

COLORADO GENERAL ASSEMBLY

JOINT BUDGET COMMITTEE



**FY 2007-08 EMERGENCY SUPPLEMENTAL
JUDICIAL BRANCH:
OFFICE OF THE CHILD'S REPRESENTATIVE**

REQUEST SUBMITTED PURSUANT TO H.B. 98-1311

JBC Working Document - Subject to Change

Staff Recommendation Does Not Represent Committee Decision

Prepared By:

Stephanie Walsh, JBC Staff

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For Further Information Contact:

**Joint Budget Committee
200 East 14th Avenue, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 866-2061**

	FY 2006-07	FY 2007-08	Fiscal Year 2007-08 Supplemental		
	Actual	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
JUDICIAL DEPARTMENT					
(7) OFFICE OF THE CHILD'S REPRESENTATIVE					
Theresa Spahn, Executive Director					
OCR Supplemental #1 - Court Appointed Counsel Costs Increase					
<i>(7) Office of the Child's Representative</i>					
Court Appointed Counsel - GF	12,641,358	13,830,806	686,137	686,137	14,516,943
Totals					
Office of the Child's Representative - GF	12,641,358	13,830,806	686,137	686,137 a/	14,516,943

a/ Of this amount, \$268,919 should not be subject to the six percent growth limit on General Fund appropriations imposed by Section 24-75-201.1 (1) (a) (II) (B), C.R.S., due to the implementation of a federal mandate (exempted under the provisions of Section 24-75-201.1 (1) (a) (III) (A), C.R.S.).

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OCR Supplemental #1 - Court Appointed Counsel Costs Increase

	Request	Recommendation ^a
Total - General Fund	686,137	686,137

^a Of this amount, \$268,919 should not be subject to the six percent growth limit on General Fund appropriations as the funding is needed to implement the provisions of S.B. 07-226, which was a response to a federal mandate (see discussion below). Therefore, of the total recommendation, only \$417,218 would be subject to the six percent limit.

<p>Does JBC staff believe the request is consistent with the emergency supplemental criteria outlined in Section 24-75-111, C.R.S.? Pursuant to statute, the Controller may authorize an over expenditure of the existing budget if the over expenditure meets the following criteria: (1) Is approved in whole or in part by the Joint Budget Committee; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not meeting in regular or special session during which such over expenditure can be legislatively addressed; (3) Is approved by the Office of State Planning and Budgeting (except State, Law, Treasury, Judicial, or Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the over expenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the over expenditure is made as of the date of the over expenditure.</p> <p>This supplemental requests an increase in the FY 2007-08 appropriation to avoid an over expenditure due to increased attorney billing. Staff believes this request meets emergency supplemental criteria as the billing increase has occurred only recently and could not have been foreseen by the agency.</p>	YES
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The Office of the Child's Representative (OCR) is seeking an increase of \$686,137 General Fund to address caseload increases and cost per case increases. This increase would be base building and carry forward into FY 2008-09.

OCR's Responsibilities. The OCR provides legal representation for children involved in the court system due to abuse ("dependency") and neglect ("D&N" cases), high-conflict divorce, or delinquency. The attorneys who represent these children are known as guardians ad litem (GALs). The GALs are private attorneys hired under contract, except in El Paso County, where OCR has an office of salaried staff to manage cases.

Recent Increase in Billings. It was anticipated earlier in the year that OCR would need additional funding to cover its court-appointed counsel expenses given rising caseloads. A total increase of \$135,817 was requested and received during the regular FY 2007-08 supplemental process to cover these costs. However several unexpected factors have led billings to exceed prior projections, including:

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- a. Denver D&N filings have increased significantly, growing nearly 50% from the last fiscal year;
- b. Jurisdictions are implementing S.B. 07-226 more quickly than anticipated (among other things, S.B. 07-226 provides children an opportunity to testify in court on matters pertaining to them in D&N cases); and
- c. Increased costs per case due to longer hours driven by more complex and litigious cases.

Each of these factors is discussed in greater detail below.

a. Denver D&N Filings Have Increased Substantially

The table below shows the historical D&N filings for Front Range judicial districts since OCR's inception in FY 2001-02. Although Denver is the biggest district, its filings have lagged behind other, less populous areas since FY 2002-03. However, beginning with FY 2006-07, and continuing into FY 2007-08, Denver's filings have been increasing quickly.

D&N Filings in Front Range Districts^b

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Denver	578	448	543	343	403	501
El Paso	454	582	618	610	629	645
Jefferson	344	415	580	608	539	409
Adams	405	526	620	517	419	361

^b Data obtained from the State Court Administrator's Office by the OCR.

Filings in Denver for the first eleven months of the FY 2007-08 (648) are up 47.2 percent compared to the same time period in FY 2006-07 (440). In March 2008, *The Denver Post* reported that the Denver Department Human Services requested 65 new child-welfare workers to deal with rapidly increasing caseloads. In April, Denver District Court requested that OCR add six to eight new attorneys for appointments. OCR has already spent over \$700,000 more this year in Denver with one month of billings left before year-end than it did in FY 2006-07.

b. Early Implementation of S.B. 07-226

Senate Bill 07-226 imposed additional requirements on GALs in Colorado. In order to conform to federal law, courts are now required to allow children age-appropriate participation in the legal system.

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Attorneys must prepare them to appear in court, working with the child before each hearing, and meeting with the child to ascertain the child's wishes regarding permanency. Attorneys are often asked to brief judges or prepare reports for them explaining why the child is testifying. Furthermore, the attorney must also contact the child immediately after hearings to explain the outcomes. Whereas an attorney might have met with a child once a year in the past, now they must meet many times. These change significantly increase the role children can play in the court proceedings that affect them, and consequently result in a greater number of hours worked by GALs.

Although OCR anticipated (and still believes) that the bulk of the cost of implementing S.B. 07-226 would not be felt until FY 2008-09,¹ there has been early implementation in certain jurisdictions. The 2nd (Denver), 10th (Pueblo), 17th (Adams), 19th (Weld) and 21st (Mesa) judicial districts have all embraced the changes and are far into the implementation of the new law. The OCR has provided extensive training to its attorneys along the Front Range and they have also begun using these skills to implement the provisions of S.B. 07-226. Judges and magistrates are changing their docket times and their policies in court rooms. For example, some court officers are scheduling hearings for the afternoon when children may attend, and many are meeting *in camera* with the children in chambers (meetings which take up more attorney time and make for longer hearings than prior to S.B. 07-226 when children were only involved in the process indirectly).

c. Increased Costs Per Case

For FY 2007-08 regular supplementals, the OCR estimated an average annual cost per case type by taking the annual average cost per case for each case type for FY 2006-07, and adjusting those costs to account for the hourly rate change approved for FY 2007-08 and other factors related to the billing cycle. Based on historic data, it estimated the average D&N case in FY 2007-08 would cost \$1,005 (see table below). However, the average cost as of May 31 is \$1,084, and that amount is understated because the final month of costs for cases that are still open has not been included. The final column in the table below shows an estimate of the final FY 2007-08 average cost per case.

¹ For FY 2008-09, OCR requested and received base increases of \$231,158 for increased GAL costs and \$10,000 for training related to the implementation of S.B. 07-226.

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OCR Case Cost Estimates

	Estimated Average Case Cost for FY 07-08 Regular Supplemental	Average Cost as of 5/31/08	Estimated Cost as of 6/30/08
D&N	\$1,005	\$1,084	\$1,105
Juvenile Delinquency	\$573	\$654	\$664
Other	\$649	\$692	\$698

OCR explains that the average cost per case has increased as cases have become increasingly complex. Safety issues have become a paramount concern to both caseworkers and GALs given the number of child fatalities in Colorado. Task forces have focused on GALs and caseworkers, and one key finding has been that communication and collaboration among individuals at all levels of the child welfare system is crucial to child safety. Communication and collaboration take attorney time, thus increasing state costs. GALs are also required to participate in an increasing amount of hearings and staffings. Additionally, GALs are being encouraged to conduct more independent investigations in problem cases and cases involving frequent moves and changes in placement (which are factors that may be associated with a higher risk for fatalities for children).

Request. The OCR estimates it will overexpend its budget by \$786,137 in FY 2007-08. This figure was projected based on actual bills received through May 31, 2008, and the knowledge that most contractors bill within 30 days of providing services (see table below).

OCR Projected FY 2007-08 Overexpenditure

Year to date billings as of May 31, 2008	11,493,117
Estimated billings for remainder of fiscal year	913,791
Estimated total FY 2007-08 billings	12,406,908
Current appropriation	11,620,771
<i>Projected overexpenditure</i>	<i>(786,137)</i>

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Per Section 24-75-110 (1), C.R.S.,² the Judicial Department is allowed to overexpend up to one million dollars each year without being forced to stop payments on bills. The allocation of this overexpenditure authority has historically been left to the State Court Administrator's Office (SCAO), as it is the administrative arm of the Branch's Chief Executive, the Chief Justice of the State Supreme Court. The SCAO has allotted \$100,000 of the overexpenditure authority for OCR this year. Therefore, the OCR's remaining need is for \$686,137 General Fund.

Consequences if Request is Unfunded. The agency is required by the State Controller's Office to use accrual accounting. Therefore, it does not have a year-end billing cutoff. At fiscal year end, it books as an expenditure with the Controller's Office an accrual of the estimated amount of current year billing that it has not yet received (now projected to be \$913,791). The OCR will be able to expend the remainder of its appropriation to pay bills, but any bills received in excess of its appropriation would not be paid until an additional appropriation is made. Therefore, based on the projections described above, attorney contractors who have done work for the state in FY 2007-08 would not be paid until an increased appropriation is received.

If the JBC does not approve a funding increase at this time, the OCR is projected to have attorney bills it would not be able to pay beginning July 1. Therefore, instead of processing attorney bills in 30 days, payments would be delayed indefinitely. In this scenario, it is likely that the OCR would submit another supplemental request for the JBC to consider at its next meeting.

Staff Recommendation. Courts appoint GALs to represent the best interest of children, pursuant to statute, and the appointments are beyond the control of OCR. As staff has discussed in previous documents, the hourly rate paid to these attorneys is uncompetitive, causing OCR to face challenges in recruiting and retaining qualified attorneys to represent some of the state's most vulnerable citizens. If the existing attorneys are not paid in a timely fashion, skilled attorneys may leave the state's services and other attorneys may be deterred from entering such service. Additionally, the state potentially opens itself up for a lawsuit.

Based on current projections, it appears that if additional funding is not provided now, the funding will be requested again in the future (at which time the OCR will have outstanding bills due). The only potential benefit of waiting to provide increased funding would be to know more definitively how much funding is required. Regardless, since the state has contractual obligations with these attorneys that must be paid, ***staff recommends the requested supplemental appropriation of \$686,137. Of this amount, \$268,919 should not be subject to the six percent growth limit on General Fund appropriations imposed by Section 24-75-201.1***

² "The total amount of moneys transferred between items of appropriation made to the judicial department pursuant to section 24-75-108 and overexpenditures by the judicial department allowed pursuant to section 24-75-109 shall not exceed one million dollars in any fiscal year."

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(1) (a) (II) (B), C.R.S., due to the implementation of a federal mandate (exempted under the provisions of Section 24-75-201.1 (1) (a) (III) (A), C.R.S.). The reason for this exemption is explained below.

General Fund Exempt From the Six Percent Limit. During the 2007 legislative session, the General Assembly passed S.B. 07-226, which changed statute regarding out of home placements for children. It primarily affected the departments of Human Services and Public Safety; however, GALs also need to understand and implement the provisions. In D&N cases, this bill requires courts and their agents to keep the affected children (and their parents, guardians, or prospective adoptive parents) more informed, and gives children the right to testify in court during all hearings that may affect them.

This bill was necessary to put Colorado in compliance with new federal requirements contained in the "Child and Family Services Improvement Act of 2006," and the "Adam Walsh Child Protection and Safety Act of 2006." Since S.B. 07-226 was a response to a federal mandate, Legislative Legal Services determined that General Fund appropriations made to comply with the provisions of the bill are exempt from the six percent limit on General Fund appropriations growth.

The OCR estimates that of the requested supplemental increase, \$268,919 is attributable to additional work required of attorneys due to the provisions of S.B. 07-226. This amount was calculated by first identifying the portion of the request that is being driven by D&N cases. Then, the amount of the increase due to the increase in filings in Denver was taken out. The remaining cost increase is due to a combination of S.B. 07-226 impacts and general workload increase. Since S.B. 07-226 is being implemented in the largest jurisdictions (but not in the entire state at this point), OCR estimates that 75 percent of the remaining cost increase is due to the impact of S.B. 07-226.