

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



FY 2012-13 STAFF BUDGET BRIEFING

JUDICIAL BRANCH

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

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November 30, 2011**

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**FY 2012-13 BUDGET BRIEFING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE**

JUDICIAL BRANCH

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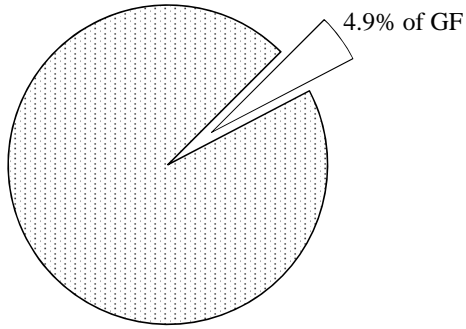
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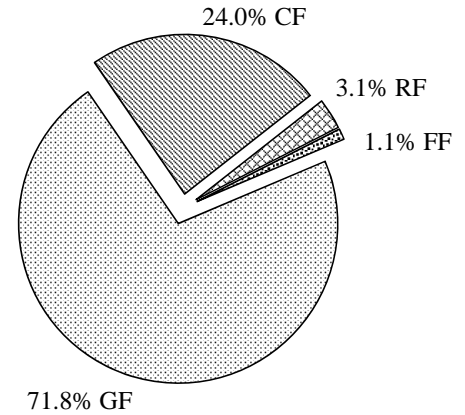
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Judicial Branch**

GRAPHIC OVERVIEW

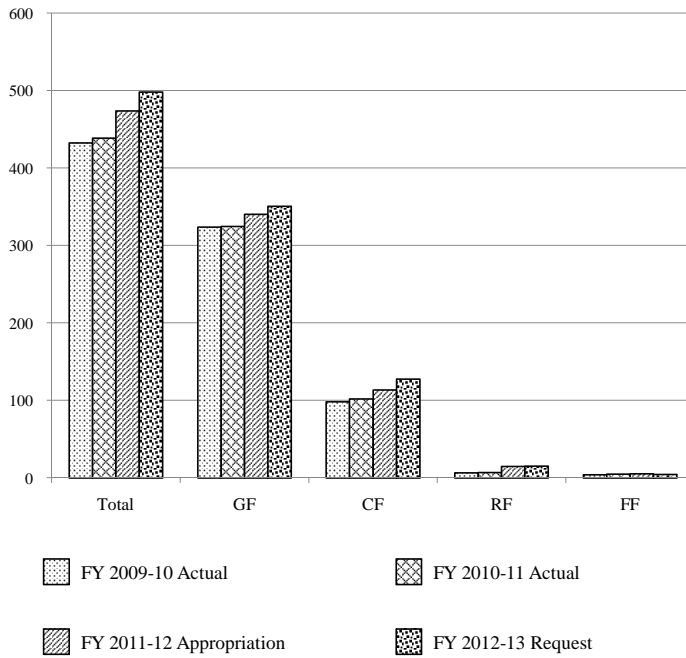
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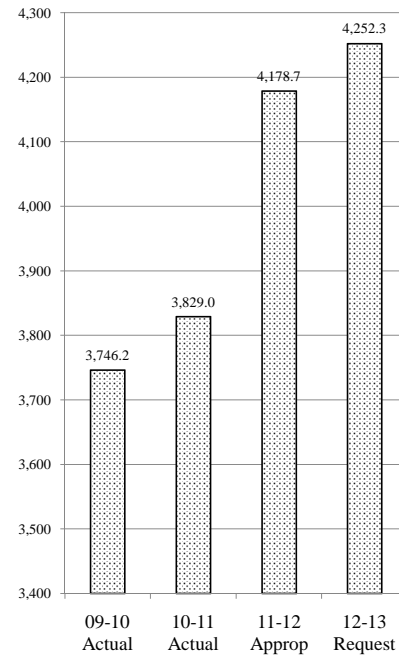
Department Funding Sources



**Budget History
(Millions of Dollars)**

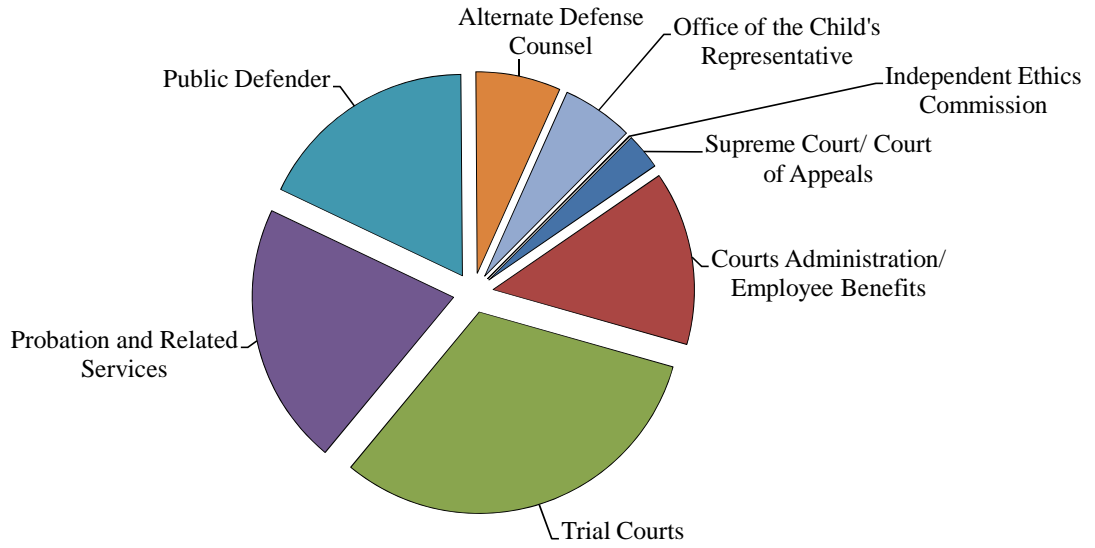


FTE History

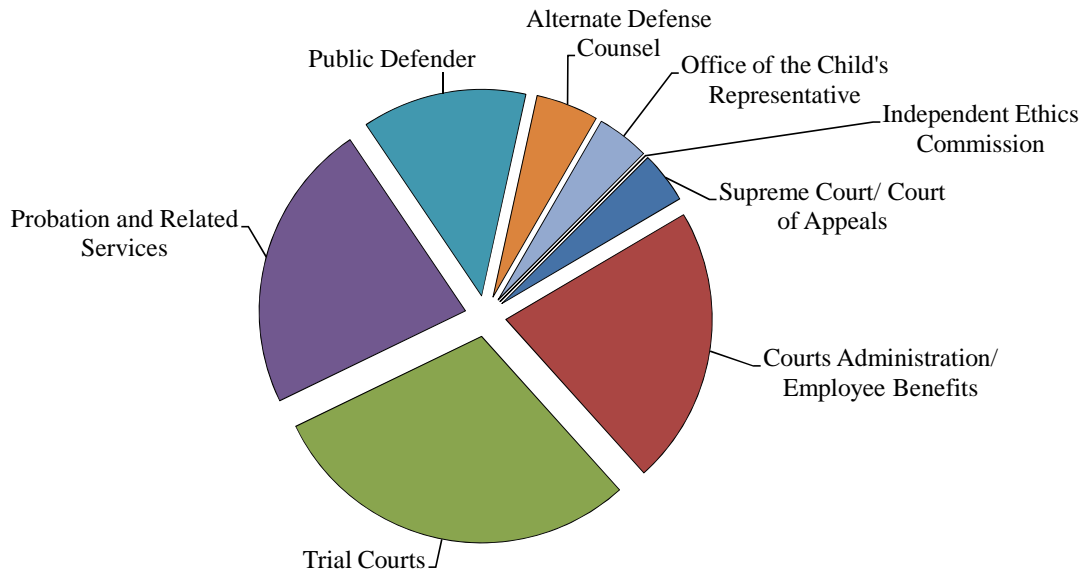


Unless otherwise noted, all charts are based on the FY 2011-12 appropriation.

Distribution of General Fund by Division



Distribution of Total Funds by Division



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DEPARTMENT OVERVIEW

Key Responsibilities

Colorado's court system consists of the Supreme Court, the Court of Appeals, district courts, the Denver probate and juvenile courts, county courts, and municipal courts. All of these courts are funded by the State, with the exception of municipal courts and Denver's county courts, which are funded by their respective local governments. The functions and agencies within the Judicial Branch that are supported by state appropriations are described below.

- 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 Supreme Court Justices select a Chief Justice to serve as the executive head of the Department, and appoint a State Court Administrator to oversee the administration of the Department and provide administrative and technical support to the courts and probation.
- *Trial courts* consist of district courts, water courts, and county courts. District courts primarily preside over felony criminal matters, civil claims, juvenile matters, probate, mental health, and divorce proceedings. Water courts have exclusive jurisdiction over cases involving the determination of water rights and the use and administration of water. County courts primarily handle misdemeanor cases, civil actions involving smaller dollar amounts, civil and criminal traffic infractions, and felony complaints.
- *Probation* services, which are provided through each judicial district, include supervising juvenile and adult offenders who are sentenced to probation, preparing presentence investigation reports for the courts, and providing victim notification and assistance.

The Judicial Branch also includes four independent agencies. The *Office of the State Public Defender (OSPD)* and the *Office of Alternate Defense Counsel (OADC)* provide legal representation for indigent criminal defendants. These cases are first assigned to the OSPD, and then referred to the OADC if the OSPD has an ethical conflict of interest in providing legal representation. The *Office of the Child's Representative* provides legal services to children entitled to legal representation at state expense. Finally, the *Independent Ethics Commission* hears complaints and issues findings and advisory opinions on ethics-related matters that arise concerning public officers, members of the General Assembly, local government officials, or government employees.

Factors Driving the Budget

Fiscal year 2011-12 funding for the Judicial Branch consists of 71.8 percent General Fund, 24.0 percent cash funds, 3.1 percent reappropriated funds, and 1.1 percent federal funds. Cash funds primarily include: various docket fees and surcharges that support court operations; fees paid by individuals sentenced to probation; and 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, attorneys, and support staff can only manage a certain number of cases each 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 affects both the crime rate and the proportion of clients eligible for state-funded representation), and changes in state laws and sentencing provisions. Workload 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

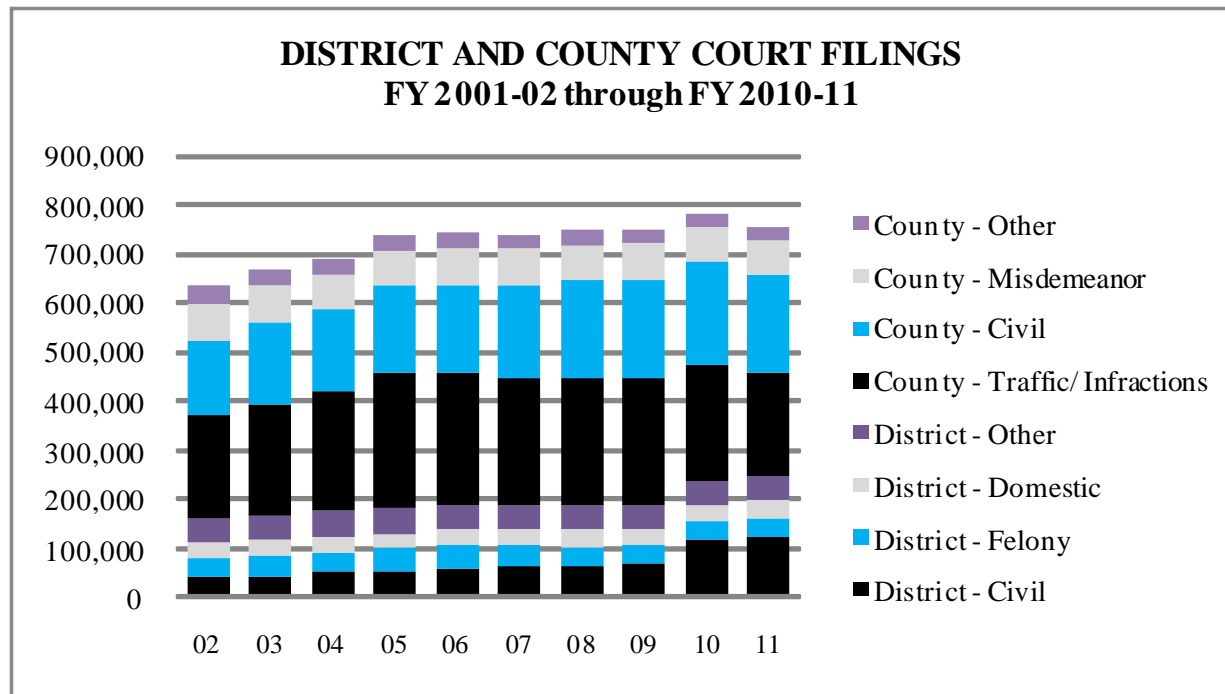
In FY 2010-11, approximately 757,000 cases were filed in the state court system, including 505,000 (66.7 percent) in county courts, 248,000 (32.7 percent) in district courts, 2,700 in the Court of Appeals, and 1,400 in the Supreme Court. The graph on the following page depicts the number of cases filed annually in county and district courts since FY 2001-02.

The total number of county and district case filings has increased by 25.3 percent over the last ten years (with a compound annual growth rate of 2.3 percent), with the most significant growth occurring from FY 2000-01 through FY 2004-05. At the district court level, the most significant increase has occurred in civil cases, and in particular cases concerning foreclosures and tax liens. The number of district court civil cases filed has more than tripled over the last ten years, and these cases now account for 50.9 percent of cases filed¹. Similarly, the number of county court civil cases has increased by more than 60,000 (43.1 percent) over the last ten years, and these cases now account for 39.6 percent of cases filed.

In response to these caseload increases, the General Assembly periodically increases the number of judges within the state court system. Most recently, H.B. 07-1054 added 43 judges for the court of appeals, district courts, and county courts over a three year period. The addition of 43 judges has required funding for the judges, the associated court support staff, and additional staff required by the State Public Defender and the Attorney General. 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

¹ Please note that while the number of foreclosure cases has continued to increase steadily, the FY 2009-10 spike in civil cases relates to distraint warrants (tax lien cases). The Department indicates, however, that the court workload associated with reviewing tax lien cases and sending approved judgements is minimal.

for the first two fiscal years to add 28 judgeships, as scheduled. In light of the state revenue shortfall, the remaining 15 judgeships have been delayed until 2011 and 2012.



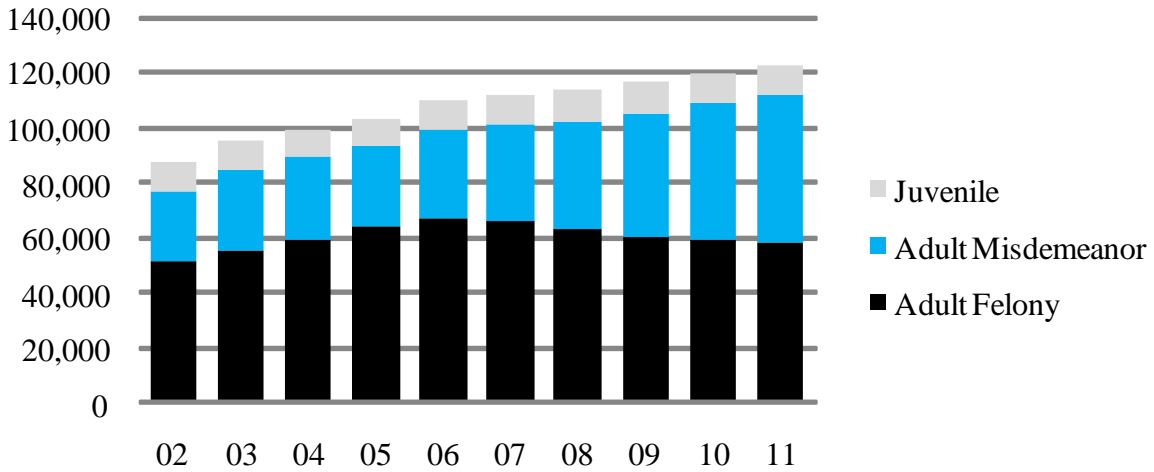
Caseload Impacts Unique to Independent Agencies

The three independent agencies that provide legal representation are affected in different ways by changes in the number of cases filed, based on the clients they are charged with representing. Each agency is discussed below.

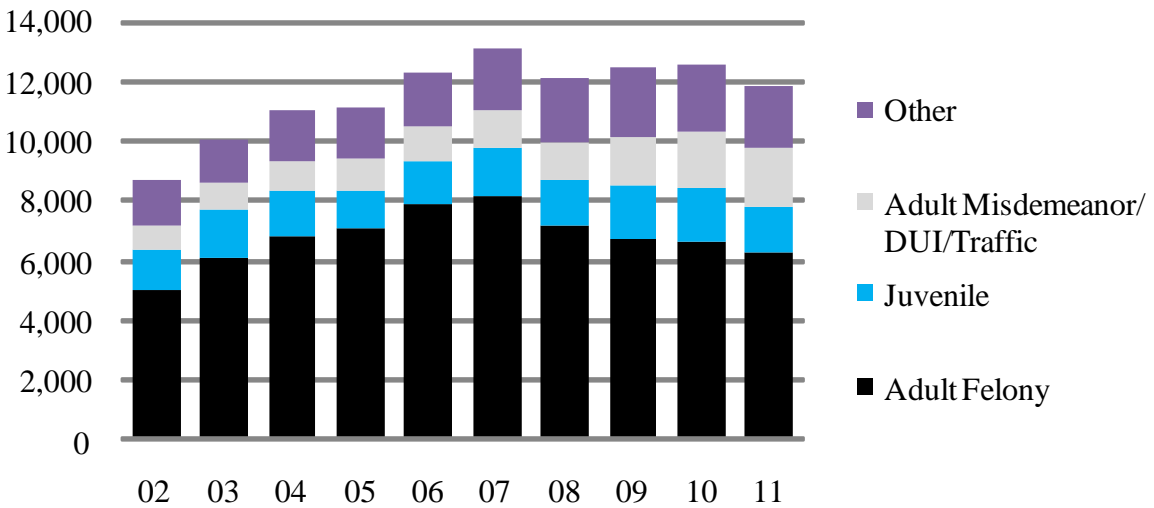
The *Office of the Public Defender (OSPD)* represents criminal defendants who have inadequate resources to pay for their own defense. The OSPD's caseload is affected by the number and types of cases filed, as well as the proportion of clients who require state-funded representation. As in the court system,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

As illustrated in the graph on the following page, the total 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 increased by more than 16,000 (31.7 percent). Since FY 2005-06, however, the number of felony cases has declined (by about 9,500), while the number of adult misdemeanor cases has increased by 69.1 percent (from about 32,100 to 54,300).

**OFFICE OF THE STATE PUBLIC DEFENDER:
Active Cases
FY 2001-02 through FY 2010-11**

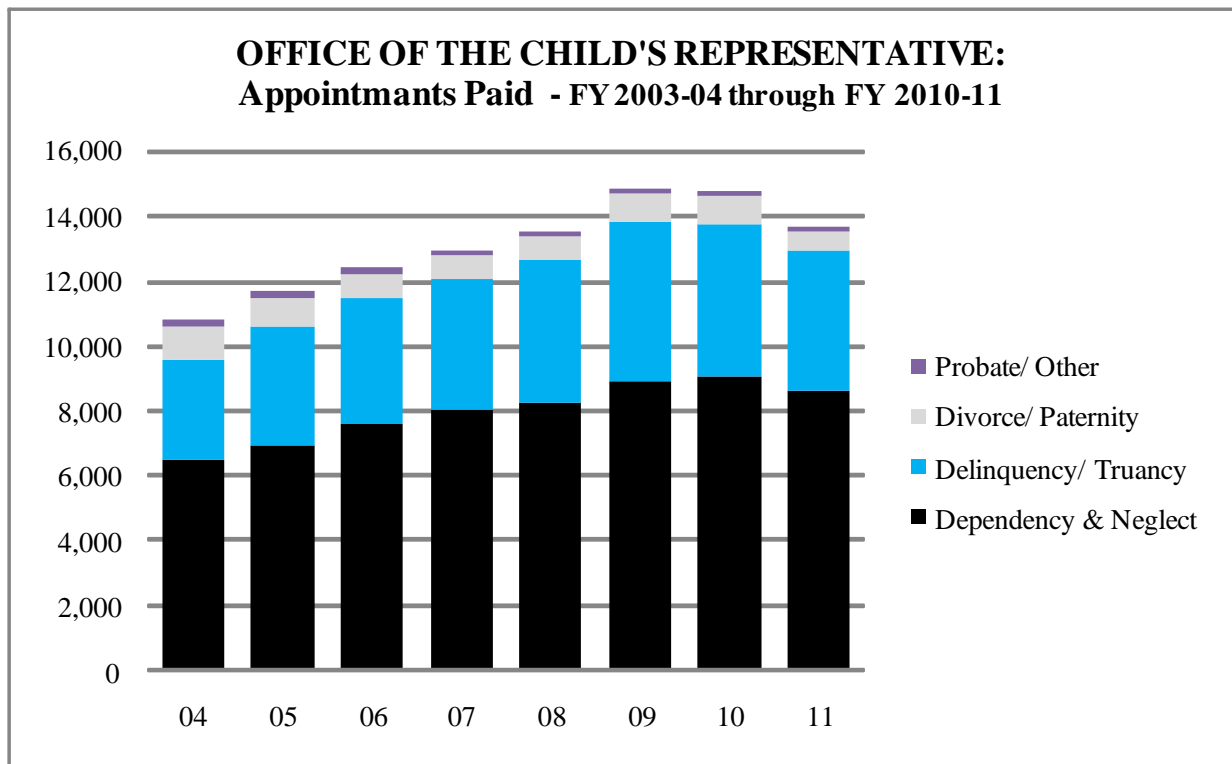


**ALTERNATE DEFENSE COUNSEL: Cases Paid
FY 2001-02 through FY 2010-11**



The *Office of the Alternate Defense Counsel (OADC)* contracts with private attorneys to represent indigent defendants in cases where the OSPD has an ethical conflict of interest in providing legal representation. Similar to the OSPD, certain types of cases (e.g., death penalty cases) are more expensive than others; these cases require more hours of attorney time and a higher hourly rate. As illustrated in the graph on the previous page, the OADC's overall caseload is more variable than that of the OSPD. The growth in the OADC caseload from FY 2001-02 through FY 2006-07 was primarily driven by increases in the number of felony cases. However, in each of the last four fiscal years the number of felony cases has declined, and the overall number of OADC cases declined in FY 2010-11.

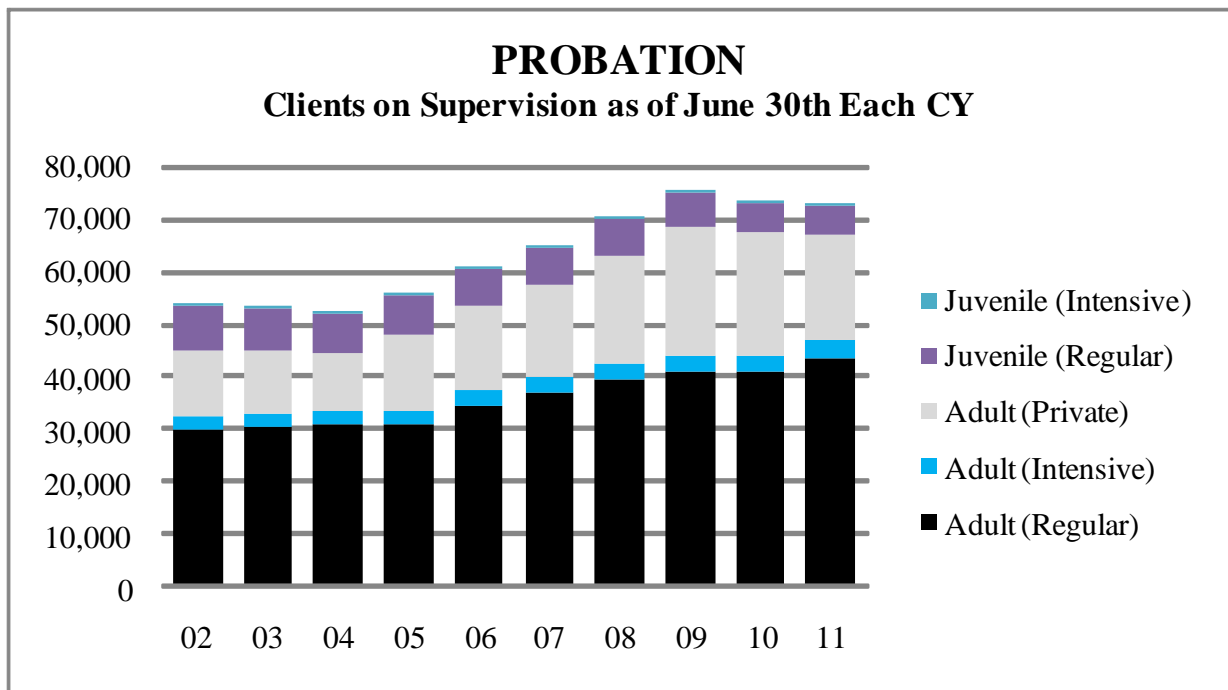
The *Office of the Child's Representative (OCR)* is responsible for providing legal representation for children involved in the court system due to abuse or neglect, delinquency, truancy, high conflict divorce, alcohol or drug abuse, mental health issues, and probate matters. OCR expenditures are primarily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



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, approximately 1,100 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 sentenced to probation increased significantly from June 2004 to June 2009. Specifically, the number of adult offenders increased by nearly 24,000 (54.2 percent); this increase was mitigated by a 13.2 percent decrease in the number of juvenile offenders. While more than half of the growth in adult offenders was related to offenders who are supervised by private providers, the number of adult offenders supervised by state staff increased by about 10,300 (30.5 percent). The following graph depicts changes in the numbers of adults and juveniles on supervision since 2002. Overall, the number of state-supervised offenders, including both juveniles and adults, increased from 41,764 in June 2002 to 52,884 in June 2011 (26.6 percent). As the number of state-supervised offenders grows, so does the need for probation officers and support staff to adequately supervise offenders.



**FY 2012-13 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

DECISION ITEM PRIORITY LIST

Decision Item	GF	CF	RF	FF	Total	FTE
JUD-1	\$0	\$1,352,600	\$0	\$0	\$1,352,600	0.0
<p>Compensation Realignment</p> <p>Courts Administration, Central Appropriations, Salary Survey; and Centrally Administered Programs, Senior Judge Program. The Department requests a total of \$1,352,600 (including \$1,042,920 cash funds from the Judicial Stabilization Fund and \$309,680 General Fund) to increase the salaries for employees in two job classifications (court judicial assistants and support services) to bring them closer to comparable Executive Branch and private sector salary levels. To offset the General Fund cost of the request, the Department proposes shifting \$309,680 of the funding for the Senior Judge Program from General Fund to the Judicial Stabilization Fund. <i>Statutory authority: Section 13-3-105, C.R.S.</i></p>						
JUD-2	0	1,414,177	0	0	1,414,177	21.5
<p>Protective Proceedings</p> <p>Courts Administration, Various Central Appropriations; Centrally Administered Programs, Courthouse Capital/ Infrastructure Maintenance; and Trial Courts, Trial Court Programs. The Department requests \$1,414,177 cash funds from the Judicial Stabilization Fund and 21.5 FTE to implement recommendations made by the Office of the State Auditor in a recent performance audit concerning court oversight of guardians and conservators. <i>Legal authority: Article VI of the State Constitution; Sections 13-5-101, et seq., 13-6-101, et seq., 13-3-105 and 108; 15-14-317 (3) and 15-14-420 (4), C.R.S.</i></p>						
JUD-3	0	840,676	0	0	840,676	12.0
<p>Pro Se Case Managers</p> <p>Courts Administration, Various Central Appropriations; Centrally Administered Programs, Courthouse Capital/ Infrastructure Maintenance; and Trial Courts, Trial Court Programs. The Department requests \$840,676 cash funds from the Judicial Stabilization Fund and 12.0 FTE to create a statewide network of services to assist self-represented parties in court cases. <i>Legal authority: Article VI of the State Constitution; Sections 13-5-101, et seq., 13-6-101, et seq., 13-3-105 and 108, C.R.S.; and Judicial Code of Conduct, Rule 2.6.</i></p>						
JUD-4	(17,867)	1,279,677	0	0	1,261,810	19.0
<p>Supervision of Sex Offenders on Probation</p> <p>Courts Administration, Various Central Appropriations; Centrally Administered Programs, Senior Judge Program and Courthouse Capital/ Infrastructure Maintenance; and Probation and Related Services, Probation Programs. The Department requests \$1,261,810 (including \$1,172,453 General Fund and \$89,357 cash funds from the Judicial Stabilization Fund) and 19.0 FTE to address staffing shortages in the area of sex offender supervision. To offset the General Fund cost of the request, the Department proposes shifting \$1,190,320 of the funding for the Senior Judge Program from General Fund to the Judicial Stabilization Fund. <i>Statutory authority: Section 18-1.3-202, C.R.S.</i></p>						

Decision Item	GF	CF	RF	FF	Total	FTE
JUD-5	0	860,000	0	0	860,000	0.0
<p>Hardware and Improvements for E-File</p> <p>Courts Administration, Administration and Technology, Information Technology Infrastructure. The Department requests \$860,000 cash funds from the Information Technology (IT) Cash Fund to purchase IT equipment that is necessary to maintain the reliability and efficiency of the Department's IT infrastructure and to accommodate the development efforts of the e-filing project. <i>Statutory authority: Section 13-32-114, C.R.S.</i></p>						
JUD-6	(240,284)	825,784	0	0	585,500	0.0
<p>Judicial Education and Training</p> <p>Courts Administration, Administration and Technology, General Courts Administration; Centrally Administered Programs, Judicial Education and Training; Trial Courts, Trial Court Programs. The Department requests an additional \$585,500 cash funds from the Judicial Stabilization Fund to address critical education and training needs for judicial officers through an expanded judicial officer training program. The request includes shifting \$240,284 of existing funding related to judicial officer training from General Fund to cash funds from the Judicial Stabilization Fund. <i>Statutory authority: Section 13-3-102, C.R.S.</i></p>						
JUD-7	(296,000)	4,177,843	0	0	3,881,843	2.0
<p>Ralph L. Carr Justice Center</p> <p>Courts Administration, Administration and Technology, General Courts Administration; Various Central Appropriations; Ralph L. Carr Justice Center, Personal Services, Operating Expenses, and Controlled Maintenance. This request would establish the Long Bill structure and spending authority to support operations of the Justice Center upon its completion in FY 2012-13. The request for \$4,177,843 cash funds from the Justice Center Cash Fund includes: \$2,072,700 for various contract services; \$1,000,000 to be set aside for future controlled maintenance needs; \$583,563 for security services provided by the Colorado State Patrol (offset by the elimination of the existing \$296,000 General Fund appropriation for this purpose); \$270,000 for utilities; and \$251,580 to support 2.0 FTE responsible for managing all operational and engineering aspects of the facility. <i>Statutory authority: Section 13-32-101 (7), C.R.S.</i></p>						
JUD-8	0	1,378,000	0	0	1,378,000	0.0
<p>Courthouse Furnishings & Infrastructure Replacement</p> <p>Courts Administration, Centrally Administered Programs, Courthouse Capital/ Infrastructure Maintenance. The Department requests \$1,378,000 cash funds from the Judicial Stabilization Cash Fund to furnish new and remodeled courthouse and probation facilities that are anticipated to be completed in three judicial districts in FY 2011-12. <i>Statutory authority: Sections 13-3-104 and 108, and 13-32-101 (6), C.R.S.</i></p>						
JUD-9*	0	0	590,000	0	590,000	0.0
<p>S.B. 91-094 Spending Authority</p> <p>Probation and Related Services, S.B. 91-094 Juvenile Services. The Department requests an increase in the reappropriated funds spending authority to allow the probation departments in two additional judicial districts to assume fiscal responsibility for the S.B.91-094 programs in those districts. The entities currently acting as fiscal agents for S.B. 91-094 funds in the 10th and 22nd judicial districts have determined that they no longer want to oversee these programs. <i>Statutory authority: Section 19-2-310, C.R.S.</i></p>						

Decision Item	GF	CF	RF	FF	Total	FTE
OSPD-1	907,715	0	0	0	907,715	0.0
<p>Attorney Salary Parity</p> <p>Office of the State Public Defender, Personal Services, and Various Central Appropriations. The OSPD requests an increase of \$2,863,900 General Fund over the next three fiscal years (starting with \$907,715 in FY 2012-13) to bring its attorney salaries in line with market pay practices for attorneys. A 2010 salary survey study conducted by Fox Lawson & Associates indicated that the OSPD's attorney salaries were, on average, 9.5 percent below prevailing market rates. <i>Statutory authority: Section 21-1-101, et seq., C.R.S.</i></p>						
OSPD-3*	243,267	(98,260)	0	0	145,007	1.0
<p>Refinance for Denver Sobriety Court</p> <p>Office of the State Public Defender, Personal Services, Operating Expenses, Various Central Appropriations, and Grants. The OSPD requests \$243,267 General Fund and 2.5 FTE to continue to provide indigent defense services for the Denver Sobriety Court. The City and County of Denver provided a short-term grant to the OSPD to support the new court through its pilot phase; this grant ends in December 2012. The request also reflects the elimination of \$98,260 cash funds and 1.5 FTE currently associated with the grant funding. <i>Statutory authority: Section 21-1-101, et seq., C.R.S.</i></p>						
OADC-1	(158,471)	0	0	0	(158,471)	0.0
<p>Conflict of Interest Contracts and Mandated Costs</p> <p>Office of the Alternate Defense Counsel, Conflict of Interest Contracts, and Mandated Costs. The OADC requests a decrease of \$158,471 for conflict of interest contracts and mandated costs, based on a redistribution of case types and implemented cost savings measures. <i>Statutory authority: Section 21-2-101, et seq., C.R.S.</i></p>						
OCR-1	45,000	0	0	0	45,000	0.0
<p>Restore CASA Contracts Funding</p> <p>Office of the Child's Representative, CASA Contracts. The OCR requests funding to increase the appropriation for court-appointed special advocate (CASA) programs from \$475,000 to \$520,000, eliminating the funding reduction that occurred in FY 2011-12. <i>Statutory authority: Section 13-91-105 (1) (b), C.R.S.</i></p>						
Total	\$483,360	\$12,030,497	\$590,000	\$0	\$13,103,857	55.5

* Please note that the Office of the State Public Defender submitted a decision item, prioritized #2 for the Office, to add the 5.1 FTE that will be needed if the General Assembly fills the remaining two judgeships authorized by H.B. 07-1054. However, in order to present the overall Branch requests related to H.B. 07-1054 in a consistent manner, staff has excluded this decision item from the above table. Similarly, staff excluded the Judicial Department's decision item (priority #10) which reflects the anticipated common policy increase related to vehicle lease payments.

**FY 2012-13 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

OVERVIEW OF NUMBERS PAGES

The following table highlights changes contained in the Department's FY 2012-13 budget request, as compared with the FY 2011-12 appropriation. For additional detail, see the numbers pages in Appendix A.

Summary of Requested Changes, FY 2011-12 to FY 2012-13 (millions of dollars)

Category	GF	CF	RF	FF	Total	FTE
FY 2011-12 Appropriation	\$340.2	\$113.5	\$14.7	\$5.2	\$473.7	4,178.7
FY 2012-13 Request	350.7	127.7	15.3	4.4	498.1	4,252.3
Increase / (Decrease)	\$10.5	\$14.2	\$0.5	(\$0.8)	\$24.4	73.6
Percentage Change	3.1%	12.5%	3.6%	-14.9%	5.2%	1.8%

Requested Changes, FY 2011-12 to FY 2012-13

Description	GF	CF	RF	FF	Total	FTE
Reinstate employer's PERA contribution rate (S.B. 11-076)	\$5,181,706	\$870,420	\$1,344	\$0	\$6,053,470	0.0
Ralph L. Carr Justice Center (JUD R-7)	(296,000)	4,177,843	0	0	3,881,843	2.0
Employee benefits ¹	3,516,793	(154,671)	0	0	3,362,122	0.0
Protective Proceedings (JUD R-2)	0	1,414,177	0	0	1,414,177	21.5
Courthouse furnishings and infrastructure replacement (JUD R-8)	0	1,378,000	0	0	1,378,000	0.0
Compensation realignment (JUD R-1)	0	1,352,600	0	0	1,352,600	0.0
Supervision of sex offenders on probation (JUD R-4)	(17,867)	1,279,677	0	0	1,261,810	19.0

¹ 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	RF	FF	Total	FTE
Annualize prior year legislation ²	364,324	585,580	0	0	949,904	14.1
Attorney salary parity (OSPD R-1)	907,715	0	0	0	907,715	0.0
Hardware and improvements for e-filing project (JUD R-5)	0	860,000	0	0	860,000	0.0
Pro se case managers (JUD R-3)	0	840,676	0	0	840,676	12.0
S.B. 91-094 Spending authority (JUD R-9)	0	0	590,000	0	590,000	0.0
Judicial education and training (JUD R-6)	(240,284)	825,784	0	0	585,500	0.0
Annualize FY 11-12 budget actions ³	272,595	1,005,906	0	(782,124)	496,377	4.0
Purchased services ⁴	451,257	0	0	0	451,257	0.0
Refinance for Denver sobriety court (OSPD R-3)	243,267	(98,260)	0	0	145,007	1.0
District attorneys' mandated costs	65,955	0	0	0	65,955	0.0
Restore CASA contracts funding (OCR R-1)	45,000	0	0	0	45,000	0.0

² Includes funding related to two bills: an increase of \$1,012,433 (including \$426,853 General Fund) and 14.1 FTE for trial court and public defender staff associated with the final two judgeships authorized by H.B. 07-1054; and a decrease of \$62,529 General Fund to eliminate one-time funding associated with the staff added through H.B. 11-1300 to hear cases related to conservation easements.

³ Most significantly, these figures include the following: an increase of \$782,124 cash funds to replace \$782,124 federal funds and maintain the capacity of existing adult drug and DUI courts to serve high risk, high need offenders; an increase of \$697,308 cash funds and 4.0 FTE for continued development of the in-house e-filing system; an increase of \$164,650 General Fund for the public defender staff added to fill some of the judgeships authorized by H.B. 07-1054; an increase of \$150,859 General Fund to restore temporary reductions in funding for operating expenses of the Office of the State Public Defender; and the elimination of \$461,000 provided for courthouse furnishings for FY 2011-12.

⁴ Includes changes related to the following purchased services: computer center; multiuse network; vehicle leases; communication services; and for risk management.

Description	GF	CF	RF	FF	Total	FTE
Conflict of interest contracts and mandated costs (OADC R-1)	(158,471)	0	0	0	(158,471)	0.0
Other ⁵	128,404	(155,020)	(66,612)	5,058	(88,170)	0.0
Total requested changes	10,464,394	14,182,712	524,732	(777,066)	24,394,772	73.6

⁵ Other changes include: leased space escalators; indirect cost adjustments; fund source adjustments; and the elimination of funding for the biennial judicial performance public awareness poll.

**FY 2012-13 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

BRIEFING ISSUE

INFORMATIONAL ISSUE: Performance-based Goals and the Judicial Branch's FY 2012-13 Budget Request

This issue brief summarizes the Judicial Branch agencies' reports on their performance relative to their strategic plans and discusses how the FY 2012-13 budget request advances the agencies' performance-based goals. Pursuant to the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act (H.B. 10-1119), the full strategic plan for Judicial Branch agencies can be accessed from the Office of State Planning and Budgeting web site.

The issue brief assumes that the performance-based goals are appropriate for the Judicial Branch. Pursuant to the SMART Government Act, legislative committees of reference are responsible for reviewing the strategic plans and recommending changes to the departments. The issue brief also assumes that the performance measures are reasonable for the performance-based goals. Pursuant to the SMART Government Act, the State Auditor periodically assesses the integrity, accuracy, and validity of the reported performance measures.

Please note that the Judicial Branch consists of the Judicial Department, which oversees the state court system and probation services, as well as four independent agencies. This briefing issue discusses the objectives for the Department and the three largest agencies.

DISCUSSION:

Performance-based Goals and Measures

Judicial Department: Courts and Probation

The Department's full strategic plan includes five overarching objectives, and 18 related goals. Two of the Department's five goals are listed below.

1. Accessibility

Objective: Provide equal access to the legal system and give all an opportunity to be heard.

a. How is the Branch measuring the specific goal/objective?

The Department identifies three sub-goals related to this objective, including: (a) identify and address barriers to effective participation; (2) maintain safety in all court and probation facilities; and (c) assist self-represented parties. While the Department's strategic plan includes useful trend data concerning the aging state population (and related increases in the number of probate and protective proceedings), the increase in the number of Coloradans with limited English proficiency (and related increases in the need for court language interpreter services), and an increase in the number of self-

represented parties, the Department’s strategic plan does not identify specific performance measures related to this goal.

b. Is the Branch meeting its objective, and if not, why?

Absent specific performance measures, staff is unable to determine whether the Department is meeting this objective.

c. How does the budget request advance the performance-based goal?

The Department has submitted a request (R-3) for funding to create a statewide network of services to assist self-represented (“*pro se*”) parties in court cases. The request specifically addresses three existing barriers to effective participation: (1) adding specialized case managers to work with *pro se* parties on a one-on-one basis to effectively answer legal and procedural questions; (2) establishing *pro se* centers to provide ready access to computer terminals, forms, and other legal materials; and (3) requiring the *pro se* case managers to conduct community outreach activities to improve community-wide support for *pro se* parties.

2. Probation Services

Objective: Implement high-quality assessments and community supervision of adult and juvenile probationers to demonstrably enhance public safety and respect victim rights.

Probation: Statewide Success Rates /a						
Fiscal Year	Adults				Juveniles	
	Regular	ISP	Female Offender Program /b	Sex Offender ISP /b	Regular	ISP /b
2007-08 (actual)	59%	54%	65%	35%	72%	41%
2008-09 (actual)	64%	66%	73%	46%	74%	45%
2009-10 (actual)	66%	66%	69%	39%	73%	46%
2010-11 (target)	67%	67%	70%	40%	74%	47%
2010-11(actual)	68%	67%	70%	46%	74%	50%

a/ This data is consistent with the "successful termination" rates detailed in the discussion of probation recidivism rates in Appendix C, with two exceptions. First, the above table includes a success rate for sex offenders who are under intensive supervision, while the annual recidivism report does not include data related to these offenders. Second, with respect to adult offenders under regular supervision, the above table only includes those offenders who are under state supervision and it excludes offenders who are under private supervision.

b/ Due to the small number of probationers in these intensive supervision programs (ISPs), success rates tend to fluctuate more dramatically than for other populations.

a. How is the Department measuring the specific goal/objective?

Beginning in FY 2008-09, Chief Probation Officers established target success rates for each probation population. "Success" is quantified based on pre-release recidivism data. Specifically, the data reflects the percent of offenders on probation who were not adjudicated or convicted of a felony or misdemeanor, or of a technical probation violation relating to a criminal offense, while under

supervision in a criminal justice program. This data thus does not reflect post-release recidivism data. Please see Appendix C for more information and data related to post-release recidivism rates.

b. Is the Department meeting its objective, and if not, why?

Yes. In FY 2010-11, the target success rates for all six probation populations were met or exceeded.

c. How does the budget request advance the performance-based goal?

The Department has submitted a request (R-4) to add probation officers to supervise sex offenders. While the Department exceeded the 40 percent targeted success rate for the sex offender population in FY 2010-11, this is the lowest target rate established for the six populations that are supervised. The Department indicates that approval of this request would reduce caseloads, allow probation officers more time to address offender’s technical violations, and reduce the revocation rate for technical violations.

Office of the State Public Defender (OSPD)

The OSPD's full strategic plan includes seven priority objectives and 32 unique performance measures. The OSPD’s top priority objective (1 of 7), and three of the 26 performance measures related to this objective are described below.

1. Provide reasonable and effective legal representation.

Measure: Comply with minimum standards for staffing requirements.

Ratio of Current Staffing to Number Needed for Full Staffing Based on Caseload Model						
Case Type	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	Target
Percent of need met for Trial Attorneys (based on closed cases)	73.8%	91.3%	77.0%	85.7%	92.1%	100.0%
Percent of need met for Appellate Attorneys (based on active cases)	54.8%	76.4%	72.0%	74.4%	76.1%	100.0%

a. How is the OSPD measuring the specific goal/objective?

To measure reasonable workload standards for its attorneys, the OSPD contracted with an outside consulting firm to develop a case weighting standard that takes into account the workload associated with various types of cases. This study is periodically updated to reflect legal, procedural, and practice changes. The study quantifies the average number of hours required for various types of cases, allowing the OSPD to calculate the staffing level required for a given caseload. The above table reflects the ratio of actual staffing levels to the level needed based on the number and distribution of cases in a particular fiscal year.

b. Is the OSPD meeting its objective, and if not, why?

No. The OSPD’s goal is to achieve 100 percent of the needed staffing level, and current levels fall short of that goal. However, due to legislative actions to increase staffing levels in recent years, the percent of the need met – particularly for trial attorneys – has increased.

c. How does the budget request advance the performance-based goal?

The OSPD’s budget request does not include funding to improve the staffing levels for attorneys or other staff. The requested FTE would help to maintain existing staffing levels by providing the necessary staff should the General Assembly choose to fill the final two judgeships in Jefferson county, and the resources necessary to maintain staffing for the Denver Sobriety Court.

1. Provide reasonable and effective legal representation.

Measure: Defense counsel’s ability, training, and experience match the case complexity.

Percent of Attorneys at Journey and Career Levels						
Case Type	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	Target
Beginning	46.5%	52.9%	54.8%	58.2%	56.0%	30.0%
Journey	21.8%	11.8%	10.5%	9.5%	16.0%	
Career	31.7%	35.4%	34.6%	32.3%	28.0%	
Journey and Career	53.5%	47.1%	45.2%	41.8%	44.0%	70.0%

a. How is the OSPD measuring the specific goal/objective?

The above table reflects the distribution of OSPD attorney staff based on three experience levels:

- *Beginning* - Entry level attorneys who carry a full caseload under close supervision (typically attorneys with up to six years of legal experience).
- *Journey* - Intermediate level attorneys who handle a full caseload of varying complexity under minimal supervision (typically five to seven years of legal experience).
- *Career* - Managing attorneys, supervising attorneys, and senior attorneys who are experts in all aspects and all levels of complexity of law, procedure, and casework (typically seven to 10 or more years of experience).

The OSPD’s goal is to have only 30 percent of staff at the beginning level, and 70 percent of staff at the journey or career levels.

b. Is the OSPD meeting its objective, and if not, why?

No. Only 44.0 percent of attorneys were at the journey or career levels in FY 2010-11. Although there was a slight improvement in FY 2010-11, the general trend is away from the stated target.

c. How does the budget request advance the performance-based goal?

The OSPD has submitted a request (R-1) to bring attorney salary ranges in line with market pay practices over a three-year period. This request is directly aimed at reducing the overall attrition rate, and reducing the supervisory burden on more experienced staff.

Office of the Alternate Defense Counsel (OADC)

The OADC’s full strategic plan includes one two-part objective and five strategies to accomplish the objective, with a corresponding performance measure for each strategy. The OADC’s primary objective, and one of the strategies are described below.

1. Provide competent and cost-effective legal representation statewide.

Strategy (2 of 5): Monitor and contain total hours per case and mandated costs.

Number of Attorney Hours Billed Per Case and Mandated Costs Per Case						
Case Type	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 10-11 Target
Number of attorney hours billed per case						
Death penalty	585.7	1,039.7	1,865.5	1,844.0	1,936.8	2,362.3
Type A felony /a	45.8	48.7	53.0	49.7	44.5	46.5
Type B felony /b	15.8	15.5	15.2	16.5	14.7	15.5
Adult misdemeanor/ Juvenile	8.2	7.5	7.2	7.3	7.0	7.8
All cases	19.3	20.4	20.6	20.8	19.2	19.6
All cases, excluding death penalty cases	18.7	19.3	18.9	18.9	17.0	18.7
Mandated costs per case						
All cases - actual	\$128.28	\$94.78	\$127.45	\$120.16	\$120.38	\$119.73

a/ "Type A" felonies include violent felonies such as first and second degree murder, attempted first and second degree murder, manslaughter, criminal negligent homicide, vehicular homicide, first and second degree assault, kidnaping, aggravated robbery, first and second degree sexual assault, incest, sexual assault on a child, arson, felony child abuse, and attempted assaults.

b/ "Type B" felonies include all other non-violent felonies.

a. How is the OADC measuring the specific goal/objective?

The OADC tracks hours billed for each type of case. The above table summarizes the data based on case types, calculating an average by dividing the sum of hours billed by the number of active cases. Mandated costs include expenses such as reimbursements to District Attorneys’ offices for discovery costs, electronic replication of grand jury proceedings, expert witnesses, transcripts, out-of-court language interpreters, etc.

b. Is the OADC meeting its objective, and if not, why?

In part. Actual hours billed per case were lower than the relevant targets for all case types. Further, for all case types except the death penalty cases, the average number of hours billed per case decreased in FY 2010-11 – by 10.1 percent for these case types collectively. The targeted average number of hours billed per death penalty case appears relatively high compared to actual experience. However, actual hours billed in these cases is highly variable depending on the status of the case; cases that are in active litigation (e.g., proceeding to a jury trial or proceeding under the Unitary Appeal Bill) require significantly more time than those which are not active.

With respect to the average mandated costs per case, actual expenditures in FY 2010-11 slightly exceeded the target. Based on the last five fiscal years, this measure appears to be relatively unstable. For the OADC, this variability generally relates to the costs of expert witnesses (e.g., cases involving DNA evidence) and increases in rates charged by District Attorneys’ offices.

c. How does the budget request advance the performance-based goal?

The OADC’s budget is largely driven by the number and types of cases in which the court appoints an OADC contract attorney. The OADC’s FY 2012-13 budget request should allow the agency to continue several initiatives that it credits with reducing or mitigating expenditures, including: providing contract attorneys with electronic access to court records free of charge; managing appellate and post-conviction cases in-house; auditing contractor billings; and offering training sessions to address time management inefficiencies.

Office of the Child’s Representative (OCR)

The OCR’s full strategic plan includes five goals with a total of 22 corresponding performance measures. One of the goals and four corresponding measures are described below.

1. The OCR will provide effective guardian ad litem (GAL) services

Measures: All four measures listed for this goal are included in table below.

Key Measures Identified for Goal of Providing Effective GAL Services			
Description	FY 08-09	FY 09-10	FY 10-11
GALs will visit all children in their placement within 30 days of each appointment and each change in placement	92.0%	92.0%	94.0%
GALs will perform a comprehensive and independent initial and ongoing investigation in every case in compliance with applicable Chief Justice Directives	80.0%	80.0%	85.0%
GALs will attend all court hearings and, when necessary, will obtain substitute counsel in compliance with applicable Chief Justice Directives	99.0%	99.0%	99.0%
GALs will provide meaningful recommendation and effective advocacy in court	92.0%	92.0%	95.0%

a. How is the OCR measuring the specific goal/objective?

The OCR indicates that the percentages related to each goal, detailed in the table on the previous page, are approximations based on resolutions of complaints, attorney evaluations, and feedback provided by various stakeholders during visits to each judicial district. The OCR recently implemented a new case management/billing system (KidsVoice Integrated Data System) that will allow attorneys to maintain comprehensive electronic files for each child he or she represents. This system will improve the OCR's ability to monitor attorney performance and the OCR's progress toward meeting its own performance measures. The OCR anticipates having a statewide, full year of data available for FY 2011-12.

b. Is the OCR meeting its objective, and if not, why?

Unknown, because the target measures are not specified. Assuming that the targets are 100 percent, the OCR is very close in meeting the goal related to court hearings, and the OCR is farthest from achieving its goal related to initial and ongoing investigations.

c. How does the budget request advance the performance-based goal?

Similar to the OADC, the OCR's budget is largely driven by the number and types of cases in which the court appoints an OCR attorney. The OCR's FY 2012-13 budget request should allow the agency to continue several initiatives that it credits with achieving efficiencies and improving children's outcomes, including the following ongoing activities:

- the implementation of the new case management/ billing system;
- an evaluation of three different models of providing legal representation: (1) contracts paying hourly rates to private attorneys; (2) a GAL office staffed by state employees; and (3) contracts with private law firms and a nonprofit organization to provide GAL services in specific court divisions;
- implementing an indigency screening process for domestic relations cases; and
- monitoring contractor costs that exceed presumptive maximum levels for each case type.

**FY 2012-13 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

BRIEFING ISSUE

INFORMATIONAL ISSUE: Audit Concerning Oversight of Guardians and Conservators

This issue brief provides a summary of a recent performance audit report released by the Office of the State Auditor concerning Judicial Branch oversight of guardians and conservators.

SUMMARY:

- ❑ The court appoints guardians and conservators to make decisions for and manage the estates of certain minor children and adults in need of protection. Following an appointment, the court is required to monitor guardians and conservators.
- ❑ The Office of the State Auditor recently released a performance audit report, which found that the Judicial Branch does not have sufficient controls in place to ensure that courts effectively monitor guardians and conservators.
- ❑ The Judicial Department has implemented several recommendations, and will implement several others through modifications to the new case management system currently under development. The Department has also submitted a request for an additional \$1.4 million cash funds and 21.5 FTE to implement the level of monitoring, supervision, investigation, and follow-up required by the remaining recommendations.

DISCUSSION:

Background Information - Guardians and Conservators

Current law establishes certain procedures the courts should follow in establishing and monitoring guardianships and conservatorships¹. A "guardian" is appointed by the court to make decisions about the support, care, education, health, and welfare of a minor child or an incapacitated adult. A "conservator" is appointed by the court to manage the estate of a minor child or an adult in need of protection. In these cases, the minor child or adult is referred to as a "ward".

A petition for appointment of a guardian and/or conservator may be filed by the ward, or a person interested in the ward's welfare. In appointing a guardian or conservator, the court is required to give priority to certain individuals over a professional guardian or conservator, including a person nominated by the ward, immediate family members of the ward, or an adult with whom the ward recently resided. Non-professional appointees are not typically compensated for their services, but

¹ See Title 15, Articles 14 and 14.5, C.R.S.

they can be reimbursed for some expenses from the ward's estate. Professional appointees are typically compensated for their services from the ward's estate.

Following an appointment, the court issues orders and letters that detail the powers and limitations of the appointed guardian or conservator. Guardians and conservators are required to annually report certain information to the court. The court is required to establish a system for monitoring guardians and conservators, including the filing and review of their annual reports².

Recent Performance Audit

The Office of the State Auditor (OSA) recently conducted an audit to review the performance of the Judicial Branch with respect to the appointment and monitoring of guardians and conservators. The OSA released the resulting Audit Report in September 2011. The Report found that the Judicial Branch has not ensured that the courts effectively administer guardianship and conservatorship cases. Specifically, the Report found that the Judicial Branch does not have sufficient controls in place to ensure that the courts:

- receive and consider all of the statutorily required background information from nominees prior to appointing them to serve as guardians and conservators;
- appoint attorneys to represent wards when required by statute; or
- appoint and receive all information from court visitors prior to making guardian and conservator appointments.

The Report also found that the courts are deficient in obtaining certain required reports from guardians and conservators, and the courts are not always reviewing (or are not adequately reviewing) reports submitted by guardians and conservators.

Audit Recommendations

The Report includes nine recommendations for the Judicial Branch to address the findings (including several multi-part recommendations). Staff has grouped the recommendations into three categories, based on the Department's plans to address the each recommendation. [Recommendations are referenced here as they are cited in the Report.]

First, the Department reported to the Legislative Audit Committee that the following recommendations can and will be implemented quickly by: issuing a Chief Justice Directive (CJD); making revisions to the *Trial Court Resource Manual*, the *Conservator's Manual*, the *Guardian's Manual*, and judicial forms; and making other internal administrative changes:

1. Ensure that courts obtain statutorily required background information from individuals nominated to serve as a guardian or conservator by:
 - (a) providing specific direction to the courts on the statutory requirements related to the information nominees must provide prior to their appointment; and

² See Section 15-14-317 (3) and 15-14-420 (4), C.R.S.

- (b) mandating that courts require guardians and conservators to use the appropriate form.
- 2. Communicate to the courts the importance of appointing attorneys to represent wards in guardianship and conservatorship cases in accordance with statute.
- 3. Ensure that courts appoint court visitors when required by statute and obtain statutorily required information from the court visitors by:
 - (a) providing training to the courts on the requirements surrounding court visitor appointments and reporting; and
 - (b) revising the Court Visitor's Report form to include all statutorily required information.
- 4. Ensure that courts obtain all required reports from guardians and conservators by:
 - (a) requiring that courts obtain a signed copy of the Acknowledgment of Responsibilities form at the time of appointment.
- 5. Ensure that guardians and conservators provide sufficient information in reports for courts to assess whether the guardians and conservators are acting in the wards' best interests by:
 - (a) issuing a directive that the courts require guardians and conservators to resubmit any report not filed on the approved form and consider taking action against guardians and conservators who repeatedly ignore the courts' orders; and
 - (b) improving guidance to guardians and conservators.
- 8. Improve the Judicial Branch's data management and strengthen its oversight of guardianship and conservatorship cases by:
 - (b) revising the *Trial Court Resource Manual* to ensure it directs courts on how to enter data into the case management system.
- 9. Ensure that the courts effectively administer guardianship and conservatorship cases by:
 - (a) issuing directives that clearly delineate which policies and procedures are mandated for every case; and
 - (b) strengthening the internal audit process by using recommendations within internal audit reports to inform Judicial Branch policymaking and by requiring the judicial districts to provide detailed responses and implementation dates for recommendations.

On September 20, 2011, the Chief Justice issued CJD 11-003, which notifies judicial officers and Judicial Department personnel that they shall comply with the recently revised policies and procedures for protective proceeding cases.

Second, the Department reported that the following recommendations will be implemented by December 2012 by incorporating certain capabilities in the new case management system that is under development:

4. Ensure that courts obtain all required reports from guardians and conservators by: (b) ensuring that the new case management system is designed to automatically capture all future reporting requirements once an appointment is made and having fail-safes that require court action on alert.
6. Strengthen the courts' guardian and conservator report review process by: (b) developing tools to automate report submissions and reviews.
8. Improve the Judicial Branch's data management and strengthen its oversight of guardianship and conservatorship cases by:
 - (a) continuing to review all existing cases in Eclipse to determine their current status and properly coding all terminated cases; and
 - (c) ensuring that the new system is designed to collect additional data for each judicial district on wards, guardians, and conservators.

Third, the Department indicated that it would work to address the following recommendations through further analysis and by seeking additional resources:

3. Ensure that courts appoint court visitors when required by statute and obtain statutorily required information from the court visitors by: (c) implementing low-cost, easily accessible options for providing information and training to all court visitors.
4. Ensure that courts obtain all required reports from guardians and conservators by:
 - (c) expanding the type of contact information obtained and pursuing the statutory authority to use addresses obtained from the Department of Revenue for jury pools for tracking down delinquent guardians and conservators;
 - (d) requiring that courts follow up with and, as appropriate, take action against guardians and conservators who fail to submit required reports; and
 - (e) evaluating whether to include expiration dates on letters of authority.
6. Strengthen the courts' guardian and conservator report review process by:
 - (a) training court staff on the use of the Judicial Branch's risk assessment tool to determine priority for report review;
 - (c) evaluating the feasibility of having experts located in the State Court Administrator's Office review more complex reports;
 - (d) providing training and guidance to court staff who continue to review reports to ensure they have the skills needed to review more complex reports;
 - (e) instructing the court to, when necessary, appoint or contract with individuals with the appropriate technical expertise to review more complex reports; and
 - (f) conducting periodic audits of the supporting documentation maintained by conservators.
7. Ensure that each judicial district has a systematic process of evaluating the overall performance of professional guardians and conservators routinely appointed in their districts.

Resources Requested to Implement Audit Recommendations

The Department's FY 2012-13 budget request includes a decision item (R-2) for \$1,414,177 cash funds from the Judicial Stabilization Fund and 21.5 FTE. The Department indicates that the Audit Report recommends a level of monitoring, supervision, investigation, and follow-up for which the Department is not currently staffed. The Department requests funding to support an additional 18.0 FTE general protective proceeding support staff, 3.0 FTE protective proceeding staff with specialized expertise, and an additional half-time magistrate (0.5 FTE).

In 2010, the Department began a pilot program to research and implement best practices for monitoring protective proceedings cases. Two State Court Administrator's Office employees, classified as probate examiners, have been working with seven judicial districts that represent about two-thirds of all open protective proceedings cases. These examiners have been responsible for:

- monitoring the filing of guardian and conservator reports by tracking review dates;
- identifying cases that were not being monitored because review dates were missing;
- notifying delinquent guardians and conservators to immediately file late reports;
- referring non-responding guardians and conservators to the judicial districts for follow-up; and
- developing best business practices regarding these tasks.

The two probate examiners processed approximately 15,000 cases during a 12-month period. The Department thus anticipates that based on certain efficiencies gained during the pilot program, the equivalent of 4.0 FTE protective proceedings specialists are needed in the courts to monitor the filing of guardian and conservator reports statewide, and to follow-up on delinquent reports.

The Department proposes adding another 14.0 FTE protective proceeding specialists to review the contents and assess the reasonableness of guardian and conservator reports. This staffing level is based on a survey of probate judges and their staff to determine the average time required to review reports. The Department assumes that the time required will decrease by 20 percent if the task is assigned to dedicated employees.

In addition, the Department proposes adding 2.0 FTE examiners to perform in-depth audits on the most complex and high-risk conservatorship cases. These two new positions would augment the existing 2.0 FTE examiners already at the State Court Administrator's Office (who conducted the pilot program). These staff would audit approximately 800 cases per year (about two percent of all cases), verifying statements made in the conservator's reports and reviewing supporting documentation. In addition, these four staff would:

- assist in developing standards for court staff's review of less complex cases;
- train court staff on review standards and provide guidance to assess the reasonableness and appropriateness of guardian and conservator expenditures; and
- assist in evaluating the overall performance of professional guardians and conservators.

The Department proposes adding 1.0 FTE investigator to provide support and technical assistance to judicial districts by investigating the whereabouts of missing guardians and conservators and locating missing assets. Based on the number of missing guardians and conservators identified in the pilot program, an estimated 3,500 fiduciaries statewide, the Department estimates that at least one investigator is needed.

Finally, the Department proposes increasing the magistrate position in the Denver Probate Court from 0.25 FTE to 0.75 FTE – an increase of 0.5 FTE magistrate. In most judicial districts, probate and protective proceedings are one of many case types heard by the district court, representing about one percent of all cases. In contrast, the Denver Probate Court is established in the State Constitution to hear probate and mental health cases exclusively. In Denver Probate Court, protective proceedings represent 13 percent of all cases. Due to its small size, the Denver Probate Court's ability to implement the OSA recommendations by reprioritizing and relocating staff is extremely limited. The Department indicates that the Denver Probate Court is currently staffed at 70 percent of full staffing need – the second worst staffing level of any district statewide.

**FY 2012-13 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

BRIEFING ISSUE

INFORMATIONAL ISSUE: Status of the Ralph L. Carr Judicial Center Project

This issue brief provides a status update on the construction of the new justice center, which will house the Judicial Branch agencies and the Department of Law starting in FY 2013-14.

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 agencies occupying the state justice center.
- ❑ Both project development costs and annual debt service payments are significantly lower than the amounts authorized by S.B. 08-206. In addition, the project now includes a 325-space parking garage that was paid for with a portion of project savings and will generate revenue to help make debt service payments.
- ❑ Both construction projects are on-time, within budget, and anticipated to earn LEED Gold certification. The museum (now known as "History Center Colorado") is scheduled to open to the public next Spring, and the justice center (now known as the "Ralph L. Carr Judicial Center") is scheduled to be completed and ready for occupancy by February 2013.
- ❑ For FY 2012-13, the Judicial Department has submitted a request to establish the appropriate Long Bill structure and spending authority to support operations of the Judicial Center upon construction completion in FY 2012-13. Budget requests for FY 2013-14 will reflect changes in impacted agencies' leased space expenses, as well as any operational or programmatic efficiencies that will be achieved through the consolidation and co-location of justice-related agencies, as anticipated by S.B. 08-206.

DISCUSSION:

Project Background Information

The Judicial Branch and the Colorado History Museum previously shared the "Judicial Heritage Complex" (bordered by 13th and 14th Avenues, Broadway, and Lincoln Street), which was constructed in 1977. A number of studies were 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 that the Complex did

not function adequately or provide adequate space for either entity, the programmatic site needs of each operation oppose one another in many ways, the unique site design of the Complex lent itself to a high level of vulnerability, and the Judicial Building had a number of life, health, safety, and accessibility issues that affected the operation of the courts. The ULI recommended that the judicial facilities be expanded and remain on the Complex site, and the Museum be moved to a new site.

In July 2006, the Judicial Department and the Colorado Historical Society contracted with Trammell Crow Company and a team of consultants 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. In December 2006, Trammell Crow submitted a report concerning the feasibility of constructing a new state justice center on the site of the Complex, and procuring a new site and building for the Museum. 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 facility at the 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 and the Supreme Court Law Library (currently located in leased space in the Denver Post building at 101 W. Colfax)
- Colorado Court of Appeals (also located at 101 W. Colfax)
- Judicial Department administrative offices (also located at 101 W. Colfax)
- Office of the State Public Defender (central administrative and appellate offices are currently located in leased space at 1290 Broadway)
- Office of the 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)

- Department of Law (currently leasing space within the Capitol Complex at 1525 Sherman Street; also rents private storage space)

The project is to 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 addressing \$17 million in deferred maintenance needs at the Judicial Heritage Complex, avoid ongoing and escalating 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 (now known as the "Ralph L. Carr Judicial Center"). The total amount of the principal component of the lease-purchase agreements concerning the History Center may not exceed \$85 million¹, the annual rental and lease-purchase payments may not exceed \$4,998,000, and the term may not exceed 37 years. The General Assembly is required to make annual appropriations from the State Historical Fund to the State Historical Society beginning in FY 2011-12 and annually thereafter as long as payments are due.

With respect to the Judicial Center, the total amount of the principal component of the lease-purchase agreements may not exceed \$275 million², the annual rental and lease-purchase payments may not exceed \$19,000,000, and the term may not exceed 38 years.

Revenues from various filing fees and any lease payments received from state agencies occupying the Judicial Center 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 Judicial Center. 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 resided².

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 Judicial 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.

¹ These amounts exclude "reasonable and necessary administrative, monitoring, and closing costs and interest".

² 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.

Current Status of Construction Projects and Financing

Judicial Department staff provided updated information concerning the total development costs of the History Center and Judicial Center projects (excluding the cost of financing):

History Center	\$110,640,000
Judicial Center	<u>257,447,305</u>
Total	368,087,305

This total is \$16.9 million lower than the amount authorized by S.B. 08-206. The Judicial Center project also now includes a 325-space parking garage that was constructed directly north of the History Center. The parking garage, which was completed in September 2011, was paid for with a portion of project savings and will generate revenue to help make debt service payments.

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 \$18.8 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 Judicial Center. 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 owned by a newly formed non-profit called CHS/CJC Building, Inc. Upon full repayment, ownership of the facilities will revert to the State.

Both construction projects are on-time, within budget, and anticipated to earn LEED Gold certification. The History Center is scheduled to open to the public next Spring, and the Judicial Center is scheduled to be completed and ready for occupancy by February 2013. The Judicial Center consists of: (1) a courthouse with courtrooms for the Supreme Court and the Appellate Court, plus a law library, an interactive learning center, and 75 below grade parking spaces; and (2) a 12-story office building with a conference center, moot courtroom, and data center (for server equipment). A corridor connects the courthouse and office building.

Impacts on FY 2012-13 and FY 2013-14 Budgets

All of the justice-related state agencies will relocate to the Judicial Center between February and June 2013. Many agencies have existing leases that extend to or beyond June 30, 2013. Thus, for the FY 2012-13 budget year, these agencies have submitted budget requests assuming a full 12 months of lease payments. The costs of relocating these state agencies were included as part of the overall project costs, so no agencies are requesting separate funding for moving expenses.

The Judicial Department has submitted a decision item (R-7) that is intended to establish the appropriate Long Bill structure and spending authority to support operations of the Judicial Center upon construction completion in FY 2012-13. As proposed, this section of the Long Bill would provide a total of \$4.2 million cash funds spending authority from the Justice Center Cash Fund, including the following five components:

- *Contract Services (\$2,072,700)*. The Department anticipates entering into several contracts with outside vendors related to building operations. The largest contract (\$887,000) is for Cushman Wakefield to act as the management company, providing contract engineering staff and first floor reception services in the office tower, and for related administrative costs. The Department also anticipates contract services totaling \$985,000 for various services, including custodial, building and grounds maintenance and supplies, and the copy center. Finally, the Department's request includes \$200,700 for Standard Parking to operate and maintain the parking garage.
- *Controlled Maintenance (\$1,000,000)*. Senate Bill 08-206 envisioned that the ongoing maintenance costs for the Judicial Center would be covered by court fees, lease payments, and parking fees. Consistent with this intent, the Department requests an annual appropriation from the Justice Center Cash Fund to set aside moneys for future controlled maintenance needs.
- *Colorado State Patrol Services (\$583,563, including \$296,000 in existing funding)*. Currently, both the Judicial Department and the Department of Law receive General Fund appropriations to pay the Colorado State Patrol for security services in the buildings they occupy. The proposed security for the new Judicial Center, based on estimates provided by the Colorado State Patrol, includes a total of 15.0 FTE (11.0 FTE security officers, 3.0 FTE troopers, and 1.0 FTE supervisor). This represents an increase of 10.0 FTE above the 5.0 FTE currently funded by the two departments. This coverage would provide for weapons screening at two public entrances during business hours (each of the magnetometers would be staffed by two security guards and one trooper for ten hours daily), 24-hour roving coverage, and the staffing of an information/security desk.

The Judicial Department proposes that the Department of Law maintain the appropriation for security in its current building for FY 2012-13, and the Judicial Department's appropriation be increased to cover the additional costs of security in the Judicial Center for six months of FY 2012-13. The Colorado State Patrol has submitted a corresponding request for FY 2012-13.

- *Utilities (\$270,000)*. The Department estimates that electricity, gas, water, and sewer expenditures for the Judicial Center will require \$270,000 in FY 2012-13, based on professional standards and costs of similarly-sized buildings in the Denver metropolitan area.
- *Facility Staff (\$239,216 and 2.0 FTE)*. Prior to its demolition, the Judicial Department previously received an appropriation for the maintenance and operations of the Judicial Heritage Complex. This appropriation (\$749,176 and 3.0 FTE) was eliminated in FY 2010-11. The Judicial Department will be responsible for all operations of the Judicial Center, so the

Department requests funding in FY 2012-13 to support 2.0 FTE to manage and oversee the operational and engineering aspects of the facility. Specifically, the Department plans to hire: (1) a Building Manager, who would be responsible for handling all tenant inquiries, coordinating maintenance work, monitoring the performance of all third party vendor contracts, and overseeing the shared services within the Judicial Center (e.g., copy center, mail room, food services, and conference/training facility); and (2) a Building Engineer, who would be responsible for the supervision of engineering operations (including mechanical, electrical, plumbing, and life/safety equipment and systems), as well as all inspections and licensing matters.

The Judicial Department is planning for state agencies to begin making lease payments for the Judicial Center beginning in July 2013. Thus, staff expects agencies' FY 2013-14 budget requests to reflect related changes in leased space expenses. While staff anticipates that the Department of Law and any other Executive Branch agencies that become tenants of the Judicial Center will maintain separate leased space appropriations in FY 2013-14 to cover their share of Judicial Center expenses, staff has suggested that the Judicial Branch consider requesting a single leased space appropriation related to the Judicial Center rather than requesting separate leased space appropriations for each agency within the Judicial Branch. This appropriation would be comprised of those revenue sources that support the operations of each of the Judicial Branch tenants (i.e., General Fund and court fees for the Judicial Department, attorney regulation fees for the Office of Attorney Regulation and Registration, and General Fund for the four independent agencies).

Based on information provided by the Judicial Department, the table on the following page provides a *preliminary* summary of the changes in leased space and associated expenditures that may occur in FY 2013-14. First, one note of caution is warranted for the reader to consider this information in the proper context. The table reflects a significant increase in square footage when existing leased space and estimated Judicial Center leased space figures are compared. This increase in square footage does reflect increases in usable square footage for some tenants to appropriately house existing staff and to allow room to accommodate growth over the next few years.

However, the apparent increase in square footage is primarily due to a difference in the standards used to measure leased space. Specifically, the square footage for existing leased space generally reflects "usable" square footage. In contrast, the initial lease agreements for the Judicial Center utilize a measurement of square footage that includes common areas within each tenant's leased floor space (e.g., hallways and elevator areas) as well as other shared spaces within the office building (e.g., lobby, conference and training rooms, copy center, mail room, etc.). Due to the design and intended use of the office building, this "gross up" factor is significant (approximately 50 percent).

Preliminary Estimates of State Agency Leased Space Changes Related to the Judicial Center						
	FY 2011-12 (Existing Leased Space)			FY 2013-14 (Judicial Center)		
	SF /a	\$ per SF	Total	SF /b	\$ per SF /c	Total
Total for Judicial Center Tenants	271,708	\$17.55	\$4,767,318	434,975	\$14.30	\$6,219,999
State Agency(ies), currently in private leased space, that relocates to 1525 Sherman /f	101,685	\$23.85	\$2,425,187	101,685	\$12.63	\$1,284,061
Grand Total	373,393	\$19.26	\$7,192,506	536,660	\$13.98	\$7,504,060

a/ The square footage for existing leased space generally reflects "usable" square footage, and the excludes common areas such as a lobby, conference rooms, etc.

b/ Initial lease agreements for the Judicial Center utilize a measurement of square footage that includes common areas within each tenant's leased floor space (e.g., hallways and elevator areas) as well as shared spaces on the main floor of the office building (e.g., lobby, conference and training rooms, copy center, mail room, etc.). Due to the design and intended use of the office building, this "gross up" factor is significant (approximately 50 percent).

c/ The plan for S.B. 08-206 assumed leased space rates of \$17.88/SF. Due to lower financing costs, these rates are now estimated at \$14.41/SF.

d/ Some staff attorneys for the Appellate Court are currently located at The Chancery due to space constraints. These staff will be located in the courthouse of the Judicial Center. Given that court fees are projected to more than cover the total debt service payments for the entire Judicial Center project, there are currently no plans to include leased space payments for the courthouse tenants.

e/ The Office of the State Public Defender has indicated that they are seeking a revision to the initial lease agreement to reduce the amount of space that they initially occupy in the Judicial Center (i.e, using projections of 2015, rather than 2020, staffing needs).

f/ The plan for S.B. 08-206 assumed private leased space rates of \$23.85/SF in FY 2012-13. For purposes of this preliminary overview, these rates are used to estimate the comparable leased space costs for other state agencies that become tenants in the Judicial Center and for state agencies that relocate to 1525 Sherman. In addition, staff has assumed the existing Capitol Complex rates will remain static through FY 2013-14. However, given the scheduled changes in the State's PERA contribution, this rate is likely understated. Pursuant to S.B. 08-206, the actual savings related to these agencies will be calculated and reported by the Department of Personnel and Administration.

In addition to changes in leased space payments, staff anticipates that agencies' FY 2013-14 budgets will reflect any operational or programmatic efficiencies that will be achieved through the consolidation and co-location of justice-related agencies, as anticipated by S.B. 08-206. The State Court Administrator's Office is continuing to explore common operating expenses and potential opportunities to consolidate services and reduce operating expenses. At this point, the most promising opportunities relate to coordinated contracts and purchasing, and the Law Library.

Finally, please note that many years in the future, after the debt service is paid off, lease payments should only be required to fund ongoing maintenance and operational expenses. At that time, lease payments should decrease and the General Assembly could choose to eliminate or redirect the court fees that were authorized by S.B. 08-206.

**FY 2012-13 Joint Budget Committee Staff Budget Briefing
Judicial Department**

BRIEFING ISSUE

ISSUE: Rates Charged by Prosecuting Attorneys for Duplicating Discoverable Materials

This issue brief discusses the outcomes of Joint Budget Committee efforts to resolve disagreements concerning procedures and fees associated with duplicating discoverable materials.

SUMMARY:

- ❑ 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 control and to provide duplicates upon request. The State pays the costs of duplicating the discoverable material when legal representation is provided for an indigent defendant.
- ❑ There is a long history of disagreements between the defense and the prosecution concerning the procedures and fees associated with duplicating discoverable materials, and some of these disputes have required court action to resolve. Since March 2009 the Joint Budget Committee has taken several actions to facilitate resolution of this issue.
- ❑ In response to Committee action, the State Court Administrator's Office submitted a proposed amendment to Rule 16 to define terms and clarify procedures. The Supreme Court Advisory Committee on Rules of Criminal Procedure, however, voted not to act on the proposal. Committee members opined that the issue was more appropriate for the legislature to resolve.
- ❑ The Joint Budget Committee sent a letter to the Colorado District Attorneys' Council (CDAC) requesting that it address procedural issues concerning District Attorneys and Rule 16, including: (1) developing a standardized statement to use in recovering costs from public agencies; (2) developing a standardized letter to use when notifying state agencies of rate changes; and (3) adopting a standard practice with respect to the timing of rate changes. While CDAC members agreed to notify the defense of rate changes in a timely manner, whenever possible, staff is not aware of any further actions taken by the CDAC to date.

RECOMMENDATION:

The Committee should consider introducing legislation to: codify the current policy of requiring prosecuting attorneys to make discoverable material available to the defense as soon as practicable; clarify which related expenditures the prosecuting attorney is allowed to recover from the defendant; and clarify certain procedural issues related to the recovery of discovery-related costs from state agencies.

DISCUSSION:

Background Information - 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 control¹, 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)]

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, the costs of duplicating discoverable materials are paid by entities that provide legal representation for indigent defendants.

2009 State Public Defender Proposal

In early 2009, 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' offices (DAs) for the costs of duplicating discoverable material. In FY 2008-09, the Office of the State Public Defender (OSPD) paid nearly \$970,000 to DAs for discovery, and the Office of the Alternate Defense Counsel (OADC) paid more than \$565,000. If these offices had been exempted from paying these costs, State expenditures would decrease accordingly.

At that time, staff did not recommend that the Committee introduce a bill as suggested by the State Public Defender due to two primary concerns:

- The proposal would reduce revenues to DAs without making a commensurate reduction in their 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

¹ 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.

discovery to non-indigent clients. Specifically, data provided by the OSPD indicated that the OSPD 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 the costs of duplicating discoverable materials, were previously included in a single line item appropriation to the Judicial Department. 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 duplicating discoverable materials, the rate of expenditure growth in recent years, and the variance in discovery costs charged by DAs, this issue clearly merited further analysis and attention.

2009 Request for Information from Judicial Department

Based on discussions with various Judicial Branch staff, as well as the Colorado District Attorneys' Council (CDAC)², staff recommended that this issue is best addressed internally by the Branch. Staff thus recommended that the Committee include the following request for information in its letter to the Chief Justice:

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.

The Department submitted the requested report for its November 16, 2009 hearing. Based on information provided by the CDAC and the OSPD, the Department confirmed that rates vary from district to district. To some extent, this variation relates to differences in staffing costs and lease equipment costs. The report explained the reasons that DAs may change their rates at different

² The CDAC is a quasi-government agency, supported by assessments charged to each member's office (through an intergovernmental agreement).

points during the year. The report also acknowledged that rate changes that occur throughout the fiscal year can cause budget planning difficulties for those who pay the costs.

The report indicated that whether individual DAs base their fees on actual cost of copying is not known and it is believed that the Judicial Department lacks authority to make such a determination as part of this process. The report acknowledged that questions about what should be counted, whether a portion of the cost of converting materials to electronic format if it is the practice of the DA to convert all materials to an electronic format for internal use anyway, how to account for the costs of acquiring new technology, etc., are not easily addressed by the rule a currently written.

The report indicated that a clarification of the definition of “actual costs of copying” would provide additional guidance on how rates are to be set. The report indicated that the Department is willing to address this issue through a Chief Justice Directive or a request to the Supreme Court Criminal Rules Committee for modification of Rule 16.

December 2009 JBC Meeting with District Attorneys/ 2010 JBC Letter to CDAC

In December 2009, the Joint Budget Committee met with several District Attorneys to discuss Rule 16. Specifically, DAs were asked what they understand is meant by "actual costs of copying", and whether they would recommend any statutory or rule changes to clarify the rule. Based on the information provided by DAs at this meeting and discussions with interested parties, the Committee took action to address two issues.

- *Clarification of “cost of duplicating” and “actual cost of copying” and rate methodology.* All of the parties who provided input to the Committee in late 2009 appeared to agree that more guidance as to what types of costs Rule 16 intends to authorize DAs to recover would be helpful. At that time, staff did not recommend that the Committee consider statutory changes to either establish a standard process for DAs to use in calculating reimbursement rates, or establishing rates or rate ceilings in statute. As discovery is governed by Supreme Court rule, staff believed that the clarification should be addressed through a rule change.

The State Court Administrator’s Office (SCAO) agreed to make a recommendation to the appropriate committee to amend Rule 16 to clarify what the “cost of duplicating” and “actual cost of copying” discoverable materials mean, and to update the rule to reflect technological and procedural changes that have occurred since the inception of Rule 16. The SCAO indicated it would first seek input from the OSPD, the OADC, and the CDAC.

- *Improving and Standardizing Invoicing and Rate Change Notification Processes.* The State Public Defender had raised three procedural issues related to Rule 16. First, not all DAs submit invoices that clearly indicate the basis for the charge (i.e., the quantity and nature of the materials provided and the applicable rates). Second, not all DAs submit information about periodic rate changes that adequately describe the basis for the rates and the reason for rate changes. Third, DAs currently change rates at various times throughout the year, making it difficult for state agencies to plan for and manage their appropriations.

The SCAO indicated that, because district attorneys are part of the executive branch and they are locally elected officials, it does not have the authority to set forth requirements for DAs that cover administrative issues such as those described above. Thus, it appeared that there were two options: (1) Encourage DAs to voluntarily address these issues, or (2) make statutory changes that address these issues.

Staff recommended encouraging voluntary action, and only considering statutory changes if DAs do not adequately address the issues. The CDAC is not a governing body, but it does exist to facilitate the exchange of information among DAs. The Executive Director of the CDAC had agreed to raise these issues with his board. Staff recommended that the Committee send a letter to the CDAC requesting that they address the following issues:

- Identify best practices and develop a standardized statement(s) for DAs to use in recovering costs from public agencies pursuant to Rule 16.
- Identify best practices and develop a standardized letter(s) for DAs to use when notifying state agencies and others when rates charged for duplicating discoverable materials change.
- Adopt a standard practice with respect to the timing of rate changes to ensure that state agencies have rate information in time to submit budget requests to the General Assembly. This practice should be designed to provide predictability and stability for both state agencies and DAs.

Finally, in order to keep the General Assembly apprised of rate changes imposed by DAs for the purpose of recovering costs pursuant to Rule 16, staff recommended that the Committee send a letter to the CDAC (and copy those DAs who were not members of the CDAC) requesting that each District Attorney copy the Joint Budget Committee when he or she notifies a state agency about a rate change. [See Appendix E for the letter from the Committee to the CDAC.]

Proposed Changes to Rule 16

On February 10, 2011, the SCAO submitted a letter to Judge Dailey of the Colorado Court of Appeals, Chair of the Supreme Court Advisory Committee on Rules of Criminal Procedure. The letter requested that the Rules Committee consider adopting proposed changes to Rule 16 to define the term “actual costs” of discovery [see Appendix F]. This 14-member committee is comprised of district and county court judges, prosecutors, and defense attorneys. The Committee makes suggestions to the Supreme Court for changes to the Colorado Rules of Criminal Procedure, which are intended to “provide for the just determination of criminal proceedings”, and “shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.”³

³ Rule 2, Colorado Rules of Criminal Procedure.

The Rules Committee discussed the proposed rule change at its April and July meetings earlier this year. The SCAO believed that the proposed changes had been agreed to by both the OSPD and the CDAC. However, at the April meeting Committee member Cliff Riedel, Esq. (from the 8th judicial district attorney's office) reported that:

"...there had been a misunderstanding and that CDAC had, in fact, never approved any attempt to define the phrase in the rule. Mr. Riedel stated that, particularly for smaller jurisdictions, calculating costs as suggested by the proposed rule would be difficult, particularly because the proposed rule does not allow for the recoupment of equipment costs, i.e. purchasing or maintaining a copier.⁴"

Further, Mr. Riedel, indicated that, "the CDAC was more interested in pursuing a legislative remedy to the problem"; the meeting minutes indicate that a number of the Rules Committee members "opined that the issue was more appropriately one for the legislature to resolve."⁵ The matter was tabled for the July meeting. At the July 2011 meeting, the Rules Committee approved a motion that the Rules Committee not act on the proposed rule change.

CDAC's Response to the Committee's February 2010 Letter

Improving and Standardizing Invoicing and Rate Change Notification Practices. A year ago, Ted Tow indicated that CDAC members had taken action on one of the three issues by committing to announcing rate changes in a timely manner (i.e., nine months before the beginning of the next fiscal year). However, he acknowledged that there may be situations when a DA will need to change rates at another time to ensure that they can perform discovery duties. Staff recently met with Tom Raynes, the current Executive Director of the CDAC, to discuss the status of the remaining two issues. Mr. Raynes indicated that he would again raise this issue at the CDAC's next meeting (October 28, 2011). To date, staff is not aware of any further actions taken by the CDAC.

JBC Notification Regarding Rate Changes. Since the JBC's February 18, 2010. letter, staff has received one copy of a rate change notification. In June 2010, the Denver District Attorney's office sent a copy of a letter announcing significant rate changes effective July 1, 2010. The letter indicates that the price increases were necessitated by cost increases over the last seven years, as well as a recent change in the policy of the State Public Defender who will no longer provide staff to make their own copies. This is the only rate change notification that staff has received to date.

New Information Concerning Impacts of Rule 16 on the Department of Law

Based on discussions with Michael Dougherty, Deputy Attorney General for Criminal Justice at the Department of Law, staff has learned that Rule 16 also has financial impacts on the Department of Law. The Department regularly provides discovery to defendants pursuant to Rule 16. The Department's practice related to providing discovery in criminal cases is to charge \$0.25 per page

⁴ Meeting minutes for April 15, 2011 meeting of the Rules Committee.

⁵ Ibid.

for a copied or scanned document. In cases with multiple defendants, the Department charges \$10.00 per additional disc and apportions the total cost of scanning and discs among co-defendants. A recent court case involving this rate methodology provides an illustration of the nature of the ongoing debate that is occurring between the prosecution and the defense related to Rule 16.

It is staff's understanding that this case⁶ involves two defendants and a large number of documents. The Department indicates that it required a staff paralegal more than 80 hours to scan, compile, and produce discovery to the defendants. The Department's per-page and per-disc rate structure resulted in total costs of \$1,800; each defendant was thus charged \$900. One of the defendants filed a motion in April 2011 objecting to the amount charged by the Department. The defendant cited the discovery practice of three other DAs as the basis for his objection. The court ordered that the Department provide the discovery to this defendant for \$1.00 per disc.

The Department has filed a motion asking the court to reconsider the discovery order. The Department argues that its fee structure is reasonable, based on the actual costs of providing discovery. The Department notes that if it had charged the defendant based on the staff time required to produce the discovery, the personnel costs alone would have totaled \$1,885 – an amount that would have exceeded the \$1,800 fee that was charged to the two defendants. The Department also argues that both civil and criminal rules seek to guarantee that discovery is not a source of revenue, and is therefore available to parties at a reasonable cost. The Department argues that a fee structure that is consistent with the Open Records Act and is less than the actual cost of providing discoverable materials is reasonable. Each defendant should be required to pay a proportionate share of the costs of the time, effort, and costs that go into producing discovery.

The Defendant's subsequent response argues that the court has never defined actual costs, and that the Department is essentially seeking to shift the cost of employing personnel on to criminal defendants. If the court allows the Department to recover personnel costs it would turn criminal discovery into an "economic windfall" for the Department at the expense of criminal defendants. The Defendant argues that the Department chose to scan the discovery and place it on a disc for its own purposes, rather than printing each document. While the "actual cost" of making physical paper copies is dependent on the number of pages that are produced, the actual cost of placing electronic files on a disc is only the cost of the disc because there is no printing involved.

Conclusions and Recommendations

In January 1997, in recognition of the fiscal impact of Rule 16 to the State, the Joint Budget Committee sent a letter to the CDAC and the State Public Defender requesting that they reach agreement on reasonable fees and procedures for document copying for discovery purposes. The Committee indicated that it felt strongly that such an agreement should allow for expedient access to documents, and provide for fees that provide adequate and reasonable cost recovery. Staff has not found any documentation to indicate that an agreement was reached. More recent Committee efforts

⁶ *The People of the State of Colorado v. Mehdi Ebrahimi*, Denver District Court case #11CR10081.

have also failed to resolve this issue. At this point it appears that all parties – including the Supreme Court Advisory Committee on Rules of Criminal Procedure, the SCAO, the OSPD, the OADC, and the CDAC – agree that a statutory change is the appropriate way to resolve this issue.

Staff thus recommends that the Committee consider introducing legislation to codify the current policy of requiring prosecuting attorneys in criminal cases to make discoverable material available to the defense as soon as practicable, and to clarify what types of related expenditures the prosecuting attorney is allowed to recover from the defendant (or in the case of an indigent defendant, the State). Such legislation should clarify the following financial issues:

- Should prosecuting attorneys be allowed to recover personnel costs related to making discoverable materials available to defendants? If so, which personnel-related costs may be recovered (i.e., salary and benefits)? What is the appropriate method to allocate a portion of personnel costs to a case, and to individual defendants?
- Should a prosecuting attorney be allowed to recover equipment costs related to making discoverable materials available to defendants? If so, which equipment costs may be recovered (i.e., the costs of purchasing, leasing, and/or maintaining a copier or computer equipment? storage costs?)? What is the appropriate method to allocate a portion of equipment costs to a case, and to individual defendants?
- Should a prosecuting attorney be allowed to recover administrative overhead costs? If so, what is the appropriate method to allocate a portion of administrative overhead costs to a case, and to individual defendants?
- Should a prosecuting attorney who has elected to implement an electronic system to manage case-related documents for internal purposes be allowed to recover system-related costs when discoverable materials are made available to the defense in an electronic format? If so, what is the appropriate method to allocate a portion of system-related costs to a case, and to individual defendants?

Please note, it is not clear what impact a rule change will have on the total state costs associated with duplicating discoverable materials. Given the significant disparity in existing rates, it is possible that such a clarification may cause some DAs to raise rates, and require others to reduce rates. However, staff believes that a consistent, defensible rate methodology is an appropriate goal. While it is possible that such a change would increase state expenditures in the short-term, it would provide more stability and predictability for both the prosecution and the defense.

Such legislation should also address several related procedural issues, including the following:

- What information should be provided by a prosecuting attorney when submitting a statement or invoice to a state agency seeking reimbursement for discovery-related costs?

- What information should be provided by a prosecuting attorney to a state agency concerning the calculation of discovery-related fees?
- When and how often may a prosecuting attorney modify discovery-related fees charged to state agencies?

Finally, if the Committee votes to have a bill drafted, staff requests permission to seek input and comment from the following entities:

- the three state agencies that currently incur the most significant expenditures related to discovery-related reimbursements (the OSPD, the OADC, and the SCAO);
- the Department of Law; and
- the CDAC.

Staff also requests permission to seek advice and input from staff in the Office of the State Auditor, based on their expertise related to cost accounting methods and their experience related to local government financial and budget procedures (including reviewing financial statements annually submitted by district attorneys' offices as required by Section 20-1-112, C.R.S.).

**FY 2012-13 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

BRIEFING ISSUE

INFORMATIONAL ISSUE: Status of the Development of an In-house E-Filing System

This issue brief provides a status update on the development of an in-house e-filing system.

SUMMARY:

- ❑ In July 2010, the Department successfully implemented an in-house public access system, called Colorado State Courts Data Access (CSCDA). The revenue that is generated through CSCDA is used for ongoing operating costs related to CSCDA, for a portion of the hardware and software needs for the courts and probation, and it is supporting the development of an in-house e-filing system, called Integrated Colorado Courts E-filing System (ICCES).
- ❑ Development of ICCES began over a year ago. The Department is currently piloting a small claims case module, which is anticipated to be available statewide by January 2012.
- ❑ The Department's contract for the existing vendor-operated e-filing system expires in December 2012. The Department is in the process of developing modules for all case types for which e-filing services are currently available, including civil, water, probate, and domestic relations cases that involve counsel. Following successful transition of these case types, the Department will develop modules for criminal, juvenile, mental health, and *pro se* domestic relations cases.
- ❑ The Department has submitted a cash funds request for FY 2012-13, and plans to submit a related supplemental request for FY 2011-12, to ensure a successful transition from the existing vendor-based e-filing system to the new in-house system in December 2012.

DISCUSSION:

Background Information - Development of Major IT Systems

Three critical information technology systems have been developed since the late 1990's. One system was developed in-house, and the other two were developed by outside vendors.

1. The Department deployed a unified, statewide court and probation *case management system* called ICON (i.e., the Integrated Colorado On-line Network) in 1997. The Department is in the process of developing a new case management system called jPOD (i.e., Judicial Paper On Demand) to replace ICON. This system will be deployed incrementally through the end of 2011.

2. To efficiently respond to requests from government agencies, background search companies, the public, and media for court and probation data, the Department issued a request for proposal (RFP) for vendor-based solution. The resulting web-based *public access system*, called CoCourts, went live in November 2000. This system provided access to all non-protected 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 paid an access fee. A second RFP was issued and awarded to LexisNexis/CourtLink in August 2005; this contract expired in June 2010.

The vendor-operated public access system was supported by user fees collected by the vendor. In addition, beginning in FY 2003-04, the Department required the vendor to collect a cost recovery fee on the Department's behalf. The Department used 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.

3. To address the high costs of receiving, retrieving, copying, and mailing court documents, the Department issued an RFP for vendor-based electronic document management system. The resulting *e-filing system* was piloted in July 2000 and implemented statewide in district courts by February 2001, in county courts (for limited case types) in early 2007, in the Court of Appeals in July 2008, and most recently in the Supreme Court. The Department indicates that Colorado has the only statewide e-filing system that is fully integrated with its case management system. This system has made it easier and cheaper for attorneys to file cases, increased the speed and reliability of retrieving documents, reduced the time required to distribute court orders, and reduced court staff workload.

The vendor-operated e-filing system is supported by user fees paid directly to the vendor. Similar to the public access system, since FY 2003-04 the Department has required the vendor to also collect a cost recovery fee on the Department's behalf. The current contract with LexisNexis expires in December 2012.

Background Information - Proposal to Bring Two Systems In-house

In April 2008, the Joint Budget Committee requested that the Judicial Department study the feasibility of providing its public access and e-filing systems in-house. The Department conducted the study and recommended that it be authorized to develop and deploy both systems in-house. To minimize risks, the Department recommended that it be authorized to develop and implement the public access system first using existing cost recovery fee revenues and a portion of the Department's IT Cash Fund balance¹. Subsequently, the Department would develop the e-filing

¹ The Judicial Department Information Technology Cash Fund, established through a Joint Budget Committee-sponsored bill in 2008, allows the Department to retain fees and cost recoveries related to information technology services, including providing public access to court records and e-filing services. Pursuant to Section 13-32-114 (2), C.R.S., moneys in this fund may be appropriated to the

system using existing cost recovery fee revenues as well as fee revenue related to the new public access system. The Department's proposed development would thus not require any General Fund moneys, and the Department anticipated that once both systems were implemented, the General Assembly could consider using revenues generated through both systems to reduce user fees, continue to improve information technology supporting the state court system, or reduce Department General Fund expenditures related to information technology.

In December 2008, the Joint Budget Committee voted to direct the Department to move ahead with plans to develop both systems. Since FY 2008-09, the General Assembly has appropriated cash funds to support development of both systems and ongoing operations of the public access system.

Implementation of In-house Public Access System

On July 1, 2010, the Department successfully implemented the in-house public access system, called Colorado State Courts Data Access (CSCDA). The system went live to the public through two vendors: Acxiom and Background Information Services. The revenue that is generated through CSCDA is used for ongoing operating costs related to CSCDA, for a portion of the hardware and software needed to support the courts and probation statewide, and it is supporting the development of an in-house e-filing system, called Integrated Colorado Courts E-filing System (ICCES).

Development of E-filing System

Development of the ICCES began over a year ago. The Department established an advisory committee to support and inform system development, and the Department created a website to allow advisory committee members and other interested parties to access information related to system development (e.g., meeting minutes, technical information, and project milestones). The Department also entered into a memorandum of understanding with the Denver County Court to co-develop an e-filing front-end program, thereby ensuring that the format and cost of the e-filing system will be consistent for all county courts.

The Department began system development with a module for small claims cases. This module has been designed to walk the user through a series of questions, rather than simply providing a form to be filled out. This module is thus intended to reduce court workload by eliminating the need for data entry from claimant forms. The Department began piloting this module in two judicial districts (the 1st and 17th). Based on feedback from the pilot districts, the Department has been modifying and improving the module. The Department intends to incrementally add districts to the pilot, and to have this module implemented statewide by January 2012.

The Department's contract with LexisNexis to make electronic filing services available for certain types of cases expires in December 2012. In order to ensure a successful transition for current system users, the Department is now developing modules for all case for which services are currently offered, including the following:

Department "for any expenses related to the department's information technology needs".

- Court of Appeals: General civil cases, agency cases, probate cases, and domestic relations cases that involve counsel
- District Court: General jurisdiction civil cases, domestic relations cases that involve counsel, probate cases, and water cases
- County Court: Civil suits asking for money damages, and forcible entry and detainer case types filed pursuant to Section 13-40-101 *et seq.*, C.R.S.

These modules are scheduled for completion by December 2012. The Department will then proceed to develop modules for the other case types for which e-filing is not currently available: criminal, juvenile, mental health, and *pro se* domestic relations cases.

Related Budget Requests for FY 2011-12 and FY 2012-13

The Department's FY 2012-13 budget request includes an increase of \$697,308 cash funds from the Information Technology (IT) Cash Fund and 4.0 FTE to continue development of ICCES. This request includes \$449,256 for related hardware and software purchases, and \$248,052 for the personal services and operating expenses associated with adding 4.0 FTE to the project. The amount requested is \$214,355 and 4.0 FTE less than the projections provided by the Department last year.

In addition, the Department has submitted a related FY 2012-13 decision item (R-5) for \$860,000 cash funds from the IT Cash Fund. The requested funds would allow the Department to purchase IT equipment that is necessary to maintain the reliability and efficiency of the Department's IT infrastructure (including CSCDA), and to accommodate the ICCES development efforts. The Department plans to submit an associated supplemental request in January. In total, the Department is requesting \$1.6 million over the next 18 months to purchase IT equipment. The request is intended to ensure that the appropriate hardware is in place before completion of the e-filing system, and before the Department relocates to the new Ralph L. Carr Judicial Center.

Specifically, the Department's IT system connects 104 court, probation, and administrative locations throughout the state and ensures the proper and secure storage and exchange of information between judicial employees, state agencies, and the public. The Department's servers which house all of the Department's production databases and its case management system (ICON/Eclipse) form the backbone of this infrastructure. In addition, the Colorado Integrated Criminal Justice Information System (CICJIS), CSCDA, inter-agency data exchanges, the court-appointed counsel payment system, and the Department's administrative systems are housed on these servers. The Department is requesting funding to purchase two new servers to replace one of the existing production servers and the back-up server.

The Department is also requesting funding to increase its document storage hardware to accommodate the large number of electronic documents that will be filed through the new e-filing system. The Department's existing controller units are under-sized, and do not provide the redundancy that will be needed to support the e-filing system.

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	Actual	Actual	Appropriation	Request	Requests

**JUDICIAL DEPARTMENT - COURTS AND PROBATION
Chief Justice Michael L. Bender**

(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 the Judicial Stabilization Cash Fund and various fees and cost recoveries.

Appellate Court Programs	11,824,879	11,093,005	11,242,796	11,595,223	
FTE	<u>138.2</u>	<u>134.5</u>	<u>140.0</u>	<u>140.0</u>	
General Fund	10,748,628	10,045,031	9,932,823	10,260,577	
FTE	124.7	117.0	122.5	122.5	
Cash Funds	1,076,251	1,047,974	1,309,973	1,334,646	
FTE	13.5	17.5	17.5	17.5	
Attorney Regulation - CF a/	6,077,482	6,950,882	6,000,000	6,000,000	
FTE b/	40.5	40.5	40.5	40.5	
Continuing Legal Education - CF a/	345,628	409,651	370,000	370,000	
FTE b/	4.0	4.0	4.0	4.0	
Law Examiner Board - CF a/	942,214	1,048,817	900,000	900,000	
FTE b/	8.2	8.2	8.2	8.2	
Law Library	332,080	390,729	550,000	550,000	
FTE	<u>0.0</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	
Cash Funds a/	332,080	380,628	500,000	500,000	
FTE	0.0	1.5	1.5	1.5	
Reappropriated Funds	0	10,101	50,000	50,000	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
TOTAL - Supreme Court/ Court of Appeals	19,522,283	19,893,084	19,062,796	19,415,223	1.8%
FTE	<u>190.9</u>	<u>188.7</u>	<u>194.2</u>	<u>194.2</u>	<u>0.0%</u>
General Fund	10,748,628	10,045,031	9,932,823	10,260,577	3.3%
FTE	124.7	117.0	122.5	122.5	0.0%
Cash Funds	8,773,655	9,837,952	9,079,973	9,104,646	0.3%
FTE	66.2	71.7	71.7	71.7	0.0%
Reappropriated Funds	0	10,101	50,000	50,000	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 2009-10 and 2010-11 reflect appropriated, rather than actual, levels.

(2) COURTS ADMINISTRATION

(A) Administration and Technology

This subdivision includes funding and staff associated with central administration of the State's judicial system, including budgeting, research, information technology systems and support, training, and technical assistance. Cash fund sources include the Judicial Department Information Technology Cash Fund and various fees and cost recoveries. Reappropriated funds include statewide and departmental indirect recoveries and funds transferred from other state agencies.

General Courts Administration	15,485,771	a/	15,694,751	15,809,110	
FTE	<u>178.3</u>	a/	<u>190.4</u>	<u>192.4</u>	
General Fund	12,292,978		11,761,843	11,508,950	JUD R-6
FTE	159.3		168.4	166.4	JUD R-6
Cash Funds	1,825,845		1,882,296	2,319,550	
FTE	19.0		20.0	24.0	
Reappropriated Funds	1,366,948		2,050,612	1,980,610	
FTE	0.0		2.0	2.0	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
Personal Services	8,613,288	b/ See above			
FTE	<u>104.8</u>	b/ line item			
General Fund	7,253,607				
FTE	104.4				
Cash Funds	43,445				
FTE	0.4				
Reappropriated Funds	1,316,236				
FTE	0.0				
Operating Expenses	<u>523,398</u>	b/ See above			
General Fund	479,290	line item			
Cash Funds	44,108				
Information Technology Infrastructure	<u>2,961,486</u>	<u>4,395,921</u>	<u>4,642,845</u>	<u>5,952,101</u>	
General Fund	353,094	529,869	853,094	403,094	
Cash Funds	2,608,392	3,866,052	3,789,751	5,549,007	JUD R-5
Statewide Indirect Cost Assessment	<u>62,984</u>	<u>113,511</u>	<u>143,285</u>	<u>110,175</u>	
Cash Funds	62,984	113,511	140,111	98,553	
Reappropriated Funds	0	0	0	3,390	
Federal Funds	0	0	3,174	8,232	
Departmental Indirect Cost Assessment - CF	1,242,659	1,253,437	1,907,327	1,870,435	
Judicial/Heritage Program	680,736	n/a			
FTE	<u>3.0</u>				
General Fund	503,260				
FTE	3.0				
Reappropriated Funds	177,476				

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
<i>Request v. Approp.</i>					
SUBTOTAL - Administration and Technology					
("Administration" prior to FY 2010-11)	14,084,551	21,248,640	22,388,208	23,741,821	6.0%
FTE	<u>107.8</u>	<u>178.3</u>	<u>190.4</u>	<u>192.4</u>	<u>1.1%</u>
General Fund	8,589,251	12,822,847	12,614,937	11,912,044	-5.6%
FTE	107.4	159.3	168.4	166.4	-1.2%
Cash Funds	4,001,588	7,058,845	7,719,485	9,837,545	27.4%
FTE	0.4	19.0	20.0	24.0	20.0%
Reappropriated Funds	1,493,712	1,366,948	2,050,612	1,984,000	-3.2%
FTE	0.0	0.0	2.0	2.0	0.0%
Federal Funds	0	0	3,174	8,232	159.4%

a/ Beginning in FY 2010-11, this subsection reflects the transfer of funding associated with 127.4 FTE previously included in other Long Bill sections, including: 57.9 FTE transferred from the Integrated Information Services subsection, 44.5 FTE transferred from the Trial Courts section, and 25.0 FTE transferred from the Probation and Related Services section.

b/ Actual expenditures include those associated with Personal Services and Operating Expenses line items in "Integrated Information Services" subsection.

(B) Central Appropriations

This subdivision includes centrally appropriated line items (which generally exclude funding associated with the four independent agencies). Cash fund sources include the Judicial Stabilization Cash Fund, the State Commission on Judicial Performance Cash Fund, the Offender Services Fund, the Judicial Department Information Technology Cash Fund, the Fines Collection Cash Fund, the Drug Offender Surcharge Fund, and the Alcohol and Drug Driving Safety Program Fund, and employee parking fees.

Health, Life, and Dental	<u>16,393,757</u>	<u>18,067,765</u>	<u>18,959,122</u>	<u>21,239,095</u>
General Fund	16,077,590	16,365,672	17,002,669	19,457,269
Cash Funds	316,167	1,702,093	1,956,453	1,781,826

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
Short-term Disability	<u>203,044</u>	<u>297,235</u>	<u>349,520</u>	<u>352,493</u>	
General Fund	192,515	264,809	287,955	287,796	
Cash Funds	10,529	32,426	61,565	64,697	
S.B. 04-257 Amortization Equalization Disbursement	<u>3,464,910</u>	<u>4,526,674</u>	<u>5,368,501</u>	<u>6,086,358</u>	
General Fund	3,458,308	4,043,325	4,410,863	5,022,613	JUD R-4
Cash Funds	6,602	483,349	957,638	1,063,745	JUD R-2, R-3
S.B. 06-235 Supplemental Amortization Equalization Disbursement	<u>2,218,565</u>	<u>3,252,810</u>	<u>4,259,422</u>	<u>4,336,272</u>	
General Fund	2,124,448	2,918,597	3,497,156	3,552,381	JUD R-4
Cash Funds	94,117	334,213	762,266	783,891	JUD R-2, R-3
Salary Survey	<u>0</u>	<u>0</u>	<u>0</u>	<u>1,352,600</u>	
General Fund	0	0	0	309,680	JUD R-1
Cash Funds	0	0	0	1,042,920	JUD R-1
Anniversary Increases	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Workers' Compensation - GF	1,623,687	1,647,138	1,672,725	1,865,076	
Legal Services - GF	157,590	85,966	227,130	227,130	
Hours	2,090.6	1,171.7	3,000.0	3,000.0	
Purchase of Services from Computer Center - GF	256,998	295,960	510,537	768,375	
Multiuse Network Payments - GF	334,800	270,664	412,501	534,336	
Payment to Risk Management and Property Funds - GF	214,188	65,718	232,018	238,829	
Vehicle Lease Payments - GF	55,025	59,044	58,443	72,221	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
Leased Space	<u>1,207,774</u>	<u>1,262,204</u>	<u>1,285,765</u>	<u>1,323,343</u>	
General Fund	1,083,763	1,129,939	1,114,285	1,151,863	
Cash Funds	124,011	132,265	171,480	171,480	
Communication Services Payments - GF	10,938	11,377	12,161	27,315	
Lease Purchase - GF	119,878	119,878	119,878	119,878	
Administrative Purposes	<u>131,913</u>	Transferred to			
General Fund	106,614	General Courts			
Cash Funds	25,299	Admin. line item			
Appellate Reports Publication - GF	55,822	See Appellate Court Pgms.			<i>Request v. Approp.</i>
SUBTOTAL - Central Appropriations ("Special Purpose" Prior to FY 2010-11)	<u>26,448,889</u>	<u>29,962,433</u>	<u>33,467,723</u>	<u>38,543,321</u>	<u>15.2%</u>
General Fund	25,872,164	27,278,087	29,558,321	33,634,762	13.8%
Cash Funds	576,725	2,684,346	3,909,402	4,908,559	25.6%

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	Actual	Actual	Appropriation	Request	Requests

(C) Centrally Administered Programs

This subdivision includes funding and staff associated with specific functions, grant programs, and distributions that are administered by the State Court Administrator's Office. Cash fund sources include the Victims and Witnesses and Law Enforcement Fund, the Crime Victim Compensation Fund, the Judicial Collections Enhancement Fund, the Fines Collection Cash Fund, the Judicial Stabilization Cash Fund, the Court Security Cash Fund, the State Commission on Judicial Performance Cash Fund, the Family Violence Justice Fund, the Family-friendly Court Program Cash Fund, and various fees, cost recoveries, and grants. Reappropriated funds include Victims and Witnesses Assistance and Law Enforcement funds transferred from the Trial Courts section, and federal funds transferred from the Department of Human Services.

Victim Assistance - CF a/	16,373,571	16,159,199	16,375,000	16,375,000	
Victim Compensation - CF a/	12,175,283	13,123,438	12,175,000	12,175,000	
Collections Investigators	5,081,134	4,960,725	5,082,460	5,179,351	
FTE	<u>71.3</u>	<u>70.5</u>	<u>83.2</u>	<u>83.2</u>	
Cash Funds	4,267,516	4,187,416	4,184,919	4,281,810	
FTE	71.3	70.5	83.2	83.2	
Reappropriated Funds	813,618	773,309	897,541	897,541	
Problem-solving Courts	1,375,160	2,145,296	2,309,513	2,343,417	
FTE	<u>18.3</u>	<u>32.2</u>	<u>32.7</u>	<u>32.7</u>	
Cash Funds	926,231	1,115,633	1,527,389	2,343,417	
FTE	13.6	17.2	21.7	32.7	
Federal Funds	448,929	1,029,663	782,124	0	
FTE	4.7	15.0	11.0	0.0	
Language Interpreters	3,174,489	3,245,920	3,633,821	3,671,284	
FTE	<u>19.9</u>	<u>22.7</u>	<u>25.0</u>	<u>25.0</u>	
General Fund	3,146,340	3,218,320	3,347,321	3,384,784	
FTE	19.9	22.7	25.0	25.0	
Cash Funds	28,149	27,600	286,500	286,500	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
Courthouse Security - CF	2,778,305	2,966,235	3,864,989	3,864,989	
FTE	1.0	1.0	1.0	1.0	
Courthouse Capital/ Infrastructure Maintenance	<u>3,064,041</u>	<u>2,432,067</u>	<u>536,055</u>	<u>1,657,386</u>	
General Fund	0	80,791	62,529	0	
Cash Funds	3,064,041	2,351,276	473,526	1,657,386	JUD R-2, R-3, R-4, R-8
Senior Judge Program	<u>1,943,200</u>	<u>1,592,873</u>	<u>1,500,000</u>	<u>1,500,000</u>	
General Fund	1,943,200	1,592,873	1,500,000	0	JUD R-1, R-4
Cash Funds	0	0	0	1,500,000	JUD R-1, R-4
Judicial Education and Training [NEW LINE ITEM] - CF				1,069,536	JUD R-6
FTE				2.0	JUD R-6
Office of Judicial Performance Evaluation - CF	646,686	705,806	916,353	890,955	
FTE	1.6	2.0	2.0	2.0	
Family Violence Justice Grants	<u>860,912</u>	<u>870,934</u>	<u>675,000</u>	<u>628,430</u>	
General Fund	750,000	750,000	458,430	458,430	
Cash Funds	110,912	120,934	216,570	170,000	
Family Friendly Court Program - CF	319,252	249,549	375,000	375,000	
FTE	0.5	0.5	0.5	0.5	
Child Support Enforcement	73,333	81,126	88,864	90,900	
FTE	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	
General Fund	24,923	27,633	30,212	30,904	
Reappropriated Funds	48,410	53,493	58,652	59,996	
FTE	1.0	1.0	1.0	1.0	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
SUBTOTAL - Centrally Administered Programs	47,865,366	b/ 48,533,168	47,532,055	49,821,248	4.8%
FTE	<u>113.6</u>	b/ <u>129.9</u>	<u>145.4</u>	<u>147.4</u>	<u>1.4%</u>
General Fund	5,864,463	5,669,617	5,398,492	3,874,118	-28.2%
FTE	19.9	22.7	25.0	25.0	0.0%
Cash Funds	40,689,946	41,007,086	40,395,246	44,989,593	11.4%
FTE	88.0	91.2	108.4	121.4	12.0%
Reappropriated Funds	862,028	826,802	956,193	957,537	0.1%
FTE	1.0	1.0	1.0	1.0	0.0%
Federal Funds	448,929	1,029,663	782,124	0	-100.0%
FTE	4.7	15.0	11.0	0.0	-100.0%

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/ Figures reflect expenditures related to Problem-solving Courts. However, please note that the funds and staff were actually appropriated as part of the Trial Courts Program line item in FY 2009-10.

(D) Ralph L. Carr Justice Center [NEW SUBSECTION]

This subdivision would include appropriations related to the operations of the Ralph L. Carr Justice Center. Funding supports: various contractual services (including engineering, custodial, and maintenance services; parking garage operations and maintenance; and copy center operations); the purchase of security services from the Colorado State Patrol; utilities; operational and engineering facility staff; and an annual appropriation for future facility controlled maintenance needs. Cash funds are from the Justice Center Cash Fund.

Personal Services [NEW LINE ITEM] - CF	1,018,419	JUD R-7
FTE	2.0	JUD R-7
Operating Expenses [NEW LINE ITEM] - CF	2,147,060	JUD R-7
Controlled Maintenance [NEW LINE ITEM] - CF	1,000,000	JUD R-7

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
SUBTOTAL - Ralph L. Carr Justice Center - CF				4,165,479	<i>n/a</i>
FTE				2.0	<i>n/a</i>
					<i>Request v. Approp.</i>
TOTAL - Courts Administration	88,398,806	99,744,241	a/ 103,387,986	116,271,869	12.5%
FTE	<u>221.4</u>	<u>308.2</u>	a/ <u>335.8</u>	<u>341.8</u>	<u>1.8%</u>
General Fund	40,325,878	45,770,551	47,571,750	49,420,924	3.9%
FTE	127.3	182.0	193.4	191.4	-1.0%
Cash Funds	45,268,259	50,750,277	52,024,133	63,901,176	22.8%
FTE	88.4	110.2	128.4	147.4	14.8%
Reappropriated Funds	2,355,740	2,193,750	3,006,805	2,941,537	-2.2%
FTE	1.0	1.0	3.0	3.0	0.0%
Federal Funds	448,929	1,029,663	785,298	8,232	-99.0%
FTE	4.7	15.0	11.0	0.0	-100.0%

a/ Beginning in FY 2010-11, this section reflects the transfer of funding associated with 69.5 FTE previously included in other Long Bill sections, including: 44.5 FTE transferred from Trial Courts, and 25.0 FTE transferred from Probation and Related Services.

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	Actual	Actual	Appropriation	Request	Requests

(3) TRIAL COURTS

Trial courts consist of district courts in 22 judicial districts, water courts, and county courts. *District courts:* preside over felony criminal matters, civil claims, juvenile matters, probate, mental health, and divorce proceedings; handle appeals from municipal and county courts; and review decisions of administrative boards and agencies. *Water courts* have exclusive jurisdiction over cases involving the determination of water rights and the use and administration of water. *County courts:* handle civil actions involving no more than \$15,000, misdemeanor cases, civil and criminal traffic infractions, and felony complaints; issue search warrants and protection orders in cases involving domestic violence; and hear municipal court appeals. Cash fund sources include the Judicial Stabilization Cash Fund, various court fees and cost recoveries, and the sale of jury pattern instructions. Reappropriated funds reflect federal funds transferred from the Departments of Public Safety and Human Services.

Trial Court Programs	121,443,399 a/	114,677,763 b/	118,970,878	123,843,048	
FTE	<u>1,671.0</u> a/	<u>1,615.2</u> b/	<u>1,754.6</u>	<u>1,797.1</u>	
General Fund	97,755,849	90,070,969	90,369,520	93,071,317	JUD R-6
FTE	1,407.5	1,345.3	1,435.8	1,435.8	
Cash Funds	22,651,044	23,572,951	27,501,358	29,671,731	JUD R-2, R-3,
FTE	263.5	269.9	318.8	361.3	R-6
Reappropriated Funds	1,036,506	1,033,843	1,100,000	1,100,000	JUD R-2, R-3
Capital Outlay	<u>1,015,079</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	0	0	0	0	
Cash Funds	1,015,079	0	0	0	
Court Costs, Jury Costs, and Court-appointed Counsel	<u>15,841,967</u>	<u>15,472,347</u>	<u>15,594,352</u>	<u>15,594,352</u>	
General Fund	15,649,308	15,319,142	15,109,352	15,109,352	
Cash Funds	192,659	153,205	485,000	485,000	
District Attorney Mandated Costs	<u>2,226,050</u>	<u>2,130,507</u>	<u>2,198,494</u>	<u>2,264,449</u>	
General Fund	2,101,050	2,005,507	2,073,494	2,139,449	
Cash Funds	125,000	125,000	125,000	125,000	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
Federal Funds and Other Grants	1,337,344	1,506,856	2,900,000	2,900,000	
FTE c/	<u>14.0</u>	<u>14.0</u>	<u>14.0</u>	<u>14.0</u>	
Cash Funds	254,272	366,130	975,000	975,000	
FTE c/	3.0	3.0	3.0	3.0	
Reappropriated Funds	48,385	116,080	300,000	300,000	
FTE c/	6.0	6.0	6.0	6.0	
Federal Funds	1,034,687	1,024,646	1,625,000	1,625,000	
FTE c/	5.0	5.0	5.0	5.0	
					<i>Request v. Approp.</i>
TOTAL - Trial Courts	141,863,839 a/	133,787,473 b/	139,663,724	144,601,849	3.5%
FTE	<u>1,685.0</u> a/	<u>1,629.2</u> b/	<u>1,768.6</u>	<u>1,811.1</u>	<u>2.4%</u>
General Fund	115,506,207	107,395,618	107,552,366	110,320,118	2.6%
FTE	1,407.5	1,345.3	1,435.8	1,435.8	0.0%
Cash Funds	24,238,054	24,217,286	29,086,358	31,256,731	7.5%
FTE	266.5	272.9	321.8	364.3	13.2%
Reappropriated Funds	1,084,891	1,149,923	1,400,000	1,400,000	0.0%
FTE	6.0	6.0	6.0	6.0	0.0%
Federal Funds	1,034,687	1,024,646	1,625,000	1,625,000	0.0%
FTE	5.0	5.0	5.0	5.0	0.0%

a/ Figures exclude expenditures and staff related to Problem-solving Courts, which are instead reflected in the Centrally Administered Programs subsection.

b/ Beginning in FY 2010-11, this section reflects the transfer of funding associated with 44.5 FTE that are now included in the Courts Administration, Administration and Technology subsection of the Long Bill.

c/ FTE figures for FY 2009-10 and 2010-11 reflect appropriated, rather than actual, levels.

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	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.

Probation Programs		68,406,169	a/ 73,267,156	75,988,668	
FTE		<u>1,050.2</u>	a/ <u>1,130.4</u>	<u>1,149.4</u>	
General Fund		61,838,774	62,875,772	65,388,401	JUD R-4
FTE		896.3	976.5	995.5	JUD R-4
Cash Funds		6,567,395	10,391,384	10,600,267	
FTE		153.9	153.9	153.9	
Personal Services	68,661,106		See above		
FTE	<u>1,038.6</u>		line item		
General Fund	59,025,104				
FTE	884.7				
Cash Funds	9,636,002				
FTE	153.9				
Operating Expenses	<u>2,398,304</u>		See above		
General Fund	1,988,697		line item		
Cash Funds	409,607				
Offender Treatment and Services	<u>8,658,982</u>	<u>9,989,786</u>	<u>17,499,136</u>	<u>17,499,136</u>	
Cash Funds	8,473,958	9,603,829	10,619,290	10,619,290	
Reappropriated Funds	185,024	385,957	6,879,846	6,879,846	
S.B. 03-318 Community Treatment Funding	<u>2,200,000</u>	<u>2,200,000</u>	<u>2,200,000</u>	<u>2,200,000</u>	
General Fund	2,200,000	2,200,000	2,200,000	2,200,000	
Cash Funds	0	0	0	0	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
H.B. 10-1352 Appropriation to Drug Offender Surcharge Fund - GF	n/a	1,068,196	6,156,118	6,156,118	
		See Offender Treatment and Services			
H.B. 10-1352 Treatment Services - RF	n/a				
S.B. 91-094 Juvenile Services - RF	1,633,255	1,603,089	1,906,837	2,496,837	JUD R-9
FTE	16.6	15.1	25.0	25.0	
Day Reporting Services - GF	186,067	206,041	393,078	393,078	
Victims Grants - RF	431,481	434,635	650,000	650,000	
FTE b/	6.0	6.0	6.0	6.0	
Federal Funds and Other Grants	4,460,495	4,973,611	5,600,000	5,600,000	
FTE b/	<u>33.0</u>	<u>33.0</u>	<u>33.0</u>	<u>33.0</u>	
Cash Funds	1,094,693	946,292	1,950,000	1,950,000	
FTE b/	2.0	2.0	2.0	2.0	
Reappropriated Funds	773,008	1,152,461	850,000	850,000	
FTE b/	18.0	18.0	18.0	18.0	
Federal Funds	2,592,794	2,874,858	2,800,000	2,800,000	
FTE b/	13.0	13.0	13.0	13.0	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
TOTAL - Probation and Related Services	88,629,690	88,881,527 a/	107,672,325	110,983,837	3.1%
FTE	<u>1,094.2</u>	<u>1,104.3</u> a/	<u>1,194.4</u>	<u>1,213.4</u>	<u>1.6%</u>
General Fund	63,399,868	65,313,011	71,624,968	74,137,597	3.5%
FTE	884.7	896.3	976.5	995.5	1.9%
Cash Funds	19,614,260	17,117,516	22,960,674	23,169,557	0.9%
FTE	155.9	155.9	155.9	155.9	0.0%
Reappropriated Funds	3,022,768	3,576,142	10,286,683	10,876,683	5.7%
FTE	40.6	39.1	49.0	49.0	0.0%
Federal Funds	2,592,794	2,874,858	2,800,000	2,800,000	0.0%
FTE	13.0	13.0	13.0	13.0	0.0%

a/ Beginning in FY 2010-11, this section reflects the transfer of funding associated with 25.0 FTE that are now included in the Courts Administration, Administration and Technology subsection of the Long Bill.

b/ FTE figures for FY 2009-10 and 2010-11 reflect appropriated, rather than actual, levels.

					<i>Request v. Approp.</i>
TOTAL - Judicial Department (Courts/ Probation)	338,414,618	342,306,325	369,786,831	391,272,778	5.8%
FTE	<u>3,191.5</u>	<u>3,230.4</u>	<u>3,493.0</u>	<u>3,560.5</u>	<u>1.9%</u>
General Fund	229,980,581	228,524,211	236,681,907	244,139,216	3.2%
FTE	2,544.2	2,540.6	2,728.2	2,745.2	0.6%
Cash Funds	97,894,228	101,923,031	113,151,138	127,432,110	12.6%
FTE	577.0	610.7	677.8	739.3	9.1%
Reappropriated Funds	6,463,399	6,929,916	14,743,488	15,268,220	3.6%
FTE	47.6	46.1	58.0	58.0	0.0%
Federal Funds	4,076,410	4,929,167	5,210,298	4,433,232	-14.9%
FTE	22.7	33.0	29.0	18.0	-100.0%

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	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 - GF	37,852,827	38,108,913	42,117,534	44,515,981	OSPD R-1, R-3
FTE	518.4	560.7	645.2	652.8	OSPD R-3
Health, Life, and Dental - GF	3,056,218	4,046,851	4,555,942	4,569,936	OSPD R-3
Short-term Disability - GF	50,852	57,220	68,330	70,697	OSPD R-1, R-3
S.B. 04-257 Amortization Equalization Disbursement - GF	650,696	873,686	1,067,990	1,266,026	OSPD R-1, R-3
S.B. 06-235 Supplemental Amortization Equalization Disbursement - GF	371,880	630,654	852,431	1,082,967	OSPD R-1, R-3
Salary Survey - GF	0	0	0	0	
Anniversary Increases - GF	0	0	0	0	
Operating Expenses	<u>988,518</u>	<u>1,147,956</u>	<u>1,209,206</u>	<u>1,330,881</u>	
General Fund	966,968	1,126,981	1,179,206	1,300,881	OSPD R-3
Cash Funds	21,550	20,975	30,000	30,000	
Purchase of Services from Computer Center - GF	19,579	See Cts. Admin, Admin. & Tech.			
Vehicle Lease Payments - GF	50,688	52,632	59,783	109,402	

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	Actual	Actual	Appropriation	Request	Requests
Capital Outlay - GF	100,000	233,910	141,090	56,436	OSPD R-3
Leased Space/Utilities - GF	4,490,715	5,895,388	6,017,436	6,122,344	
Automation Plan - GF	1,097,199 a/	1,891,335	894,768	894,768	
Contract Services - GF	18,000	18,000	18,000	18,000	
Mandated Costs - GF	3,092,601	3,516,379	3,649,464	3,649,464	
Grants	88,729	99,132	316,520	218,260	
FTE	<u>2.0</u>	<u>2.0</u>	<u>5.1</u>	<u>3.6</u>	
Cash Funds	81,558	99,132	316,520	218,260	OSPD R-3
FTE	1.0	2.0	5.1	3.6	OSPD R-3
Reappropriated Funds	7,171	0	0	0	
FTE	1.0	0.0	0.0	0.0	
					<i>Request v. Approp.</i>
TOTAL - Public Defender	51,928,502	56,572,056	60,968,494	63,905,162	4.8%
FTE	<u>520.4</u>	<u>562.7</u>	<u>650.3</u>	<u>656.4</u>	<u>0.9%</u>
General Fund	51,818,223	56,451,949	60,621,974	63,656,902	5.0%
FTE	518.4	560.7	645.2	652.8	1.2%
Cash Funds	103,108	120,107	346,520	248,260	-28.4%
FTE	1.0	2.0	5.1	3.6	-29.4%
Reappropriated Funds	7,171	0	0	0	n/a
FTE	1.0	0.0	0.0	0.0	n/a

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	Actual	Actual	Appropriation	Request	Requests
(6) ALTERNATE DEFENSE COUNSEL					
Lindy Frolich, Alternate Defense Counsel					
This agency provides legal representation for indigent defendants in cases where the State 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	704,510	690,609	690,704	706,089	
FTE	7.5	7.5	7.5	7.5	
Health, Life, and Dental - GF	65,348	72,791	80,682	80,682	
Short-term Disability - GF	941	1,029	1,089	1,089	
S.B. 04-257 Amortization Equalization Disbursement - GF	11,523	13,727	17,026	19,490	
S.B. 06-235 Supplemental Amortization Equalization Disbursement - GF	7,080	9,909	13,590	16,678	
Salary Survey - GF	0	0	0	0	
Performance-based Pay Awards - GF	0	0	0	0	
Operating Expenses	<u>65,619</u>	<u>68,844</u>	<u>67,030</u>	<u>67,030</u>	
General Fund	65,619	68,844	67,030	67,030	
Cash Funds	0	0	0	0	
Purchase of Services from Computer Center - GF	1,203	See Cts. Admin, Admin. & Tech.			
Leased Space - GF	32,022	36,577	40,544	35,880	

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	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	Change
	Actual	Actual	Appropriation	Request	Requests
Training and Conferences	<u>40,000</u>	<u>41,000</u>	<u>40,000</u>	<u>40,000</u>	
General Fund	20,000	21,000	20,000	20,000	
Cash Funds	20,000	20,000	20,000	20,000	
Conflict of Interest Contracts - GF	20,760,634	18,132,047	20,692,161	20,503,742	OADC R-1
Mandated Costs - GF	1,513,582	1,429,874	1,589,848	1,619,796	OADC R-1 <i>Request v. Approp.</i>
TOTAL - Alternate Defense Counsel	23,202,462	20,496,407	23,232,674	23,090,476	-0.6%
FTE	<u>7.5</u>	<u>7.5</u>	<u>7.5</u>	<u>7.5</u>	0.0%
General Fund	23,182,462	20,476,407	23,212,674	23,070,476	-0.6%
FTE	7.5	7.5	7.5	7.5	0.0%
Cash Funds	20,000	20,000	20,000	20,000	0.0%

(7) OFFICE OF THE CHILD'S REPRESENTATIVE

Linda Weinerman, 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	1,865,701	1,806,800	1,868,708	1,910,890
FTE	26.8	26.4	26.9	26.9
Health, Life, and Dental - GF	139,235	130,716	167,808	167,808
Short-term Disability - GF	2,512	2,685	2,986	2,986
S.B. 04-257 Amortization Equalization Disbursement - GF	31,595	37,502	46,681	52,568
S.B. 06-235 Supplemental Amortization Equalization Disbursement - GF	19,384	27,072	37,260	44,960

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	Actual	Actual	Appropriation	Request	Requests
Salary Survey - GF	0	0	0	0	
Anniversary Increases - GF	0	0	0	0	
Operating Expenses - GF	172,112	204,872	159,929	159,929	
Capital Outlay - GF	3,517	0	0	0	
Purchase of Services from Computer Center - GF	1,553	See Cts. Admin, Admin. & Tech.			
Leased Space - GF	144,178	147,687	150,380	162,090	
CASA Contracts - GF	520,000	520,000	475,000	520,000	OCR R-1
Training - GF	36,999	52,607	38,000	38,000	
Court Appointed Counsel - GF	15,853,321	16,021,900	16,531,560	16,531,560	
Mandated Costs - GF	39,717	29,290	26,228	26,228	
					<i>Request v. Approp.</i>
TOTAL - Office of the Child's Representative - GF	18,829,824	18,981,131	19,504,540	19,617,019	0.6%
FTE	26.8	26.4	26.9	26.9	0.0%

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	Actual	Actual	Appropriation	Request	Requests

(8) INDEPENDENT ETHICS COMMISSION

Jane Feldman, Executive Director

Established through a 2006 constitutional amendment, the Commission is charged with hearing complaints, issuing findings, assessing penalties, and issuing advisory opinions on ethics issues that arise concerning public officers, members of the General Assembly, local government officials, or government employees. The Commission was transferred from the Department of Personnel and Administration and established as an independent agency in the Judicial Branch in FY 2010-11.

Personal Services - GF	n/a	175,963	a/	125,799	129,827
FTE		2.0		1.0	1.0
Health, Life, and Dental - GF	n/a	9,256	a/	4,437	5,461
Short-term Disability - GF	n/a	272	a/	285	142
S.B. 04-257 Amortization Equalization Disbursement - GF	n/a	3,770	a/	4,458	2,680
S.B. 06-235 Supplemental Amortization Equalization Disbursement - GF	n/a	2,721	a/	3,558	2,303
Salary Survey - GF	n/a	0		0	0
Anniversary Increases - GF	n/a	0		0	0
Operating Expenses - GF	n/a	36,906	a/	15,807	15,807
Legal Services - GF	n/a	34,217	a/	68,139	68,139
Hours		466.4		900.0	900.0

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	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
TOTAL - Independent Ethics Commission - GF		263,105	222,483	224,359	0.8%
FTE		2.0	1.0	1.0	0.0%

a/ Please note that the FY 2010-11 appropriation was provided in a lump sum; amounts are shown by line item, above, for informational purposes.

					<i>Request v. Approp.</i>
JUDICIAL GRAND TOTAL	432,375,406	438,619,024	473,715,022	498,109,794	5.1%
FTE	<u>3,746.2</u>	<u>3,829.0</u>	<u>4,178.7</u>	<u>4,252.3</u>	<u>1.8%</u>
General Fund	323,811,090	324,696,803	340,243,578	350,707,972	3.1%
FTE	3,096.9	3,137.2	3,408.8	3,433.4	0.7%
Cash Funds	98,017,336	102,063,138	113,517,658	127,700,370	12.5%
FTE	578.0	612.7	682.9	742.9	8.8%
Reappropriated Funds	6,470,570	6,929,916	14,743,488	15,268,220	3.6%
FTE	48.6	46.1	58.0	58.0	0.0%
Federal Funds	4,076,410	4,929,167	5,210,298	4,433,232	-14.9%
FTE	22.7	33.0	29.0	18.0	-37.9%

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APPENDIX B: SUMMARY OF MAJOR LEGISLATION

- ❑ **H.B. 11-1300 (Looper/ Grantham): Conservation Easement Tax Credit Dispute Resolution.** Authorizes a new expedited method for resolving disputed claims over conservation easement state income tax credits. Appropriates \$653,000 General Fund and 6.0 FTE to the Judicial Department for FY 2011-12 to hear cases related to a notice of deficiency, disallowance, or rejection from the Department of Revenue regarding a claimed tax credit on conservation easements.

- ❑ **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 Department of Law) into a single complex at the now former site of the Colorado Supreme Court and the Colorado History Museum. Also authorizes the construction of a new history museum on 12th Avenue, between Broadway and Lincoln using a limited amount of funding 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 complex and the new museum. 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, to cover 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 previously resided.

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 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.

- ❑ **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.

**FY 2012-13 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

**APPENDIX C: UPDATE OF FY 2011-12
LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION**

Long Bill Footnotes

- 1a 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 also receives moneys from the Persistent Drunk Driver Cash Fund that are transferred from the Department of Human Services.

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 \$200 to \$4,500 for each conviction or deferred sentence; these surcharges were increased by H.B. 10-1352. Moneys credited to 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. In addition, pursuant to H.B. 10-1352 [see Section 16-11.5-102, C.R.S.], General Fund moneys appropriated to the Fund shall only be used to cover the costs associated with the treatment of substance abuse or co-occurring disorders of adult offenders who are assessed to be in need of treatment and who are on diversion, on probation, on parole, in community corrections, or in jail.

Pursuant to Section 16-11.5-102 (3), C.R.S., the Judicial, Corrections, Human Services, and Public Safety departments are required to cooperate and develop a plan for the allocation of moneys deposited in the Fund. With respect to moneys appropriated to the Fund based on savings generated by H.B. 10-1352, allocation decisions are made by these same four departments plus three representatives for District Attorneys and one representative for the State Public Defender. The Judicial Department is required to submit the allocation plan with its annual budget request.

As detailed in the following two tables, departments are requesting appropriations totaling \$11,119,950 for FY 2012-13. Requested appropriations for FY 2012-13 are anticipated to exceed projected available funds by \$619,123. Due to the current and projected levels of revenues, the Fund oversight committee has planned for spending restrictions in FY 2011-12, as well as the next two fiscal years. Please note that revenues and expenditures related to H.B. 10-1352 are excluded from the main table and are instead reflected separately in the second table.

Drug Offender Surcharge Fund (Excluding HB 10-1352 Revenues): Revenue and Expenditure Trends					
Description	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Proj.	FY 12-13 Proj.	FY 13-14 Proj.
Beginning Fund Balance	\$2,302,257	\$1,034,717	\$597,656	\$186,260	\$286,769
Revenue:					
Surcharges	4,272,439	4,090,718	4,111,172	4,152,283	4,193,806
Interest	<u>37,592</u>	<u>35,899</u>	<u>41,112</u>	<u>62,284</u>	<u>62,907</u>
Total Revenues	4,310,031	4,126,617	4,152,284	4,214,567	4,256,713
Expenditures:					
Corrections	1,245,128	1,058,358	1,245,127	1,245,127	1,245,127
Human Services	1,239,714	1,080,024	1,270,616	1,270,627	1,270,627
Judicial	784,279	1,483,655	1,483,657	1,396,383	1,309,109
Public Safety	948,450	941,641	1,107,813	1,107,813	1,107,813
All agency restriction			<u>(543,533)</u>	<u>(905,892)</u>	<u>(905,892)</u>
Total Expenditures	4,217,571	4,563,678	4,563,680	4,114,058	4,026,784
Transfers Out	1,360,000	0			
Ending Fund Balance	1,034,717	597,656	186,260	286,769	516,698
Annual Change in Fund Balance		(437,061)	(411,396)	(349,868)	229,929
<i>Fund Balance as Percent of Annual Expenditures</i>	24.5%	13.1%	4.1%	7.0%	12.8%

Drug Offender Surcharge Fund Revenues Related to HB 10-1352: Revenue and Expenditure Trends					
Description	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Proj.	FY 12-13 Proj.	FY 13-14 Proj.
Beginning Fund Balance			\$682,239	\$738,357	\$794,475
Revenue:					
HB 10-1352 GF Appropriation		1,068,196	6,156,118	6,156,118	6,156,118
HB 10-1352 Expenditures		385,957	6,100,000	6,100,000	6,100,000
Ending Fund Balance		682,239	738,357	794,475	850,593
Annual Change in Fund Balance			56,118	56,118	56,118
<i>Fund Balance as Percent of Annual Expenditures</i>			12.1%	13.0%	13.9%

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 \$128¹.

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 Colorado Bureau of Investigation (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 CBI (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.

¹ 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.

Pursuant to S.B. 09-241, the CBI is provide test kits to local law enforcement agencies throughout the state to begin collecting DNA samples from arrestees beginning October 1, 2010. Eventually, this should 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 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.

Offender Identification Fund: Revenue and Expenditure Trends					
Description	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Proj.	FY 12-13 Proj.	FY 13-14 Proj.
Beginning Fund Balance	\$479,252	\$1,376,878	\$1,360,476	\$900,145	\$480,282
Revenue (including S.B. 09-241)	1,417,894	1,471,594	1,501,026	1,538,552	1,577,016
Expenditures:					
Corrections	4,960	0	0	0	0
Judicial	120,506	120,348	64,563	61,621	61,621
Public Safety	<u>394,802</u>	<u>1,367,648</u>	<u>1,896,794</u>	<u>1,896,794</u>	<u>1,896,794</u>
Total Expenditures	520,268	1,487,996	1,961,357	1,958,415	1,958,415
Ending Fund Balance	1,376,878	1,360,476	900,145	480,282	98,883
Annual Change in Fund Balance		(16,402)	(460,331)	(419,863)	(381,399)
<i>Fund Balance as Percent of Annual Expenditures</i>	264.6%	91.4%	45.9%	24.5%	5.0%

As detailed in the above table, departments are requesting appropriations totaling \$1,958,415 for FY 2012-13. Annual revenues are projected to exceed expenditures in FY 2011-12, FY 2012-13, and FY 2013-14, leaving a fund balance of less than \$100,000. Thus, unless fund revenues increase, the Fund will not be sufficient to support existing appropriations in FY 2014-15.

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 the Fund, and to submit the plan to the General Assembly.

The following table details the allocation plan approved by the SOMB on September 11, 2011. This plan mirrors the plans submitted for the last three fiscal years.

Sex Offender Surcharge Fund Allocation Plan: FY 2012-13			
Department	Description	Amount	% of Total
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, \$3,500 will be used to provide cross-system training	163,591	30.7%
TOTAL		533,181	100.0%

As detailed in the following table, the SOMB is requesting appropriations totaling \$532,749 for FY 2012-13. However, requested appropriations are anticipated to exceed available funds by \$4,315 in FY 2012-13. It is anticipated that the SOMB will again direct departments to restrict spending in FY 2012-13 (by a total of \$63,929, including \$36,243 for Judicial) in order to avoid exceeding available funds.

Sex Offender Surcharge Cash Fund: Revenue and Expenditure Trends					
Description	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Proj.	FY 12-13 Proj.	FY 13-14 Proj.
Beginning Fund Balance	\$42,469	\$61,874	\$92,394	\$93,385	\$68,244
Revenues	419,266	437,101	441,472	443,679	465,863
Expenditures:					
Judicial	226,522	226,522	302,029	302,029	302,029
Judicial Spending Restrictions			(54,365)	(36,243)	(36,243)
Corrections	21,983	28,756	28,879	28,879	28,879
Human Services	28,663	28,610	38,250	38,250	38,250
Public Safety	122,693	122,693	168,014	163,591	163,591

Sex Offender Surcharge Cash Fund: Revenue and Expenditure Trends					
Description	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Proj.	FY 12-13 Proj.	FY 13-14 Proj.
Other Spending Restrictions			(42,326)	(27,686)	(27,686)
Total Expenditures	399,861	406,581	440,481	468,820	468,820
Ending Fund Balance	61,874	92,394	93,385	68,244	65,287
Annual Change in Fund Balance		30,520	991	(25,141)	(2,957)
<i>Fund Balance as Percent of Annual Expenditures</i>	15.5%	22.7%	21.2%	14.6%	13.9%

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 \$4,405,588 for FY 2012-13. This amount represents a \$1,035,940 (19.0 percent) reduction compared to FY 2011-12, due to recent reductions in fund revenues.

Alcohol and Drug Driving Safety Cash Fund: Revenue and Expenditure Trends					
Description	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Proj.	FY 12-13 Proj.	FY 13-14 Proj.
Beginning Fund Balance	\$693,902	\$550,429	\$913,710	\$193,470	\$513,891
Revenues	5,177,623	4,716,571	4,721,288	4,726,009	4,730,735

Alcohol and Drug Driving Safety Cash Fund: Revenue and Expenditure Trends					
Description	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Proj.	FY 12-13 Proj.	FY 13-14 Proj.
Expenditures:					
Human Services (via transfer from Judicial)	440,062	420,140	429,387	440,062	440,062
Judicial (excluding portion transferred to DHS)	<u>4,881,034</u>	<u>3,933,150</u>	<u>5,012,141</u>	<u>3,965,526</u>	<u>4,065,526</u>
Total Expenditures	5,321,096	4,353,290	5,441,528	4,405,588	4,505,588
Ending Fund Balance	550,429	913,710	193,470	513,891	739,038
Annual Change in Fund Balance		363,281	(720,240)	320,421	225,147
<i>Fund Balance as Percent of Annual Expenditures</i>	<i>10.3%</i>	<i>21.0%</i>	<i>3.6%</i>	<i>11.7%</i>	<i>16.4%</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. 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;
- 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;
- to assist in providing court-ordered alcohol treatment programs for indigent and incarcerated offenders; and
- to assist in providing continuous monitoring technology or devices for indigent offenders.

The Judicial Department does not administer this Fund, but it now receives moneys from the Fund transferred from the Department of Human Services (\$779,846 for FY 2011-12). 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.

- 33 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 2011-12</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, Denver Juvenile Court Judge, and Denver Probate 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 this footnote in the Long Bill.

- 34 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 Office of the State Public Defender (OSPD) is in compliance with this footnote. This footnote provides the OSPD with the authority to transfer up to 2.5 percent (\$1,524,212) of its total FY 2011-12 appropriation (\$60,968,494) between line items. In FY 2010-11, the OSPD transferred the full allowable amount of \$1,417,587 (2.5 percent) between line items. The following table details the line items affected by such transfers.

Long Bill Line Item	Transfers In/ (Out)
Personal Services	(\$1,417,587)
Operating Expenses	10,000
Leased Space/ Utilities	140,000
Automation Plan	1,218,000
Mandated Costs	49,587
Net Transfers	0

- 35 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 provides the OADC with the authority to transfer up to 2.5 percent (\$580,817) of its total FY 2011-12 appropriation (\$23,232,674) between line items. In FY 2010-11, the OADC transferred a total of \$2,814 (less than 0.1 percent) between line items. The following table details the line items affected by such transfers.

Long Bill Line Item	Transfers In/ (Out)
Personal Services	(\$1,093)
Operating Expenses	1,814
Leased Space	(1,721)
Training and Conferences	1,000
Net Transfers	0

- 36 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 the Child's Representative.

Comment: The Office of Child's Representative is in compliance with this footnote. This footnote provides the OCR with the authority to transfer up to 2.5 percent (\$487,614) of its total FY 2011-12 appropriation (\$19,504,540) between line items. In FY 2010-11, a total of \$69,920 (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	(\$69,920)
Operating Expenses	50,000
Leased Space	2,244
Training	14,613
Mandated Costs	3,063
Net Transfers	0

37 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 increased steadily from FY 2004-05 to FY 2008-09, from \$426,186 to \$801,945.

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 CLRs 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 continuing to support a pilot program in the 17th judicial district (Adams/Broomfield) to offer Early Neutral Assessment (ENA) to parties in domestic relations cases (the OCR pilot began in 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 17th 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 district's 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 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.

Initial results of the pilot appear promising, with 77 percent of completed cases reaching full agreements and 13 percent reaching partial agreement. However, only a small number of the ENA cases were state-paid cases. The OCR also indicates that for FY 2010-11, due in part to turnover among judges hearing domestic relations cases, there were very few ENA referrals.

38 **Judicial Department, Independent Ethics Commission** -- In addition to the transfer authority provided in Section 24-75-108 (5), C.R.S., up to 10.0 percent of the total Independent Ethics Commission appropriation may be transferred between line items in the Independent Ethics Commission.

Comment: The Independent Ethics Commission is in compliance with this footnote. This footnote provides the Commission with the authority to transfer up to 10.0 percent (\$22,248) of its total FY 2011-12 appropriation (\$222,483) between line items. In FY 2010-11, a total of \$4,644 (1.7 percent) was transferred between line items. The following table details the line items affected by such transfers.

Long Bill Line Item	Transfers In/ (Out)
Operating Expenses	(\$4,644)
Employee benefits-related central appropriations (primarily Health, Life, and Dental benefits and Short-term Disability)	4,644
Net Transfers	0

Requests for Information

Requests Applicable to All Departments, Including Judicial

- 5. All Departments, Totals** -- Every department is requested to submit to the Joint Budget Committee, by November 1, 2011 information on the number of additional federal and cash funds FTE associated with any federal grants or private donations that were received in FY 2010-11. The Departments are also requested to identify the number of additional federal and cash funds FTE associated with any federal grants or private donations that are anticipated to be received during FY 2011-12.

Comment: The Judicial Department's budget request includes a list of federal and cash grants, the grantor, grant period, dollar amount, and associated FTE. The budget requests for each of the independent agencies reflect anticipated grant amounts, from either cash or federal sources, that are anticipated to be received each fiscal year.

Requests Applicable to Judicial Department Only

- 1. Judicial Department, Trial Courts, District Attorney Mandated Costs** -- District Attorneys in each judicial district shall be responsible for allocations made by the Colorado District Attorneys' Council's Mandated Cost Committee. Any increases in this line item shall be requested and justified in writing by the Colorado District Attorneys' Council, rather than the Judicial Department, through the regular appropriation and supplemental appropriation processes. The Colorado District Attorneys' Council is requested to submit an annual report by November 1 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)², as requested.

Background Information. Colorado's district attorneys' offices (DAs) are responsible for prosecuting all criminal and traffic cases filed in district and county courts. While DAs' budgets are primarily set and provided by boards of county commissioners within each respective judicial district, the State provides direct funding for DAs in the following four areas:

- The Department of Law's budget includes an appropriation for "District Attorneys' Salaries" (\$2,479,796 for FY 2011-12).
- The Judicial Department's budget includes an appropriation for "District Attorney Mandated Costs" (\$2,198,494 for FY 2011-12). This line item is described below.
- 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 for FY 2011-12).
- The Department of Public Safety's budget includes an appropriation for "Witness Protection Fund Expenditures" to pay DAs for qualifying expenses related to security personnel, travel expenses, lodging, and other immediate needs (\$83,000 for FY 2011-12).

In addition, the General Assembly appropriates funds to the Office of the State Public Defender, the Office of the Alternate Defense Counsel, the State Court Administrator's Office, and the Office of the Child's Representative to cover the costs of obtaining discoverable materials³. In FY 2010-11, these offices spent a total of \$2,122,666 for discovery. The majority of these expenditures were paid to reimburse DAs.

District Attorney Mandated Costs. This line item provides state funding to reimburse DAs 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

² The CDAC is a quasi-government agency, supported by assessments charged to each member's office (through an intergovernmental agreement).

³ Under Colorado Supreme Court Rule 16, the prosecuting attorney is required to make available to the defense certain material and information that is within his or her control and to provide duplicates upon request. The State pays the costs of duplicating discoverable material when legal representation is provided for an indigent defendant.

to section 13-3-104, C.R.S.⁴, 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 offender or juvenile for the amount of the costs of prosecution. Section 16-18-101, C.R.S., specifies the types of expenditures that may be included under this provision.

Based on FY 2010-11 expenditure data provided by the CDAC, DAs' mandated costs consist of the following:

- Witness fees and travel expenses (\$595,680 or 29 percent of costs in FY 2010-11)
- Mailing subpoenas (\$554,749 or 27 percent)
- Expert witness fees and travel expenses (\$380,416 or 18 percent)
- Service of process (\$336,437 or 16 percent)
- Court reporter fees for transcripts (\$188,957 or nine percent)

The following table provides a history of appropriations and actual expenditures for this line item.

District Attorneys' Mandated Costs								
Fiscal Year	Appropriation			Actual Expenditures				Over/ (Under) Budget
	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	2,101,050	125,000	2,226,050	1.7%	(2)

⁴ 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".

District Attorneys' Mandated Costs								
	Appropriation			Actual Expenditures				Over/ (Under) Budget
Fiscal Year	General Fund	Cash Funds	Total	General Fund	Cash Funds	Total	Annual % Change	
2010-11*	2,005,324	125,000	2,130,324	2,005,507	125,000	2,130,507	-4.3%	183
2011-12	2,073,494	125,000	2,198,494					
2012-13 Request	2,139,449	125,000	2,264,449					

* Appropriation reduced by \$17,300 pursuant to H.B. 10-1291.

Prior to FY 2000-01, funding for DAs' 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 DAs' mandated costs. This line item has been accompanied by a footnote or a request for information (e.g., RFI #1 for FY 2011-12) indicating that DAs in each judicial district are responsible for allocations made by an oversight committee (currently the CDAC). Any increases in the line item are to be requested and justified in writing by the CDAC, rather than the Judicial Department.

The CDAC allocates funds among the 22 judicial districts (including those districts that are not members of the CDAC) based on historical spending. However, the CDAC holds back a portion of the appropriation (typically \$300,000). District Attorneys submit information quarterly concerning costs incurred, as well as projections of annual expenditures. The CDAC has a special process for requesting additional funds above the allocated amount. In order to limit state expenditures, the CDAC has required DAs to continue to follow the old Chief Justice Directive 87-01, which limited 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. In FY 2010-11, \$15,593 of DAs' expenditures were not reimbursed due to this policy.

For FY 2012-13, the CDAC requests an appropriation of \$2,264,449, which represents a \$65,955 (3.0 percent) increase compared to FY 2011-12.

- 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 report concerns recidivism among probationers terminated during FY 2009-10. On June 30, 2010, there were 73,669 offenders on probation in Colorado, including 67,271 adults and 6,398 juveniles, including those under intensive supervision⁵. Key findings included in the report are summarized below.

Pre-release Recidivism

- Pre-release recidivism rates (including revocations due to both technical violations and new crimes) decreased significantly for adults on regular supervision, from 31.1 percent to 26.7 percent. Following significant decreases in FY 2008-09, pre-release recidivism rates for both the Adult Intensive Supervision Program (AISP) and the Female Offender Program (FOP) increased slightly in FY 2009-10. Pre-release recidivism rates remained relatively stable for juveniles.
- As expected based on their risk assessment, both juveniles and adults supervised at the most intensive level and those supervised by other agencies (e.g., county jail work release programs, detention centers, or residential placements) were most likely to fail while under supervision.
- 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 has generally declined over the last several years. 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 appropriate.

Post-release Recidivism

- For juveniles who successfully completed regular probation supervision, 14.1 percent received a new filing within one year. For juveniles who successfully completed intensive probation supervision, 12.5 percent received a new filing.
- For adults who successfully completed regular probation supervision, only 6.1 percent received a new filing within one year. Post-release recidivism rates for the Adult Intensive Supervision Program (AISP) and the Female Offender Program (FOP) were 6.8 percent and 4.5 percent, respectively.

⁵ Please note that this total includes individuals under state and private probation supervision (DUI and non-DUI). An additional 9,049 DUI offenders were monitored by state probation but were not part of this study.

Overall Success Rate

- 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 slightly for all juveniles and for adults on regular supervision. The overall success rate for adults on intensive supervision decreased slightly.
- For juveniles under regular supervision, 62.7 percent were successful one year after release; for those under intensive supervision, 44.1 percent were successful.
- For adults under regular supervision, 68.9 percent were successful one year after release; for those under intensive supervision, overall success rates were 65.2 percent for AISP and 68.5 percent for FOP.

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

Probation Recidivism Rates Termination Cohorts for Fiscal Years 2004-05 Through 2009-10 ^a						
Supervision Level at Time of Termination	Fiscal Year	Successful Termination ^b	Pre-release Recidivism ^c		Post- Release Recidivism ^d	Overall Success ^e
			Technical Violation	New Crime		
Juvenile - Regular	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%
	2008-09	73.7%	19.3%	7.0%	15.3%	62.4%
	2009-10	73.0%	19.9%	7.1%	14.1%	62.7%
4,501	<i>Individuals</i>	3,285	898	318	464	2,821
Juvenile Intensive Supervision Program (JISP)^f	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%
	2008-09	45.0%	37.7%	17.3%	12.3%	43.5%
	2009-10	45.8%	34.8%	19.4%	12.5%	44.1%
474	<i>Individuals</i>	217	165	92	8	209

Probation Recidivism Rates Termination Cohorts for Fiscal Years 2004-05 Through 2009-10 ^a						
Supervision Level at Time of Termination	Fiscal Year	Successful Termination ^b	Pre-release Recidivism ^c		Post- Release Recidivism ^d	Overall Success ^e
			Technical Violation	New Crime		
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%
	2008-09	68.9%	25.0%	6.1%	6.7%	64.3%
	2009-10	73.3%	21.2%	5.5%	6.1%	68.9%
34,139	<i>Individuals</i>	<i>25,030</i>	<i>7,250</i>	<i>1,859</i>	<i>1,525</i>	<i>23,505</i>
Adult Intensive Supervision Program (AISP)^{f, g}	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%
	2008-09	66.5%	22.7%	10.8%	11.3%	66.0%
	2009-10	65.6%	23.9%	10.5%	6.8%	65.2%
1,234	<i>Individuals</i>	<i>809</i>	<i>295</i>	<i>130</i>	<i>5</i>	<i>804</i>
Adult - Female Offender Program (FOP)^f	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%
	2008-09	73.1%	19.9%	7.0%	9.7%	71.6%
	2009-10	69.2%	21.7%	9.1%	4.5%	68.5%
143	<i>Individuals</i>	<i>99</i>	<i>31</i>	<i>13</i>	<i>1</i>	<i>98</i>

^a Data for all fiscal years except FY 2009-10 excludes DUI offenders. Beginning in FY 2009-10, data includes DUI offenders under state or private probation supervision who are receiving some probation services; a total of 9,049 DUI offenders who were under private probation supervision, were "monitored" by state probation, but received no additional probation services continue to be excluded in FY 2009-10. In addition, Denver County Court filing data was only made available to Judicial's ICON/Eclipse system (the Judicial Branch's management information system) for FY 2005-06 and FY 2006-07. Thus, post-release recidivism rates may be understated for fiscal years 2004-05, 2007-08, 2008-09, and 2009-10.

^b “Successful terminations” for intensive programs include offenders who were transferred to regular supervision.

^c “Pre-release Recidivism” includes an *adjudication or conviction* for a felony or a misdemeanor, or a technical violation relating to a criminal offense, while under supervision in a criminal justice program.

^d “Post-release Recidivism” reflects the percent of successfully terminated offenders for whom there was a *filing* for a felony or misdemeanor (whether or not it resulted in a conviction) within one year of termination from program placement for a criminal offense.

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

^f Please note that the relatively small number of individuals participating in the intensive programs for juveniles, adults, and female adults can cause recidivism rates to differ significantly from year to year - particularly with respect to post-release recidivism.

^g Please note that while some sex offenders who are on regular supervision are included in the Adult - regular data above, sex offenders who are on intensive supervision programs are not reflected at all in the Department’s recidivism report. The Department indicates that data related to these offenders is instead reported annually by the Department of Public Safety, Division of Criminal Justice (as required by statute).

Intensive Supervision Programs

The intensive supervision programs for juveniles (JISP), adults (AISP), and adult females (FOP) were 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 – 44.1 percent compared to 62.7 percent. For juveniles who terminated probation for technical violations, 53.9 percent on JISP were sentenced to the Division of Youth Corrections (DYC) or the Department of Corrections (DOC), compared to 36.0 percent on regular probation. For juveniles who terminated probation for committing a new crime, 70.7 percent on JISP were sentenced to DYC or DOC, compared to 45.3 percent on regular probation.
- The overall success rate for AISP is slightly lower than for regular adult supervision – 65.2 percent compared to 68.9 percent. For adults who terminated probation for technical violations, 67.8 percent on AISP were sentenced to DOC, compared to 9.9 percent on regular probation. For adults who terminated probation for committing a new crime, 86.2 percent on AISP were sentenced to DOC, compared to 20.0 percent on regular probation.
- The overall success rate for FOP, 68.5 percent, is similar to the success rate for regular adult supervision. For adults who terminated probation for technical violations, 61.3 percent on FOP were sentenced to DOC, compared to 9.9 percent on regular probation. For adults who terminated probation for committing a new crime, 76.9 percent on FOP were sentenced to DOC, compared to 20.0 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 2009-10:

- JISP redirected as many as 209 juveniles from NYC, including 56 who left probation and did not recidivate within one year and 153 who succeeded and were transferred to regular probation. The annual cost to serve a juvenile in NYC in FY 2009-10 was \$84,596, compared to \$5,905 for JISP.
 - AISP redirected as many as 804 offenders from DOC, including 69 who left probation and did not recidivate within one year and 735 who succeeded and were transferred to regular probation. The annual cost to serve an offender in DOC in FY 2009-10 was \$32,388, compared to \$3,909 for AISP.
 - FOP redirected as many as 98 women from DOC, including 21 who left probation and did not recidivate within one year and 77 who succeeded and were transferred to regular probation. The annual cost to serve an offender in DOC was \$32,388 in FY 2009-10, compared to \$3,182 for FOP.
- 3. 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 2010-11, as well as allocations for FY 2011-12, is provided in the table on the following page.

Please note that for FY 2011-12, \$6,989,043 of the appropriation is reflected as unallocated. This amount primarily includes \$6,100,000 that will be available for substance abuse treatment services for adult offenders in a variety of settings, including \$2,000,000 for offenders on probation. The unallocated amount also includes \$889,043 that has been restricted due to revenue projections for the Offender Services Fund, the Drug Offender Surcharge Fund, and the Sex Offender Surcharge Fund.

Offender Treatment and Services Line Item: Budget and Expenditures					
Treatment or Service	FY 2010-11			FY 2011-12	
	Allocation	Expenditures	% of Total	Allocation	% of Total
Substance Abuse Treatment	\$3,001,615	\$2,104,283	21.9%	\$2,006,034	11.5%
Drug Testing	1,334,863	1,401,938	14.6%	1,263,736	7.2%
Transfer of Persistent Drunk Driver Cash Fund moneys from DHS-ADAD	<u>562,483</u>	<u>385,957</u>	<u>4.0%</u>	<u>779,846</u>	<u>4.5%</u>
Subtotal: Substance Abuse Services	4,898,961	3,506,221	36.5%	4,049,616	23.1%
Adult Sex Offender Assessment	1,263,066	1,123,930	11.7%	1,170,282	6.7%
Adult Sex Offender Treatment	1,040,857	989,455	10.3%	956,203	5.5%
Adult Sex Offender Polygraphs	363,732	368,035	3.8%	383,092	2.2%
Juvenile Sex Offender Assessment and Treatment	201,473	212,749	2.2%	210,128	1.2%
Juvenile Sex Offender Polygraphs	<u>93,039</u>	<u>74,003</u>	<u>0.8%</u>	<u>103,755</u>	<u>0.6%</u>
Subtotal: Sex Offender Services	2,962,167	2,768,172	28.8%	2,823,460	16.1%
Mental Health Treatment	743,370	628,596	6.5%	621,576	3.6%
Domestic Violence Treatment	648,581	679,272	7.1%	613,033	3.5%
Electronic Home Monitoring	1,054,998	242,417	3.6%	475,462	2.9%
Transportation Assistance	259,700	364,978	3.8%	322,444	1.8%
Emergency Housing	222,619	346,896	3.6%	292,959	1.7%
Special Treatment Courts	0	0	n/a	220,420	1.3%
Educational/Vocational Assistance	219,886	291,858	3.0%	198,266	1.1%
Global Positioning Satellite Tracking (GPS)	116,857	112,143	1.2%	125,082	0.7%
Restorative Justice	158,851	130,903	1.4%	116,538	0.7%
Incentives	110,402	90,294	0.9%	100,371	0.6%
Interpreter Services	100,823	91,605	1.0%	100,033	0.6%
General Medical Assistance	<u>75,993</u>	<u>64,021</u>	<u>0.7%</u>	<u>75,833</u>	<u>0.4%</u>
Subtotal: Funds Allocated to/Expended by Districts	11,573,208	9,317,376	97.0%	10,135,093	57.9%
Evidence-based Practices Research	250,000	174,425	1.8%	250,000	1.4%
Initiative to Build Capacity in Rural/Under served Areas	350,000	112,029	1.2%	125,000	0.7%
Unallocated	<u>76,761</u>	<u>n/a</u>	<u>0.0%</u>	<u>6,989,043</u>	<u>39.9%</u>
Total	12,249,969	9,603,830	100.0%	17,499,136	100.0%



State of Colorado

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October 31, 2011

Representative Cheri Gerou, Chair
Joint Budget Committee

Dear Representative Gerou:

The Legislative Audit Committee has been concerned about departments not implementing audit recommendations that they have agreed to implement. The State Auditor and her staff have developed a database to track recommendations and produce reports identifying those not implemented. We are providing this report for your consideration as you evaluate the budget requests for the Judicial Branch.

Attached you will find information regarding the following recommendations:

Judicial Branch		
<u>Number of Recommendations</u>	<u>Audit of Origination</u>	<u>Audit Date</u>
1	Problem Drivers and Traffic Fatalities Performance Audit	November 2009

Thank you for integrating this into your budget process.

Sincerely,

Senator Lois Tochtrop, Chair
Legislative Audit Committee



Office of the State Auditor Audit Recommendations

All Performance and IT Recommendations That Agency Agreed to But Has Only Partially Implemented

Agency	Date Audit Released by LAC		Name of Audit	Audit Rec Number	Agency Response	Original Implementation Date *1	Current Implementation Date *2	Main Recommendation Text	Recommendation Sub-part Text	Implementation Status	Source of Implementation Status	Date of Implementation Status Report	Agency Comments from Status Report	
Judicial	2009	November	Problem Drivers and Traffic Fatalities	1992-1	Agree	2010	January	The Judicial Branch, as a participating agency in the Colorado Integrated Criminal Justice Information System Program, should work with criminal justice agencies to integrate municipal courts and Denver County Court into a statewide criminal database in order to provide all prosecutors and courts in the state with complete records of misdemeanor and traffic charges.		Partially Implemented	Self-Reported by Agency	2011	January	New implementation date was given as TBD. The State Court Administrator presented this issue to the CIJS Board shortly after the release of the report. The Board agreed that working toward including the municipal courts and Denver County into a database available to all state users is a priority. However, given the State's current budget situation, there are not funds available to pursue this initiative. CIJS will consider this issue again when the State's financial situation improves.

*1 The original implementation date is the date provided by the agency in the report.

*2 The current implementation date is the date by which the agency currently projects that the recommendation will be implemented.

STATE OF COLORADO

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February 18, 2010

Mr. Ted C. Tow
Executive Director
Colorado District Attorneys' Council
1580 Logan Street, Suite 420
Denver, CO 80203

Dear Mr. Tow:

SUBJECT: Reimbursements to District Attorneys for Duplicating Discoverable Materials

On December 15, 2009, the Joint Budget Committee (the Committee) invited representatives from the Colorado District Attorneys' Council (CDAC) to attend a meeting to discuss, among other topics, reimbursements to district attorneys for duplicating discoverable materials pursuant to Colorado Supreme Court Rule 16. We appreciate the written comments you provided, along with the comments provided by the District Attorneys from the 1st, 2nd, 4th, 18th, and 20th judicial districts who also attended the meeting.

The Committee recently learned that the State Court Administrator's Office (SCAO) has agreed to make a recommendation to the Supreme Court Criminal Rules Committee to amend Rule 16 to clarify what the "cost of duplicating" and "actual cost of copying" discoverable materials mean. The SCAO also intends to update the rule to reflect technological and procedural changes that have occurred since the inception of Rule 16. The SCAO has indicated that it will seek input from the Colorado State Public Defender, the Director of the Office of the Alternate Defense Counsel, and the CDAC prior to making its recommendation. In addition, through the rule making process, all of these groups, as well as district attorneys who are not members of the CDAC and the private defense bar, will have an opportunity to provide input to the Rules Committee.

There are still three issues that have been brought to the Committee's attention that remain to be addressed. First, not all district attorneys submit invoices that clearly indicate the basis for the charge (i.e., the quantity and nature of the materials provided and the applicable rates). Second, not all district attorneys submit information about periodic rate changes that adequately describe the basis for the rates and the reason for the rate changes. Third, district attorneys currently

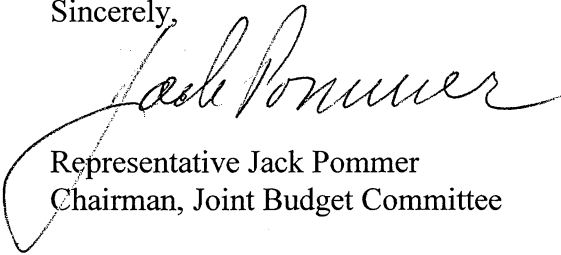
change rates at various times throughout the year, making it difficult if not impossible for state agencies to plan for and manage their annual appropriations. **The Committee requests that the CDAC take the following actions to address these issues within the next 90 days:**

1. Identify best practices and develop a standardized statement(s) for district attorneys to use in recovering costs from public agencies pursuant to Rule 16.
2. Identify best practices and develop a standardized letter(s) for district attorneys to use when notifying state agencies when rates charged for duplicating discoverable materials change.
3. Adopt a standard practice with respect to the timing of rate changes to ensure that state agencies have rate information in time to submit budget requests to the General Assembly. This practice should be designed to provide predictability and stability for both state agencies and district attorneys.

Finally, in order to keep the General Assembly apprised of rate changes imposed by district attorneys for the purpose of recovering costs pursuant to Rule 16, **we request that each district attorney copy the Committee when notifying a state agency about rate changes related to Rule 16.**

We appreciate your prompt attention to these issues. If you have any questions or comments, please contact Ms. Carolyn Kampman of our staff at 303-866-4959.

Sincerely,



Representative Jack Pommer
Chairman, Joint Budget Committee

- cc: Hon. Carol Chambers, District Attorney, 18th Judicial District
Ms. Lindy Frolich, Director, Office of the Alternate Defense Counsel, Judicial Department
Mr. Gerald A. Marroney, State Court Administrator, Judicial Department
Hon. Mitchell R. Morrissey, District Attorney, 2nd Judicial District
Mr. Douglas K. Wilson, Colorado State Public Defender, Judicial Department
Mr. John Ziegler, Staff Director, Joint Budget Committee

Office of the State Court Administrator



February 10, 2011

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Honorable John Dailey
Chair, Rules of Criminal Procedure Committee
101 West Colfax, Suite 800
Denver, CO 80202

Dear Judge Dailey and Members of the Committee,

The attached suggested rule change is submitted in response to discussions with the Colorado Joint Budget Committee regarding costs of discovery materials. As you will see in the report, the issue of discovery costs has been an on-going concern for the Joint Budget Committee. Committee staff has asked the State Court Administrator to work with the State Public Defender and the Colorado District Attorneys' Council to suggest changes to Criminal Rule 16 to provide more predictability in the amounts charged for discovery materials. In a related request, the Committee is asking local District Attorneys to consider making rate changes on an annual basis with enough notice to allow the JBC to plan for needed funding increases to the State Public Defender's office.

Attached is a short report on this subject with suggested changes to Rule 16. These changes were drafted cooperatively with the State Public Defender (Doug Wilson) and the now former Executive Director of the Colorado District Attorneys' Council (Ted Tow). The intent of the suggested change is to more clearly delineate the factors that can be considered "actual costs" which are allowable under the current rule. In choosing a definition, staff consulted various definitions in place in federal grant guidelines or in private accounting systems.

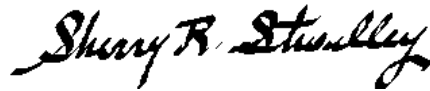
By adopting this definition of direct cost and the paragraph requiring an annual justification of costs, it is hoped that the State can avoid the need for

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sudden increases to the Public Defender's budget to cover discovery cost increases. The annual justification will also assist local District Attorneys in assessing the adequacy of their billing and bring more consistency to billing rates across the state.

Thank you in advance for considering this suggested change. If I can be of any further information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Sherry R. Stwalley". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Sherry Stwalley
Director of Planning and Analysis
And Legislative Liaison

cc Tom Raines
Doug Wilson
Carolyn Kampman

Attachment A

“The Committee recently learned that the State Court Administrator’s Office (SCAO) has agreed to make a recommendation to the Supreme Court Criminal Rules Committee to amend Rule 16 to clarify what the “cost of duplicating” and “actual cost of copying” discoverable materials mean. The SCAO also intends to update the rule to reflect technological and procedural changes that have occurred since the inception of Rule 16. The SCAO has indicated that it will seek input from the Colorado State Public Defender, the Director of the Alternate Defense Counsel, and the CDAC prior to making its recommendation.”

- JBC letter to CDAC dated Feb. 18, 2010

ISSUE

When Colorado Rule of Criminal Procedure 16 was enacted, the “cost of duplicating” primarily referred to plain paper copies. Now, however, materials may be in paper, video, or digital form and available in a variety of formats (e.g., paper, video or, through digital reproduction, on CD, DVD, or a computer server). The number of options for information storage and retrieval and the various steps in making these options available has complicated this definition.

While it may seem that the cost of duplicating should simply be broadened to include the cost of physical materials and staff time used to create this information, this is also further complicated by the degree to which staff time and equipment used for creating duplicate information is already in place for the core benefit and business needs of the originating office itself.

DISCUSSION

Rule 16 uses the term “actual cost,” which is also referred to as “direct cost,” and is generally accepted to include only those costs that can be directly assigned to a given project or function. For purposes of this discussion, actual costs would include staff time used directly for the duplication of materials, the cost of the materials or electronic media used to provide the duplicated information, and other direct charges such as mailing or delivery costs.

This does not include “indirect costs,” or those expenses that are not specifically related to a particular function but are part of general operations, also known as overhead costs. Examples of indirect costs germane to this discussion are equipment purchase and maintenance costs, normal operating expenses, salaries and benefits for staff time spent on tasks not specific to duplication of information, storage costs, building use and maintenance, phone service, administrative staff and services, and other such administrative costs. In general, if an expense or function is not clearly and easily attributable to one specific project or function, it is most likely an indirect cost.

When copying paper files, it is easier to identify direct and indirect costs. Staff time spent retrieving and copying files and the number copies made for each case can be separated from other work that staff person may have done for the office and other copies made on that copier. However, as business offices have begun to convert records to digital format, there have been attempts to include some technology costs in the amount charged for reproduction. Inclusion of the cost of upgrades in technology and staff time required to convert physical records to digital format has varied by location. In addition, technological upgrades have varied by location. Following the definitions used above, upgrades and digital availability of records may be of benefit to defense counsel, however the technology and availability of electronic records is also of benefit internally and would likely take place whether the records were to be provided to defense counsel or not. Therefore, the costs associated with technology upgrades and staff time used to transfer records to electronic format are considered indirect costs. The exception to this would be staff time spent converting records solely for the requestor and not for use internally.

RECOMMENDATION

It is difficult for district attorney's offices, the public defender and alternate defense counsel to plan and budget properly when they are faced with unpredictable amounts of reimbursement or variation in cost assignment, respectively. The Judicial Department considers the rates established by district attorney's offices, and the timing with which they update them, to be a policy decision within the discretion of the executive branch of government, so recommendations specific to those decisions are not included here. However, the clarification of the definition of "actual costs" in Rule 16 is within the Judicial Department's discretion. As such, it is recommended that Rule 16 be amended to clarify the definition of actual costs as follows:

Proposed Rule Modification:

Rule 16(V)(c) Cost and Location of Discovery.

(1) 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~~ DUPLICATING the same to the party furnishing the material, AS SPECIFIED IN THIS SUBSECTION (2). 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 material shall be at the office of the party furnishing it, or a mutually agreeable location.

(2) THE ACTUAL COSTS OF DUPLICATING IN SUBSECTION (1) MAY INCLUDE REASONABLE AND NECESSARY:

- A. STAFF TIME TO RETRIEVE, SORT, LABEL, PREPARE OR COPY DOCUMENTS. COST OF STAFF MAY INCLUDE SALARIES AND PRO-RATED BENEFITS.
- B. COST OF MATERIALS (PAPER, COPIER SUPPLIES, CDS, DVDS, TAPES, ETC.)
- C. MAILING OR DELIVERY COSTS

AND MAY NOT INCLUDE:

- D. PURCHASE OR MAINTENANCE OF COPIER OR COMPUTER EQUIPMENT;
- E. NORMAL OPERATING EXPENSES OF COMPUTER;
- F. STAFF TIME REQUIRED TO SORT, ORGANIZE OR TRANSFER INFORMATION INTO AN ELECTRONIC FORMAT IF THE PARTY FURNISHING THE MATERIAL REGULARLY MAINTAINS OR WILL ALSO UTILIZE THE INFORMATION IN THAT FORMAT;
- G. STORAGE COSTS, INCLUDING COST OF ELECTRONIC STORAGE; AND
- H. ADMINISTRATIVE COSTS NOT DIRECTLY RELATED TO DUPLICATION REQUESTS.

(3) ON AN ANNUAL BASIS OR AT ANY TIME THERE IS A CHANGE IN THE CURRENT FEE SCHEDULE AND UPON REQUEST OF THE PARTY RECEIVING AND RESPONSIBLE FOR PAYING FOR THE ACTUAL COST OF DUPLICATING THE MATERIAL, THE PARTY FURNISHING THE MATERIAL SHALL PROVIDE AN ITEMIZATION OF THE CALCULATION OF SUCH FEES FOR THE VARIOUS METHODS AND FORMS OF DUPLICATING DISCOVERY TO THE PARTY MAKING THE REQUEST.