accused or of a codefendant.

Section 18-1-403, C.R.S., states that "all indigent persons who are charged with or held for the commission of a crime are entitled to legal representation and supporting services at state expense...". Thus, discovery costs are paid by entities that provide legal representation for indigent defendants.

*Background - State Public Defender Proposal.* Last year, as part of budget balancing discussions, the State Public Defender proposed a statutory change that would exempt legal counsel for indigent defendants and *pro se* defendants from paying district attorneys for the costs of duplicating discoverable material. The Public Defender's Office (PDO) was paying approximately \$944,000 annually to district attorney offices for discovery, and the Office of the Alternate Defense Counsel (OADC) was paying approximately \$379,000 annually. If these offices were exempted from paying these costs, State expenditures would decrease accordingly. This proposal would reduce revenues to district attorney offices.

Last session, staff did not recommend that the Committee introduce a bill as suggested by the State Public Defender due to the following concerns:

- The proposal would reduce revenues to district attorney offices without making a commensurate reduction in the offices' workload. Given the proportion of defendants who are indigent and thus require state-funded legal representation, it does not appear to be feasible or fair to shift the costs of discovery to non-indigent clients. Specifically, data provided by the PDO indicates that the PDO is involved in about 53 percent of non-traffic criminal cases, 73 percent of felony cases, 35 percent of misdemeanor cases, and 68 percent of juvenile cases.
- Mandated costs, including discovery costs, were previously included in a single line item appropriation to the Judicial Branch. Each judge had the responsibility of approving costs incurred by each party in a case. It is staff's understanding that these costs are now reflected in separate line items for the purpose of transferring the responsibility for managing these costs to the entities responsible for incurring them. Staff agrees with this approach and believes that it serves to limit expenditures.

However, given the magnitude of state funds expended for discovery, staff believed that this issue merits further analysis and attention. For example, data provided by the PDO indicated that their discovery costs increased by 16.5 percent in FY 2006-07 and by 16.4 percent in FY 2007-08, while the PDO's overall caseload increased by only 1.5 percent and 3.3 percent, respectively.

In addition, a comparison of the allocation of discovery costs by location to the allocation of cases by location revealed significant disparities. For example, data provided by the PDO indicated that in FY 2007-08, 17.6 percent of PDO discovery costs were incurred in the 18th judicial district (Arapahoe/Douglas), while this district accounted for only 10.2 percent of the PDO's caseload.

Finally, given the variance in discovery costs charged by district attorney offices (based on data provided by the PDO), it appeared that district attorneys utilize different methodologies when calculating rates related to discovery. For example:

- per page copy rates ranged from \$0.10 in Denver (where the PDO makes their own copies) to \$0.35 in Montrose;
- audio rates ranged from \$3.50 in La Junta to \$13.00 in Arapahoe/Douglas;
- video rates ranged from \$2.50 in Montrose to \$26.00 in Arapahoe/Douglas; and
- DVD rates ranged from \$10.00 in Greeley, Pueblo, and Sterling to \$25.00 in Colorado Springs.

Based on discussions with various Judicial Branch staff, as well as the Colorado District Attorney's Council (CDAC), staff believes that this issue is best addressed internally by the Branch. Staff thus recommended that the Committee include this request for information in its letter to the Chief Justice.

- 2 Judicial Department, Courts Administration; Office of the Child's Representative** -- The State Court Administrator's Office is requested to work with the Office of the Child's Representative (OCR) to explore options for providing the OCR with timely access to filing and appointment information for the purpose of allowing the OCR to better monitor its caseload and manage its annual appropriation. The Department is requested to provide a report to the Joint Budget Committee by September 1, 2009, describing the status of its efforts to provide timely filing and appointment information.

**Comment:** The Department submitted a report, which is summarized below.

At the initial meeting with representatives from the State Court Administrator's Office (SCAO), representatives from the Office of the Child's Representative (OCR) identified the following information needs to better monitor its caseload and manage its annual appropriations:

- *Notice of Appointment* - data on the number of guardian ad litem (GAL), child and family investigator (CFI), and child's legal representative (CLR) appointments and the case type in which the appointment is made;
- *Case Filing* - data on the number of filings for the following case types: dependency and neglect, expedited permanency planning, truancy, juvenile delinquency, and domestic relations
- *Domestic Relations Cases* - with respect to domestic relations cases, information about whether the appointment were pre- or post-decree and the ability to confirm indigency; and
- *Drug Court Cases* - data on the number of appointments made in cases identified as drug court cases.

In response, the SCAO installed an upgrade to the ICON/ECLIPSE system that automatically sends an e-mail to the OCR each time there is an appointment of an OCR attorney. The e-mail includes most of the information requested by the OCR: the case number, the case type, the name of the attorney appointed, and the county of the case.

In addition, upon request, the SCAO is able to query for these orders and aggregate data by jurisdiction, case class, and case type. However, the SCAO strongly urges the OCR to use this query/aggregate function as a back-up and auditing tool of its own independent data system, as the SCAO system was not designed to track appointment data in the way the OCR needs it. For example, if a case has a change of attorney, the aggregate data will show two appointments. The SCAO and the OCR have agreed that a single data request will be submitted by the OCR at the beginning of each fiscal year covering an agreed upon standard query of data on new filings and GAL appointments by district.

Three of the information needs identified by the OCR cannot be satisfied by the SCAO:

- *Indigency Determination in Domestic Relations Cases:* The SCAO's automated case management system does not contain documentation from which indigency can be determined. Parties seeking state-paid representation complete one of two forms, a JDF 205 or a JDF 203, indicating their financial status or certifying that Colorado Legal Services has determined indigency. The information from these documents is not scanned or entered into data fields.

Please note that effective July 1, 2009, the Chief Justice amended CJD 04-05 to require state-paid attorneys to notify the Court and the paying agency if the attorney has reason to believe that the client has not been accurate in their financial representations. The Court then has the discretion to reassess indigence and, if appropriate, terminate a state-paid appointment and require reimbursement of the State.

- *Pre- or Post-Decree Domestic Relations Cases:* The SCAO does not have the electronic means to determine whether a domestic relations case is pre- or post-decree in an aggregate fashion. The SCAO recommends that the OCR consider requiring contractors to note this information at the time of billing.
- *Drug Court Cases:* The SCAO does not have the electronic means to determine the number of drug court cases throughout the state. This is an ongoing technical and training issue. The SCAO has identified improvements to the drug court module of its computer system as a priority for improvement, but progress is contingent on the installation of new JPOD capabilities. The SCAO recommends that the OCR consider requiring contractors to provide this information at the time they notify OCR of their original appointment or at the time of billing.

In summary, the SCAO and OCR have worked together cooperatively to establish processes by which the OCR can access timely filing and appointment information for the purpose of allowing

the OCR to better monitor its caseload and manage its annual appropriation. However, certain information related to domestic relations cases (indigency documentation and whether a case is pre- or post-decree) and data identifying drug court cases is not currently available electronically. The SCAO recommends that the OCR consider creating a data reporting plan with its contractors to accurately determine the number and types of appointments involving OCR contractors.

- 3 Judicial Department, Trial Courts, District Attorney Mandated Costs** -- District Attorneys in each judicial district shall be responsible for allocations made by the Colorado District Attorney's Council's Mandated Cost Committee. Any increases in this line item shall be requested and justified in writing by the Colorado District Attorney's Council, rather than the Judicial Department, through the regular appropriation and supplemental appropriation processes. As part of its annual budget request, the Judicial Department is requested to include a report by the Colorado District Attorney's Council detailing how the District Attorney Mandated Costs appropriation is spent, how it is distributed, and the steps taken to control these costs.

**Comment:** The Judicial Department's budget request includes information provided by the Colorado District Attorneys' Council (CDAC)<sup>3</sup>, as requested.

*Background Information.* Colorado's district attorneys' offices (DA's) are responsible for prosecuting all criminal and traffic cases filed in district and county courts. The State provides funding for DA's in three areas. First, the Department of Corrections' budget includes an appropriation for "Payments to District Attorneys" for costs associated with prosecuting a crime alleged to have been committed by a person in the custody of the Department (\$144,108 in FY 2009-10 Long Bill). Second, the Department of Law's budget includes an appropriation for DA salaries (\$2,096,078 in the FY 2009-10 Long Bill). Third, the District Attorney Mandated Costs line item in the Judicial Department's budget provides state funding for DA's "mandated costs" (described below). The remainder of DA's budgets are set and provided by boards of county commissioners within each respective judicial district.

*District Attorney Mandated Costs.* This line item provides state funding to reimburse DA's for costs incurred for prosecution of state matters, as required by state statute. Section 16-18-101, C.R.S., states that, "The costs in criminal cases shall be paid by the state pursuant to section 13-3-104, C.R.S.<sup>4</sup>, when the defendant is acquitted or when the defendant is convicted and the court determines he is unable to pay them." Pursuant to Section 18-1.3-701 (2), C.R.S., when a person is convicted of an offense or a juvenile is adjudicated, the Court shall give judgement in favor of the State, the prosecuting attorney, or the law enforcement agency and against the

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<sup>3</sup> The DAC is a quasi-government agency, supported by assessments charged to each DA's office (through an intergovernmental agreement). Denver and Arapahoe are not currently members of the DAC.

<sup>4</sup> This section states that the State "shall provide funds by annual appropriation for the operations, salaries, and other expenses of all courts of record within the state, except for county courts in the city and county of Denver and municipal courts".

offender or juvenile for the amount of the costs of prosecution. The costs assessed pursuant to this provision or Section 16-18-101, C.R.S. (above), may include the following types of expenditures:

- witness fees and mileage
- fees for service of process or publications
- expert witness fees
- lodging and transportation expenses for witnesses required to travel more than 50 miles, as well as for parents of witnesses under age 18
- court reporter fees for transcripts (including transcripts of preliminary hearings)
- exemplification and copy fees
- deposition fees
- fees for interpreters required during depositions or during trials
- costs for obtaining a governor's warrant
- costs for photocopying reports, developing film, and purchasing videotape as necessary for use in the case
- any other cost specifically authorized by statute
- any other reasonable and necessary costs that are directly the result of the prosecution of the defendant upon motion and order of the court

Prior to FY 2000-01, funding for DA's Mandated Costs was included within the Mandated Costs line item appropriation to the Judicial Department. In 1999, an ad hoc committee on mandated costs released a report recommending that responsibility for managing court costs be transferred to the entities that incur them. Thus, beginning in FY 2000-01, the General Assembly has provided a separate appropriation for DA's Mandated Costs.

*Allocation of Funds.* The CDAC allocates funds among judicial districts based on historical spending (using a three-year average). However, the CDAC holds back \$300,000 of appropriation. District Attorneys submit monthly expenditure reports, as well as projections of annual expenditures. The CDAC has a special process for a DA to request additional funds above the allocated amount. In order to limit state expenditures, the CDAC has required DA's offices to continue to follow the old CJD 87-01, which limits expert witness fees. Fees paid in excess of the limits established in this Directive are only reimbursed if funds remain available at the end of the fiscal year.

The most significant cost increases in DA's mandated costs occurred in FY 2006-07 and FY 2007-08. These increases were largely due to rapidly increasing energy costs, which increased the mileage reimbursement rate. As a result, travel-related mandated costs increased by 40 percent from FY 2003-04 to FY 2006-07.

For FY 2010-11, the CDAC is requesting a decrease of \$78,428 (3.5 percent) in the appropriation for this line item. The request is based on actual expenditures incurred in the last three fiscal years. The following table provides a history of appropriations and actual expenditures for this line item.

District Attorneys' Mandated Costs								
	Appropriation			Actual Expenditures				Over/ (Under) Budget
Fiscal Year	General Fund	Cash Funds	Total	General Fund	Cash Funds	Total	Annual % Change	
2000-01	\$1,938,724	\$0	\$1,938,724	\$1,889,687	\$0	\$1,889,687		(\$49,037)
2001-02	1,938,724	0	1,938,724	1,978,963	0	1,978,963	4.7%	40,239
2002-03	2,025,199	125,000	2,150,199	1,833,410	71,117	1,904,527	-3.8%	(245,672)
2003-04	2,025,199	125,000	2,150,199	1,847,369	59,334	1,906,703	0.1%	(243,496)
2004-05	1,911,899	0	1,911,899	1,911,970	0	1,911,970	0.3%	71
2005-06	1,911,899	0	1,911,899	1,772,849	106,325	1,879,174	-1.7%	(32,725)
2006-07	1,841,899	125,000	1,966,899	1,928,795	99,090	2,027,885	7.9%	60,986
2007-08	1,837,733	125,000	1,962,733	2,092,974	130,674	2,223,648	9.7%	260,915
2008-09	2,101,052	125,000	2,226,052	2,063,785	125,000	2,188,785	-1.6%	(37,267)
2009-10	2,101,052	125,000	2,226,052					
2010-11 Request	2,022,624	125,000	2,147,624					

**4 Judicial Department, Probation and Related Services** -- The Judicial Department is requested to provide by November 1 of each year a report on pre-release rates of recidivism and unsuccessful terminations and post-release recidivism rates among offenders in all segments of the probation population, including the following: adult and juvenile intensive supervision; adult and juvenile minimum, medium, and maximum supervision; and the female offender program. The Department is requested to include information about the disposition of pre-release failures and post-release recidivists, including how many offenders are incarcerated (in different kinds of facilities) and how many return to probation as the result of violations.

**Comment:** The Department submitted the information, as requested. This is the 14th year it has produced a report on recidivism among probationers. Key findings included in the report, comparing data from FY 2007-08 and FY 2006-07, are summarized below.

- The percentage of probationers successfully completing probation continued to increase for juveniles and adults on regular supervision and for the female offender program.
- Probation is more likely to be revoked for offenders committing technical violations rather than a new crime. However, the proportion of offenders who are terminated from probation due to technical violations continues to decline in all categories (except for juveniles on intensive supervision where it remained steady). The division has focused on this area in recent years, providing officers with training and tools to respond to technical violations



with intermediate sanctions and avoiding revocation when possible. The Department recently received a federal grant to conduct a thorough analysis of technical violations.

- The rate of successful terminations for the Juvenile Intensive Supervision Program (JISP) and the Adult Intensive Supervision Program (AISP) declined due to increases in the proportion of probationers who committed a new crime while on probation. The Division is currently evaluating both of these programs to determine how probationers on these programs may be more successful. The Division will be linking probation officer profiles to success rates, with the goal of being able to appropriately match individual probation officers and tools with offenders.
- The overall success rate, defined as individuals who successfully completed probation and did not commit a new crime within one year of leaving probation supervision, increased for juveniles and adults on regular supervision, as well as the female offender program. The overall success rates for juveniles and adults on intensive supervision declined.

The following table summarizes recidivism data, by supervision level, for the last four fiscal years.

<b>Probation Recidivism Rates</b>						
<b>Termination Cohorts for Fiscal Years 2004-05 Through 2007-08<sup>a</sup></b>						
<b>Supervision Level at Time of Termination</b>	<b>Fiscal Year</b>	<b>Successful Termination<sup>b</sup></b>	<b>Pre-release Recidivism</b>		<b>Post-Release Recidivism<sup>d</sup></b>	<b>Overall Success<sup>e</sup></b>
			<b>Technical Violation</b>	<b>New Crime<sup>c</sup></b>		
<b>Juvenile - Regular</b>	2004-05	68.1%	25.7%	6.2%	16.6%	58.2%
	2005-06	69.6%	23.8%	6.6%	15.4%	58.9%
	2006-07	71.7%	21.5%	6.8%	16.2%	60.1%
	2007-08	72.5%	20.9%	6.6%	15.2%	61.4%
<b>Juvenile Intensive Supervision Program (JISP)<sup>f</sup></b>	2004-05	48.7%	39.1%	12.2%	10.0%	46.8%
	2005-06	44.6%	43.8%	11.6%	25.6%	40.0%
	2006-07	47.8%	40.7%	11.5%	24.5%	43.2%
	2007-08	41.1%	40.8%	18.1%	29.7%	37.3%

Probation Recidivism Rates Termination Cohorts for Fiscal Years 2004-05 Through 2007-08 <sup>a</sup>						
Supervision Level at Time of Termination	Fiscal Year	Successful Termination <sup>b</sup>	Pre-release Recidivism		Post- Release Recidivism <sup>d</sup>	Overall Success <sup>e</sup>
			Technical Violation	New Crime <sup>c</sup>		
Adult - Regular	2004-05	61.3%	32.6%	6.1%	8.0%	56.4%
	2005-06	60.7%	33.0%	6.3%	8.2%	55.7%
	2006-07	61.1%	31.8%	7.1%	8.5%	55.9%
	2007-08	64.4%	29.3%	6.3%	7.3%	59.7%
Adult Intensive Supervision Program (AISP) <sup>f</sup>	2004-05	52.0%	34.4%	13.6%	1.4%	51.9%
	2005-06	53.9%	31.4%	14.7%	17.1%	52.9%
	2006-07	56.0%	33.1%	10.9%	2.7%	55.9%
	2007-08	54.5%	31.5%	14.0%	10.0%	54.1%
Adult - Female Offender Program (FOP) <sup>f</sup>	2004-05	57.9%	31.6%	10.5%	0.0%	57.9%
	2005-06	56.7%	37.2%	6.2%	12.5%	54.9%
	2006-07	62.7%	28.0%	9.3%	8.3%	61.6%
	2007-08	65.1%	26.2%	8.7%	8.7%	63.9%

<sup>a</sup> Excludes DUI offenders. In addition, Denver county data was only made available for FY 2005-06 and FY 2006-07.

<sup>b</sup> “Successful terminations” for intensive programs include offenders who were transferred to regular supervision.

<sup>c</sup> “New crime” includes an *adjudication or conviction* for a felony or a misdemeanor while under probation supervision.

<sup>d</sup> “Post-release failure” reflects the percent of successfully terminated offenders for whom there was a *filing* for a felony or misdemeanor within one year of termination from program placement for a criminal offense.

<sup>e</sup> “Overall success” reflects those offenders who did not recidivate either prior to or for one year following release.

<sup>f</sup> Please note that the relatively small number of individuals participating in the intensive programs for juveniles, adults, and females can cause recidivism rates to differ significantly from year to year - particularly with respect to post-release recidivism. For example, the FY 2007-08 post-release failure rates of 29.7 percent (JISP), 10.0 percent (AISP), and 8.7 percent (FOP) correspond to 19, 5, and 2 offenders, respectively.

### Intensive Supervision Programs

The intensive supervision programs for juveniles (JISP), adults (AISP), and adult females (FOP) are designed as alternatives to incarceration. Offenders placed on these programs have higher risks related to the probability of program failure and the commission of a new crime, and they typically have higher levels of identified needs. The outcomes for these intensive programs in relation to regular supervision are summarized below:

- The overall success rate for JISP is significantly lower than for regular juvenile supervision – 37.3 percent compared to 61.4 percent. For juveniles who terminated probation for technical violations, over 60 percent on JISP were sentenced to the Division of Youth Corrections (DYC)

or the Department of Corrections (DOC), compared to 35 percent on regular probation. For juveniles who terminated probation for committing a new crime, 78 percent on JISP were sentenced to NYC or DOC, compared to 43 percent on regular probation.

- The overall success rate for AISP is slightly lower than for regular adult supervision – 54.1 percent compared to 59.7 percent. For adults who terminated probation for technical violations, 78 percent on AISP were sentenced to DOC, compared to 16 percent on regular probation. For adults who terminated probation for committing a new crime, 95 percent on AISP were sentenced to DOC, compared to 41 percent on regular probation.
- The overall success rate for FOP, 63.9 percent, is actually higher than any other program. For adults who terminated probation for technical violations, 73 percent on FOP were sentenced to DOC, compared to 16 percent on regular probation. For adults who terminated probation for committing a new crime, 87 percent on FOP were sentenced to DOC, compared to 41 percent on regular probation.

To the extent that these intensive programs divert high risk offenders who would otherwise be incarcerated, they are cost effective. Specifically, for FY 2007-08:

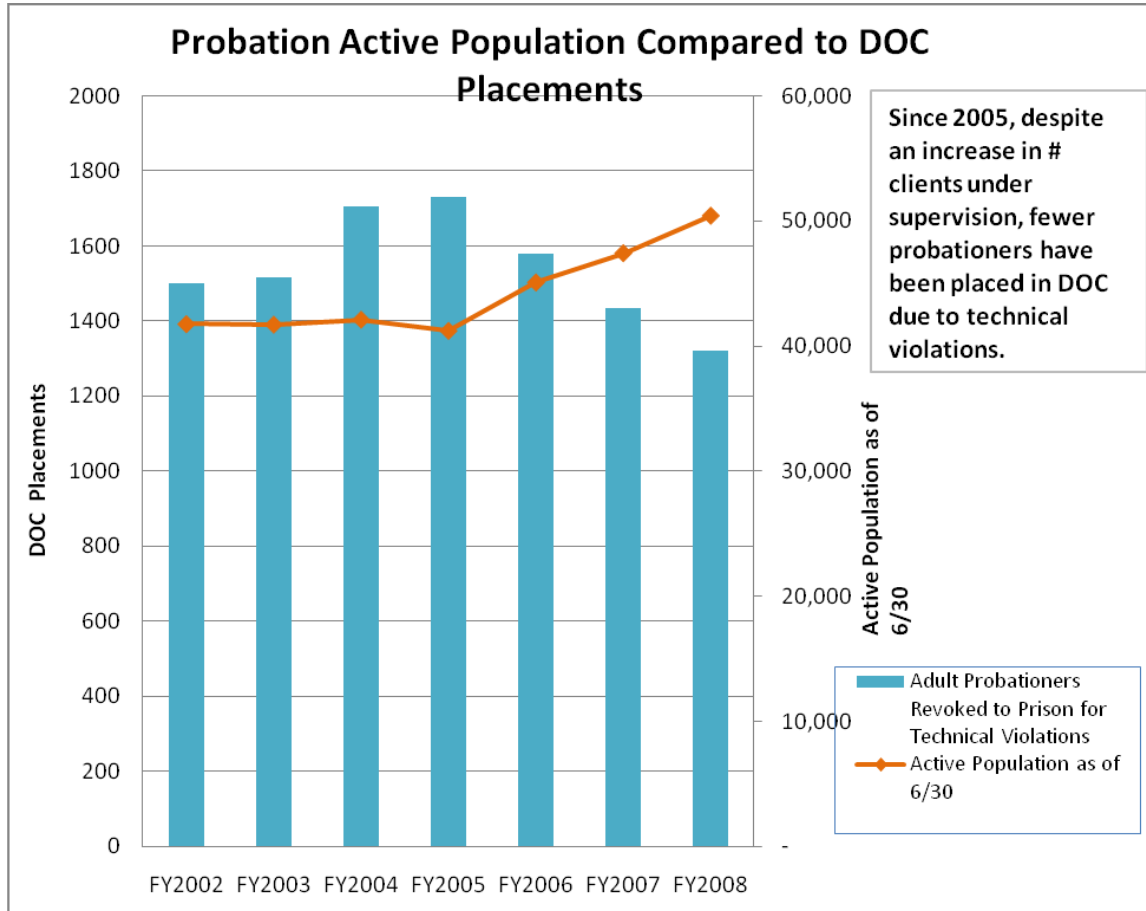
- JISP redirected as many as 185 juveniles from NYC, including 45 who left probation and did not recidivate within one year and 140 who succeeded and were transferred to regular probation. The annual cost to serve a juvenile in NYC in FY 2007-08 was \$84,596, compared to \$5,359 for JISP.
- AISP redirected as many as 722 offenders from DOC, including 45 who left probation and did not recidivate within one year and 677 who succeeded and were transferred to regular probation. The annual cost to serve an offender in DOC in FY 2007-08 was \$30,388, compared to \$3,492 for AISP.
- FOP redirected as many as 110 women from DOC, including 21 who left probation and did not recidivate within one year and 89 who succeeded and were transferred to regular probation. The annual cost to serve an offender in DOC was \$30,388 in FY 2007-08, compared to \$2,697 for FOP.

#### Longer-term Trends - Impact of Previous Budget Reductions

In response to a staff inquiry, the Department also provided data concerning longer-term trends in probation. This data clearly illustrates the impact of budget and staff reductions during the last economic downturn.

Specifically, the overall success rates for both juveniles and adults declined significantly from FY 2000-01 to FY 2004-05. Over the same time period, the rate of terminations due to technical violations increased significantly, and the number of offenders sentenced to DOC as a result of a technical violation increased (from 1,499 in FY 2001-02 to 1,729 in FY 2004-05).

When probation staff and treatment resources were subsequently increased, the overall success rates stabilized and then increased, the rate of terminations due to technical violations stabilized and then decreased, and the number of offenders sentenced to DOC as a result of a technical violation decreased (from 1,729 in FY 2004-05 to 1,320 in FY 2007-08). The following graph, prepared by the Division, illustrates the decline in the number of probationers placed in DOC due to technical violations since FY 2004-05, despite an increase in the overall number of offenders on probation.



**5 Judicial Department, Probation and Related Services, Offender Treatment and Services**  
 -- The Judicial Department is requested to provide by November 1 of each year a detailed report on how this appropriation is used, including the amount spent on testing, treatment, and assessments for offenders.

**Comment:** The Department provided the information requested. In FY 2006-07, the Joint Budget Committee approved a request to combine various appropriations from the General Fund, Offender Services Cash Fund, Drug Offender Surcharge Fund, and the Sex Offender Surcharge Fund, to create a single line item entitled "Offender Treatment and Services". The purpose of this organizational change was to: (a) provide increased flexibility to local

probation departments to allocate funds for treatment and services for indigent offenders or those otherwise unable to pay; and (b) reduce year-end reversions of unspent cash funds.

The Offender Treatment and Services appropriation is now divided among the 22 judicial districts as "block grants" based on the number of FTE and the number of probationers under supervision in each district. Each probation department then develops a local budget for each of the approved treatment and service areas. The local allocation of funds depends on the availability of treatment and services and the particular needs of the local offender population. A summary of allocations and expenditures for FY 2008-09, as well as allocations for FY 2009-10, is provided in the table on the following page.

FY 2008-09 Budget and Expenditures from the Offender Treatment and Services Line Item					
Treatment or Service	FY 2008-09			FY 2009-10	
	Allocation	Expenditures	% of Total	Allocation	% of Total
Substance Abuse Treatment	\$1,744,958	\$1,525,156	22.6%	\$2,495,778	22.8%
Drug Testing	<u>888,865</u>	<u>891,052</u>	<u>13.2%</u>	<u>1,176,242</u>	<u>10.8%</u>
Subtotal: Substance Abuse Services	2,633,823	2,416,208	35.8%	3,672,020	33.6%
Adult Sex Offender Assessment	945,201	1,039,104	15.4%	1,348,897	12.3%
Adult Sex Offender Treatment	586,882	710,287	10.5%	914,996	8.4%
Adult Sex Offender Polygraphs	235,300	264,709	3.9%	359,822	3.3%
Juvenile Sex Offender Treatment & Assessment	164,983	181,752	2.7%	256,443	2.3%
Juvenile Sex Offender Polygraphs	<u>99,313</u>	<u>76,068</u>	<u>1.1%</u>	<u>136,038</u>	<u>1.2%</u>
Subtotal: Sex Offender Services	2,031,679	2,271,920	33.7%	3,016,196	27.6%
Mental Health Treatment	565,664	467,907	6.9%	683,170	6.2%
Domestic Violence Treatment	392,485	410,728	6.1%	571,501	5.2%
Electronic Home Monitoring	227,040	183,056	3.6%	249,614	2.9%
Transportation Assistance	153,927	157,481	2.3%	229,458	2.1%
Emergency Housing	133,000	136,760	2.0%	239,865	2.2%
Educational/Vocational Assistance	125,308	105,803	1.6%	160,447	1.5%
Global Positioning Satellite Tracking (GPS)	120,520	70,263	1.0%	138,014	1.3%
Restorative Justice	119,047	104,205	1.5%	151,486	1.4%
Interpreter Services	118,398	94,891	1.4%	150,045	1.4%
General Medical Assistance	69,389	45,961	0.7%	95,746	0.9%
Incentives	<u>58,802</u>	<u>49,607</u>	<u>0.7%</u>	<u>128,892</u>	<u>1.2%</u>
<b>Subtotal: Funds Allocated to/Expended by Districts</b>	<b>6,749,082</b>	<b>6,514,790</b>	<b>96.5%</b>	<b>9,486,454</b>	<b>86.8%</b>
Initiative to Build Capacity in Rural/Underserved Areas	750,000	57,388	0.9%	350,000	3.2%
Evidence-based Practices Research	250,000	125,493	1.9%	250,000	2.3%
Transfer from DHS-ADAD	312,733	52,549	0.8%	312,733	2.9%
Unallocated	<u>545,207</u>		<u>0.0%</u>	<u>532,826</u>	<u>4.9%</u>
<b>Total</b>	<b>8,607,022</b>	<b>6,750,220</b>	<b>100.0%</b>	<b>10,932,013</b>	<b>100.0%</b>

# SUPREME COURT OF COLORADO

STATE JUDICIAL BUILDING  
2 EAST 14TH AVENUE  
DENVER, COLORADO 80203-2116

MARY J. MULLARKEY  
CHIEF JUSTICE

(303) 837-3771

October 27, 2009

The Honorable Moe Keller, Chairman  
Joint Budget Committee  
Colorado General Assembly  
200 East 14th Avenue, 3rd Floor  
Legislative Services Building  
Denver, CO 80203

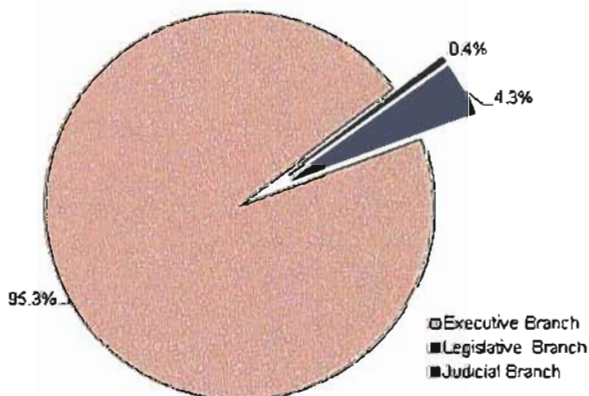
Dear Senator Keller:

Based on the ongoing revenue challenges facing the State of Colorado, I wanted to take this opportunity to update you on the steps the Judicial Branch has been taking to help address the FY2010 and FY2011 budget shortages. In this planning process, I have attempted to avoid one-time cuts that would necessitate additional cuts the following year while making every effort to minimize the impacts on public safety, children and other vulnerable populations the courts serve. I have also been cognizant that every dollar cut to our probation program has a potential \$18 impact to the Department of Corrections (DOC) or a \$27 impact to the Department of Youth Corrections (DYC). With these values in mind, I present the Judicial Branch's FY2010 and FY2011 budget reduction plan.

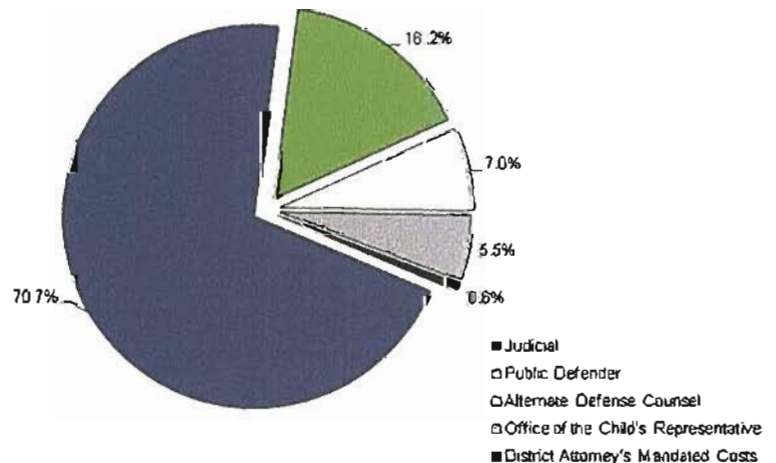
## FY2010

As of July 1, 2009, the Colorado Judicial Branch, excluding the independent agencies, has a \$239.8 million general fund appropriation and represents just 3.2% of total state general fund appropriations.

FY2010 Statewide  
General Fund Appropriations

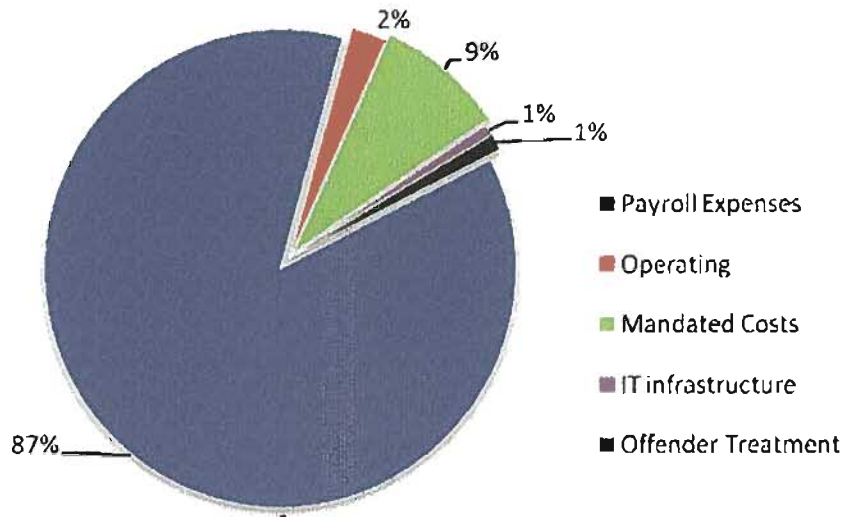


FY 2010 Judicial General Fund  
Appropriation by Agency



Appendix D-1

The Branch's budget can be viewed as five major cost categories: payroll (87%); mandated costs which comprises courts costs, jury costs, DA cost of prosecution and court appointed counsel (9%); operating costs which primarily covers phones, postage, copiers and travel for circuit judges and probation officer home visits (2%); maintenance of the statewide information technology system (1%) and offender treatment (1%). As a result, the only place Judicial can generate budget savings in the long run is through FTE reductions.



We have crafted the following strategy for managing potential budget shortages for FY2010 of \$20 million. This amount includes the \$3.0 million cut we received in the July 1 appropriation, our structural shortage leftover from FY2003 (\$4.5 million) and an additional cut of 5.2% (\$12.5 million) from our July 1, 2009 budget. The main component of our reduction plan is FTE reductions across all programs totaling 266.0 FTE (9% of non-judge staff). However, while we make these cuts over FY2010, additional short term measures are needed to bridge the gap until the FTE cuts are fully realized. These steps include:

- Vacancy savings targets of another \$7.4 million (resulting in the equivalent of 149 FTE or another 4.8% of non-judge staff held vacant all year);
- Operating budget reductions of 10-15% for non-fixed costs;
- Elimination of all capital allocations for new FTE received in FY10;
- Reduction of allocations for county courthouse projects of 15%;
- We are requesting the General Assembly to delay the HB07-1054 judgeships that were scheduled to start in May 2010;
- Targeted local furloughs based on caseload and staffing levels;
- Reduction in information technology hardware replacement budget;
- In addition, we have taken steps to eliminate or reduce travel, overtime, dues, memberships, and encourage voluntary furloughs and reductions in numbers of hours worked wherever appropriate; and
- Use federal grant funds to temporarily support some positions.



## FY2011

Our primary focus has been on positioning the courts to manage potential cuts that would need to be maintained at least through FY2011 or until restored. The highlights of our FY2011 plan are:

- Reduction of 9% of all non-judge positions (266.0 FTE);
- Further delay of 6 months (for a total delay of 18 months) of most of the third year of the HB07-1054 judgeships;
- Refinance one-time county courthouse capital needs from cash fund related to judgeship delay; and
- Implement an in-house public access system saving the general fund \$1 million in FY11.

In addition, we have requested and been approved for a two-year federal grant to expand our drug courts. While this requires additional investment in court resources, nationally other states have seen significant savings or cost avoidance to the corrections system of three to ten times the money spent on the drug court. I am hopeful that during these difficult times, this could prove to be a timely federally supported investment that will demonstrate system cost-effectiveness and will be an early step in helping the state to begin its recovery.

## Impacts

As staff is reduced in the courts, access to the courts through reduced hours is the first impact that is generally seen, followed by case delays. Case delays have a ripple effect throughout the state impacting families, businesses, county jails, and many other state and local agencies.

Reductions in probation staff have historically resulted in an immediate and measurable cost impact to the State. In FY2003, a 10% reduction in Intensive Supervision Probation (ISP) officers resulted in a 10% increase in unsuccessful probation terminations resulting in DOC commitments.

Through our year long hiring freeze we have already generated most of the 9% FTE reduction; however, these are not equally distributed around the state. After final FY2011 staffing figures are known in the spring, we anticipate the need for some level of reallocation around the state to equalize staffing in all court and probation locations.

Thank you for your continued support and as we have in the past, I look forward to working with you in developing a workable solution for the Courts and Colorado during these difficult times.

Sincerely,



Mary J. Mullarkey, Chief Justice  
Colorado Supreme Court

cc: Representative Jack Pommer, Joint Budget Committee Vice-chairman  
Senator Al White, Joint Budget Committee Member  
Senator Abel Tapia, Joint Budget Committee Member  
Representative Mark Ferrandino, Joint Budget Committee Member  
Representative Kent Lambert, Joint Budget Committee Member  
Speaker of the House Terrance Carroll  
Senate President Brandon Shaffer  
Mr. John Ziegler, Joint Budget Committee Staff Director  
Mr. Todd Saliman, Director, Office of State Planning and Budget

Attachment

**Budget Balancing**

	<u>FTE</u>	<u>Total</u>	<u>GF</u>	<u>CF</u>	<u>RAF</u>	<u>FF</u>
FY11 FTE Reduction						
Appellate	(10.0)	(548,696)	(548,696)			
Administration	(18.5)	(1,246,189)	(1,246,189)			
Trial Courts	(146.5)	(5,354,404)	(5,354,404)			
Probation	(91.0)	(5,321,082)	(5,321,082)			
Total FTE Reduction	(266.0)	(12,470,371)	(12,470,371)	-	-	-
FY10 Personal Services cut		(3,120,724)	(2,697,553)	(402,902)	(20,269)	-
Delay HB07-1054 Judgeships	(36.0)	(3,823,077)	-	(3,823,077)		
Public Access/eFile	19.0	1,923,498	(1,000,000)	2,923,498		
Courthouse Capital Refinance		1,200,000	(1,000,000)	2,200,000		
Operating Cut		(550,000)	(550,000)			
Leased Space		550,000	550,000			
HLD associated with FTE reduction		(1,469,600)	(1,469,600)			
	<b>(283.0)</b>	<b>(17,760,274)</b>	<b>(18,637,524)</b>	<b>897,519</b>	<b>(20,269)</b>	<b>-</b>



## OFFICE OF THE STATE PUBLIC DEFENDER

DOUGLAS K. WILSON  
STATE PUBLIC DEFENDER

November 2 , 2009

Honorable Jack Pommer  
Chair, Joint Budget Committee  
Legislative Services Building, 3<sup>rd</sup> Floor  
200 East 14<sup>th</sup> Avenue  
Denver, Colorado 80203

Dear Representative Pommer,

The Office of the State Public Defender (OSPD or “The Office”) has made significant efforts to reduce its total budget expenditures for the current fiscal year in light of current State revenue forecasts. I am writing to inform you of those efforts in the context of our significant staffing deficit and case overload, which continue to challenge our ability to assert that the State is successfully meeting its constitutional mandate to provide effective legal representation to its growing population of poor people.

The Office is a constitutionally mandated, single-program agency whose sole purpose is to provide competent legal representation to indigent people accused of a crime that is commensurate with the same level of representation afforded non-indigent clients by a private attorney. Competent legal counsel largely encompasses a working caseload that remains in harmony with established maximum workload standards and minimum staffing requirements, as well as the assurance of equity with resources provided to the prosecution and law enforcement.

The Office’s mission is established in the U.S. and Colorado constitutions and accountable to standards adopted through state and national legal bar associations, Chief Justice Directives and independent case weighting studies (Updated Weighted Caseload Study: Colorado Public Defender, 2008). OSPD workload and resource requirements are driven firstly by cases referred to the courts as the result of enforcement of existing Colorado criminal codes, secondly by changes in the indigency of the accused, and lastly by changes to the greater criminal justice system through law, procedure, practice, staffing and organization. Furthermore, in an increasing trend, local governments and some state agencies have begun to shift their costs to the Public Defender through increased and/or newly devised fees.

Entering into Fiscal Year 2009-10, the OSPD is operating at a 24 percent deficit of minimum staffing required to responsibly support its caseload. As part of its expenditure reduction efforts this year, The Office has delayed the hiring of 42.2 newly appropriated FTE until June 2010 (FY 2011) in order to assist in bringing State expenditures in line with declining revenue projections. As a result of this action, The Office’s effective total staffing deficit has increased by about five percentage points to a current 29 percent total staffing deficit for the current year.

## **FY 2008-09 Resource Developments**

In the earlier half of this calendar year, The Office proposed and supported statutory and policy actions to proactively reduce taxpayer burdens on a recurring basis through a number of initiatives during the 2009 Legislative Session.

Specifically:

- The Public Defender proposed a series of sentencing reform measures. Under S.B. 09-286, potential savings were originally estimated at about \$9.6 million in FY 2009-10 and \$20 million in FY 2010-11.
- H.B. 09-1274 as introduced would have repealed the Death Penalty in Colorado and used some of the savings to bolster cold case investigations in the Colorado Bureau of Investigation. OSPD General Fund savings (March 2009 fiscal note) were estimated at just over one million dollars, additional savings could have been realized from other State Departments, including Judicial, Corrections and the Attorney General, to name a few.
- The OSPD proposed statutory changes to alleviate it of the high cost of transcripts and discovery. Savings for FY 2009-10 would have been approximately \$2.4 million based on current year estimates.

As of the writing of this memorandum, the OSPD has already reduced its FY 2009-10 base funding by \$673,904. In addition, OSPD postponed until July 2010 (FY 2011) the deployment of H.B. 07-1054 resources, saving the state and estimated \$4.9 million General Fund and 74.6 FTE. These two decisions resulted in a 9.3 percent reduction to The Office's FY 2009-10 continuation base budget.

## **FY 2009-10 Resource Developments**

In addition to the actions already taken by The OSPD, The Office has since implemented a variety of targeted, one-time actions to further contribute to a reduction of the State's budget shortfall without jeopardizing the constitutionally mandated representation of our clients. Those reductions for FY 2009-10 at this time total \$2,667,919, equal to a further reduction of 4.9 percent of its total budget authority for the current year. These additional reductions are proposed in this Memorandum and executed by the attached Schedule 13.

To date, the Office has contributed net reductions to its total FY 2009-10 base continuation budget equaling a 13.8 percent reduction to its resources. Additionally, The Office continues to analyze spending to generate further reductions.

## **Assessing OSPD's General Fund Reductions**

In August 2009, The Office of State Planning and Budgeting (OSPB) proposed a 3 percent General Fund reduction of \$10,090,725 for the Judicial Department. In determining OSPD's share of that amount, OSPD calculated its total budget reduction using a percentage reduction

against its total General Fund authority, basically 100 percent of its total authority. The equivalent reduction to The Office would have been about 1.6 million dollars.

An alternate means of assessing The Office's share of Judicial Department reductions would have been to calculate the reduction as a percentage of the Judicial Department's total budget authority, this would have resulted in a lower percentage decrease to the Public Defender's total budget authority. The rationale for this approach would be that Judicial has access to \$114,306,140 in other fund sources not available to OSPD, which provide it the additional flexibility to refinance activities and thereby offset its overall General Fund reductions. The Office of the State Public Defender is fully General Fund appropriated, and therefore, does not have this option available to it in absorbing reductions to its budget resources.

In addition, the Judicial Department and most other state agencies and departments are general, vast enterprises consisting of myriad discretionary programs that can be scaled back, reprioritized, funded one year and not the next. Conversely, The Office has only one priority, one program that continues to increase in scale of caseload, workload and complexity: protecting client liberty and constitutional rights. These rights are jeopardized when The Office's resources are scaled back further on top of the existing resource deficit it maintains. This priority is a constitutional mandate that the State must provide. The only alternative available to the State in lieu of The Office's provision of these services is shifting the cost and services from The Office to contracted attorneys at three times the cost per case.

In lieu of the recommended 3 percent reduction proposed by OSPB, The Office is proposing a 4.9 percent reduction to its current resources that has already been achieved through the following targeted, one-time actions:

- Savings in the Personal Services lines (PS, HLD, STD, AED, SAED) of **\$1,301,259** as a result of personnel actions taken that are equivalent to a 10 percent staffing reduction from current appropriated levels on top of the existing 24 percent staffing deficit. These actions include:
  - Savings through estimated continued attrition;
  - Extending the filling of all vacancies by one month beyond the leave payout date;
  - Holding open through the end of FY 2009-10 non-critical support positions vacated prior to and during FY 2009-10;
  - Delaying the hiring of newly funded positions associated with OSPD's FY 2009-10 Decision Item # 1 (Caseload Increase) and Judicial's Decision Item # 2 (Drug Court);
  - Implementing a voluntary furlough program that successfully resulted in 760 days offered at an estimated savings of about \$230K.
  
- Savings in Operating Expenses of **\$235,533** from:
  - Restructuring OSPD's Fall Conference to a metro-only event, fewer days and focused only on continuing legal education forums. Secretarial and investigator classes will be managed in regional venues throughout the year;
  - Cancellation of the Spring OSPD management conference;

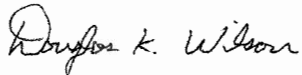
- Restrictions on travel and training;
  - Cancelling life cycle replacements on furnishings;
  - Reviewing all service and maintenance obligations and eliminating or delaying costs until FY 2010-11; and,
  - Reviewing all routine operating practices and procedures for further efficiencies.
    - The Office is estimated to avoid costs of approximately \$8,000 by not providing the full recommended per-diem travel amount. While the Denver Metro per-diem maximum is \$66, the Office is holding its per-diem at \$39. This cost, however small on a per-employee basis, is being borne by employees in addition to holding salaries static and implementing some level of furlough days.
- Savings in Vehicle Lease Payments line of **\$10,704**. Note that this line may be reduced separately through DPA/OSPB common policy action.
  - Only minimum furnishings and equipment will be procured for new FTE anticipated for June 2010 saving **\$119,576** in the Capital Outlay appropriation.
  - Savings in the Leased Space/Utilities line of **\$562,162** from:
    - Leased space tax savings pursuant to H.B. 07-1395;
    - Delaying new leases until FY 2010-11;
    - Incorporating utility costs into lease agreements; and,
    - Terminated all off-site storage contracts bringing storage on-site.
  - Savings in the Automation Plan line of **\$211,598** from:
    - Extending life cycle replacements of existing hardware;
    - Discontinuing software support;
    - Delaying software upgrades by one more year;
    - Downsizing use of wireless access in offices; and,
    - Downsizing use of wireless cards and cell phones.
  - Savings in the Mandated Costs line of **\$227,085** from:
    - Fewer active death penalty cases; and,
    - Controlling all expert witness and travel requests.

**Table A** (attached) details Fiscal Year 2009-10 operating estimates and the spending reductions noted above that are being implemented in order to balance the OSPD's constitutional mandate with the State's budget shortfall.

As previously mentioned, these additional reductions proposed for FY 2009-10 total \$2,667,919, equal to 4.9 percent of the Office's total current budget authority for this fiscal year. To date, in total, the OSPD has provided 13.8 percent in reductions to its total FY 2009-10 base continuation budget requirements. The Office continues to analyze spending to generate further spending reductions.

The OSPD welcomes any questions or requests for assistance you might have as they relate to the proposals contained herein, and any other needs you and the committee might have as you resolve the State's current budget crisis. Thank you for your consideration of the Public Defender's funding situation and our need to balance targeted reductions with our constitution obligations to our clientele.

Sincerely,



Douglas K. Wilson  
Colorado State Public Defender

C: John Ziegler  
Carolyn Kampman



<b>TABLE A</b>	<b>ACTUAL</b>	<b>ESTIMATED</b>	<b>PROPOSED</b>		
<b>LINE ITEMS</b>	<b>LONG BILL</b>	<b>EXPENSES</b>	<b>REDUCTIONS</b>	<b>FINAL</b>	
<b>Personal Services</b>	38,468,649	37,890,338	(578,311)	37,890,338	
<b>Health, Life and Dental</b>	3,683,543	3,056,218	(627,325)	3,056,218	
<b>STD</b>	54,015	50,852	(3,163)	50,852	
<b>AED</b>	690,464	650,696	(39,768)	650,696	
<b>SAED</b>	424,572	371,880	(52,692)	371,880	
<b>Operating</b>	1,240,001	1,004,468	(235,533)	1,004,468	
<b>Capital</b>	219,576	100,000	(119,576)	100,000	
<b>Leased Space</b>	5,177,879	4,615,715	(562,164)	4,615,715	
<b>Contract Services</b>	18,000	18,000	-	18,000	
<b>Computer Center</b>	19,579	19,579	-	19,579	
<b>Mandated Costs</b>	3,567,671	3,340,586	(227,085)	3,340,586	
<b>Automation</b>	894,768	683,170	(211,598)	683,170	
<b>Vehicle Lease</b>	61,392	50,688	(10,704)	50,688	
<b>Federal Grants</b>	63,745	63,745	-	63,745	
<b>Totals</b>	<b>54,583,854</b>	<b>51,915,935</b>	<b>(2,667,919)</b>	<b>51,915,935</b>	
			<b>Current Budget Reduction</b>	<b>Full Continuation Budget Reduction</b>	
			November 2009 Proposed Reductions	-4.9%	-4.4%
			July 2009 Base Reduction in Long Bill	-1.2%	-1.1%
			November 2008 Delay of HB 1054 Staff		-8.2%
			<b>Cumulative Reductions to FY 2009-10</b>	<b>-6.1%</b>	<b>-13.8%</b>



# State of Colorado

## Office of the Alternate Defense Counsel

Lindy Frolich, Director

[www.coloradoadc.org](http://www.coloradoadc.org)

Denver Office  
1580 Logan Street, #330  
Denver, Colorado 80203  
Phone: (303) 832-5300  
Fax: (303) 832-5314

Western Slope Office  
446 Main Street  
Grand Junction, CO 81501  
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Fax: (970) 245-8714

October 30, 2009

To the Citizens and Legislators of the State of Colorado:

Each person accused of a crime has a constitutional right to be represented by counsel at each critical stage of the action against him or her. This right only has meaning if counsel is competent, effective, and zealous. This constitutional right applies not only to the wealthy in the United States, but also to the poor. *The Office of the Alternate Defense Counsel was created by the Colorado Legislature (C.R.S. § 21-2-101, et. seq) to provide state wide representation in criminal cases when the Office of the Public Defender has a conflict of interest and therefore cannot ethically represent the indigent defendant.* The OADC has become a national model for indigent defense assigned counsel programs and we continually explore and implement strategies to control case costs while providing effective court-appointed counsel. Both the director and deputy director have been invited to other states to present the Colorado model for court-appointed counsel programs, and have worked with other states to initiate similar programs.

Today, in every courtroom in Colorado, there are OADC contract lawyers available to accept court appointments. Before the creation of the OADC in 1996, there was no standardized method for court appointments. Lawyers were randomly appointed by the court and payments were administered by the Colorado State Public Defender's Office. An indigent defendant might receive court-appointed counsel with little or no criminal defense experience, or counsel with significant criminal defense experience. There was no training, no oversight, and very little accountability.

During its formative years the OADC focused on establishing the infrastructure needed to develop a systematic method for appointing counsel. As the agency began formalizing the process of court-appointed counsel, the priority was to insure competent, qualified counsel state wide. Since its inception the agency has strived to provide competent, effective representation for indigent defendants while keeping administrative costs low.

From 1996 until 2006, the agency's case load increased from approximately 7,000 cases per year to more than 12,000. Once the infrastructure was well-established, the doors were open to explore ways to become more efficient. In order to keep administrative costs low, and use state resources to pay contractors directly, the OADC began developing its automated payment system, WEBPAY, in FY02. By FY05, all regular contractors were billing on line and continue to do so. The agency continues to refine this system to further simplify contractor billing while improving data collection.

In order to continue improving its services, the agency reviews its operations in order to implement changes that increase efficiency and effectiveness as the demand for OADC services continue to increase. Since 2006, in a continuing effort to keep costs low, the OADC has broken new ground in the following areas:

**Appellate Paralegal (pilot project begun in 2006, fully implemented in 2007)** – After close scrutiny of the number of hours all appellate lawyers spent interacting with court personnel and court reporters and perfecting the record on appeal, the OADC discovered that it was spending tens of thousands of dollars chasing the record on appeal, with no statutory authority over court reporters. Although we identified a problem, we did not have the statutory authority to fix it. The appellate paralegal position was created to streamline the appellate process and bring it in house, while substituting paralegal hours for lawyer hours.

**Training Director (partially implemented in 2007, fully implemented in 2008)** – It is axiomatic that better trained lawyers are more competent, more efficient, and more effective. The OADC has a full complement of trainings scheduled for this year and next year. These trainings range from very general, to very specific. Participants range from the inexperienced to the most experienced. We are training lawyers, investigators and paralegals. We are training trial lawyers, post-conviction lawyers and appellate lawyers. The Training Director is responsible for organizing these trainings and assisting the Director and Deputy Director with the Oversight and Accountability commitment outlined below.

**Technology (Significant increase began in 2006 and expansion continues to date)** – The utilization of technology has captured the interest of the OADC contractors. The OADC is on the vanguard of using electronic technology statewide. Our web portal enables us to increase the quality of representation and reduce costs. Examples of our increased use of technology include: A Brief and Motions Bank (2008), electronic discovery distribution (2006), technology in the courtroom (Power Point, Trial Director, electronic exhibits, etc.), accessing resources electronically (forms, documents, procedures, experts, etc.), electronic records and briefs (2008-2009), and going paperless (ongoing).


**Oversight and Accountability** – In 2006, the OADC developed and implemented a systematic evaluation process for attorney contractors. This includes input from judicial personnel, face-to-face interviews, billing reviews, and courtroom observation.

The OADC has a decade of data, experience, and institutional wisdom. There can now be a detailed analysis of not just the number and type of cases assigned to the OADC, but the cost, in detail, of each case. This allows the OADC to identify costs that are truly uncontrollable and determine areas that can be impacted by increased efficiencies. The following are areas where the OADC is continuing to break new ground:

- Encouraging OADC attorneys to use paralegals, researchers, and investigators (less expensive contractor hours) in order to decrease attorney and expert time (the more expensive contractor hours).
- Initiating a pilot program to reduce the cost of post-conviction cases.
- Continuing to increase the use of technology to reduce costs.

With these changes, the OADC is continuing to provide quality representation at a reasonable cost. With the Colorado State budget shortfall the OADC is doing everything it can to contain the costs of representing indigent defendants in Colorado. We are no longer reimbursing attorneys for their travel mileage, we are reducing payments in excess of the maximum guidelines by 10%, and we are restricting the use of experts as much as is constitutionally permissible. Our goal is to continue to explore new ways to reduce the cost of court-appointed counsel representation.

Sincerely,



Lindy Frolich  
Director

**FY 2010-11 Joint Budget Committee Staff Budget Briefing  
Judicial Department**

**BRIEFING ISSUE** (*Prepared November 2008*)

**ISSUE: U.S. Supreme Court *Rothgery* Decision**

The State Public Defender has expressed concern that a recent U.S. Supreme Court decision calls into question the constitutionality of two existing Colorado statutory provisions.

**SUMMARY:**

- The U.S. Supreme Court has previously held that under the Sixth Amendment to the U.S. Constitution the indigent accused must be provided counsel by the government in any prosecution where incarceration is being sought. In a recently issued opinion, the Court further held that the right to counsel attaches at the time a criminal defendant first appears before a judicial officer.
- The State Public Defender has expressed concern that this recent Court decision calls into question the constitutionality of two existing Colorado statutory provisions.
- The State Public Defender indicates that if the State is successfully sued under this recent decision, his office' misdemeanor caseload -- and the associated staffing need -- will increase significantly. However, estimates of the potential magnitude of such a caseload increase are not currently available.

**RECOMMENDATION:**

Staff recommends that the Joint Budget Committee discuss this issue with the House and Senate Judiciary Committees. If it appears that statutory changes are warranted, the Joint Budget Committee should coordinate with the Judiciary Committees and plan for any necessary budget changes.

**DISCUSSION:**

*U.S. Supreme Court Decision*

The U.S. Supreme Court has previously held that under the Sixth Amendment to the U.S. Constitution the indigent accused must be provided counsel by the government in any state or federal prosecution where incarceration is being sought<sup>1</sup>. On June 23, 2008, the U.S. Supreme Court issued an opinion in *Rothgery v. Gillespie County*, holding that the right to counsel attaches at the

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<sup>1</sup> The following citations were provided by the Public Defender's Office: *Gideon v. Wainwright*, 372 U.S. 335 (1963) and *Alabama v. Shelton*, 535 U.S. 654 (2002)

time a criminal defendant first appears before a judicial officer where he is informed of the criminal charges and restrictions are imposed on his freedom.

### *State Public Defender's Concerns Related to Rothgery Decision*

The State Public Defender has prepared a memorandum to the Joint Budget Committee [see Appendix E] expressing concern that the *Rothgery* decision calls into question the constitutionality of two existing provisions of the Colorado Revised Statutes.

First, Section 16-7-301, C.R.S., authorizes a district attorney to engage in plea discussions with a defendant "only through or in the presence of defense counsel", with the following exceptions:

1. Where the defendant is not eligible for appointment of counsel.
2. Where the defendant refuses appointment of counsel and has not retained counsel.
3. In the case of a misdemeanor, petty offense, or traffic offense, a defendant's application for appointment of counsel is deferred until after the prosecuting attorney has spoken to the defendant. If a plea agreement is reached, and the court determines that the proposed plea agreement is acceptable, the court is required to advise the defendant of the right to a court-appointed attorney prior to the acceptance of the defendant's plea. If a plea agreement has not been reached, the court is required to appoint counsel (if the defendant is indigent) and "all discussions with the defendant outside the presence of counsel shall cease".

The third exception, above, was added through H.B. 92-1060 (Grampsas/Bird), a bill that was sponsored by the Joint Budget Committee (JBC) [see Section 16-7-301 (4) (a), C.R.S.]. This bill was introduced in response to a request from the State Public Defender for additional staff due to an increase in the number of misdemeanor cases (primarily domestic violence and drug cases).

The provision concerning this exception was subsequently modified, adding language stating that the defendant is under no obligation to talk to the prosecuting attorney, and requiring the prosecuting attorney to advise the defendant that he has the right to retain counsel or seek appointment of counsel [see S.B. 93-81, another JBC-sponsored bill].

Second, Section 16-2-207, C.R.S., requires the judge, at a defendant's first appearance in court or first arraignment (whichever was first), to inform the defendant that he: (a) need not make a statement, and any statement made can and may be used against him; (b) has a right to counsel; and (c) if indigent, the defendant may apply for a court-appointed attorney and one will be appointed. House Bill 92-1060 added language to this provision creating an exception. Specifically, if the defendant is charged with a misdemeanor, petty offense, or traffic offense, and if the prosecuting attorney files a written statement that incarceration is not being sought, counsel shall not be provided to the defendant.

The State Public Defender indicates that in the *amicus* briefs and the *Rothgery* decision, Colorado

is openly criticized for its practice requiring indigent, *pro se* defendants to meet with the prosecution prior to the appointment of counsel.

The State Public Defender and State Court Administrator sent a letter to Attorney General Suthers requesting a legal opinion concerning the constitutionality and viability of Sections 16-7-301 (4) (a) and 16-7-207 (1) (c), C.R.S., in light of the *Rothgery* decision. As the Attorney General had submitted a brief in the *Rothgery* case (contrary to the ultimate ruling), he declined to issue a formal opinion.

#### *Potential Impact of Rothgery Decision*

The State Public Defender indicates that *pro se* misdemeanants are informed that they must first meet with the prosecution without counsel. The Public Defender's Office currently handles an estimated 37.5 percent of misdemeanor cases statewide, excluding traffic cases. The State Public Defender indicates that if the State is successfully sued under the *Rothgery* decision, the Public Defender's misdemeanor caseload (and the associated staffing needs) will increase significantly. The Public Defender's Office does not know the number of *pro se* defendants that meet with the prosecution, so it is unable to calculate the magnitude of the likely increase.

# OFFICE OF THE STATE PUBLIC DEFENDER

## MEMORANDUM

**Date:** October 31, 2008

**To:** Joint Budget Committee of the Colorado General Assembly

**From:** Douglas K. Wilson

**Subject:** United States Supreme Court *Rothgery* Decision

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The Office of the Colorado State Public Defender was established in 1970 as a separate and independent agency of the Colorado Judicial Branch as a result of a Federal Constitution mandate to provide counsel to the poor. *Gideon v. Wainwright*, 372 U.S. 335 (1963). See also, *Alabama v. Shelton*, 535 U.S. 654 (2002). In *Gideon* and now *Shelton*, the United States Supreme Court held that in any state or federal prosecution where incarceration is being sought, the indigent accused must be provided counsel by the government. This holding under the Sixth Amendment to the United States Constitution applies to the States via the Fourteenth Amendment to the United States Constitution.

In 1993, the Colorado Legislature amended CRS 16-7-301 to require indigents accused of misdemeanors, petty offenses and traffic cases, to meet with the prosecuting attorney to attempt to resolve the case before applying for a public defender. Additionally, CRS 16-5-501 states that if the prosecution is not seeking incarceration for any criminal offenses that are charged as class 2 or 3 misdemeanors, petty offenses and class 1 or 2 traffic offenses, then court appointed counsel and supporting services need not be provided at state expense.

As explained below, the continued constitutionality of these procedures is now in question.

On June 23, 2008, the United States Supreme Court issued an opinion in *Rothgery v. Gillespie County*, 554 U.S. \_\_\_\_ (6/23/08). The *Rothgery* Court held that the Sixth Amendment's right to counsel attaches at the time a criminal defendant first appears before a judicial officer where he is informed of the criminal charges and restrictions are imposed upon his freedom. CRS 16-7-301(4) (a) requires an indigent defendant in misdemeanors, petty offenses and traffic offenses to pre-try his case with the prosecutor before he is entitled to apply for a public defender. CRS 16-7-207(1)(c) references the same procedure, but goes further by denying counsel to indigent defendants if the prosecution stipulates that they will not seek jail.

In the *amicus* briefs and the opinion, Colorado is openly criticized for its practice of requiring indigent, *pro se* defendant's to meet with the prosecution prior to the appointment of counsel. The Court indicates that Colorado is in the minority with

the current practice of appointing counsel for the poor in criminal misdemeanor cases. (See *Rothgery* at pages 10-13).

Presently, if a *pro se* misdemeanant goes to court or comes to one of our offices to apply for counsel on a misdemeanor, the court or our staff will inform them that they must first meet with the prosecution without counsel. At this time, our office handles approximately 37.5% of the misdemeanor cases statewide, not including traffic court cases. If the State is successfully sued under the constitutional mandate of *Rothgery*, the misdemeanor caseload of the Public Defender, and thus our staffing needs, will increase significantly as a result of a Federal mandate.

Since we do not know the number of *pro se* defendants that meet with the prosecution each year, the increase is impossible to determine. Ultimately, once the mandate reaches the Colorado Court, the Public Defender will be at significant odds to meet an unstaffed mandate, especially considering the current deficit of staffing resources the Public Defender currently maintains. The results of a Colorado *Rothgery* mandate would supplement the Public Defender's already great resource need.