

JOINT BUDGET COMMITTEE



SUPPLEMENTAL BUDGET REQUESTS FY 2020-21

JUDICIAL BRANCH

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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CONTENTS

Branch Overview	1
Summary: FY 2020-21 Appropriation and Recommendation	3
Request/Recommendation Descriptions	3
JUD Prioritized Supplemental Requests	5
JUD S1 Exonerated Persons Interim Supplemental.....	5
JUD S2 Footnote 65/HB20-1368 Technical Correction.....	5
JUD Staff-initiated Supplemental Requests	7
Staff-initiated – (I) Note Technical Correction.....	7
Independent Agency Prioritized Supplemental Requests	8
OADC S1 Caseload Decrease	8
ORPC S1/BA1 Increase in Appointments and Costs.....	10
Statewide Common Policy Supplemental Requests.....	13
Appendix A: Numbers Pages.....	14

JUDICIAL BRANCH

BRANCH OVERVIEW

One of three branches of Colorado state government, the Judicial Branch is established in Article 6, Section 1 of the Colorado Constitution. It interprets and administers the law, resolves disputes, and supervises offenders on probation. The Chief Justice of the Colorado Supreme Court, selected by the justices of the Court, is the executive head of the Branch. The justices also appoint a State Court Administrator to oversee the daily administration of the Branch and provide administrative and technical support to the courts and probation. The General Assembly has established 22 judicial districts within the state, and the General Assembly establishes the number of justices and judges at each level of the state court system¹. The state court system consists of four primary courts:

- *County Courts* have limited jurisdiction, handling civil cases under \$15,000, misdemeanors, civil and criminal traffic infractions, felony complaints, protection orders, and small claims.
- *District Courts* have general jurisdiction, handling felony criminal cases, large civil cases, probate and domestic matters, cases for and against the government, as well as juvenile and mental health cases. District Courts also include water courts (one in each of the seven major river basins in Colorado) which have exclusive jurisdiction over cases concerning water matters.
- The *Colorado Court of Appeals* hears cases when either a plaintiff or a defendant believes that the trial court made errors in the conduct of the trial. The Court of Appeals also reviews decisions of several state administrative agencies.
- The *Colorado Supreme Court* also hears appeals, but only when it considers the cases to have great significance. The Supreme Court may also answer legal questions from the General Assembly regarding proposed laws. The Supreme Court is also responsible for overseeing the regulation of attorneys and the practice of law, and for reviewing judges standing for retention during elections.

Municipal courts and Denver's *county* court are not part of the state court system, and are funded by their respective local governments. In addition, all counties are required to provide and maintain adequate court facilities for their respective district and county courts.

The Branch is also charged with supervising offenders on probation. Managed by the chief probation officer in each judicial district, approximately 1,250 employees prepare assessments and provide pre-sentence investigation services to the courts, supervise offenders sentenced to community programs, and provide notification and support services to victims. Investigation and supervision services are provided based on priorities established by the Chief Justice and each offender's risk of re-offending.

¹ Legislation changing the boundaries of a judicial district or changing the number of Supreme Court justices or district court judges requires a 2/3 majority in each house [Article VI, Sections 5 and 10 of the State Constitution.]

The Judicial Branch also includes seven independent agencies:

- The *Office of State Public Defender* (OSPD) provides legal representation for indigent defendants in criminal and juvenile delinquency cases where there is a possibility of being jailed or imprisoned. The OSPD is comprised of a central administrative office, an appellate office, and 21 regional trial offices. The OSPD employs about 760 individuals including attorneys, investigators, and support staff.
- The *Office of Alternate Defense Counsel* (OADC) oversees the provision of legal representation to indigent defendants in criminal and juvenile delinquency cases when the OSPD has an ethical conflict of interest. This office provides legal representation by contracting with licensed attorneys across the state.
- The *Office of the Child's Representative* (OCR) oversees the provision of legal representation to children and youth involved in the court system, primarily due to abuse, neglect, or delinquency. Generally, the Office provides legal representation by contracting with licensed attorneys across the state.
- The *Office of the Respondent Parents' Counsel* (ORPC) oversees the provision of legal representation for indigent parents or guardians who are involved in dependency and neglect proceedings. This office provides legal representation by contracting with licensed attorneys across the state.
- The *Office of the Child Protection Ombudsman* (OCPO) serves as an independent and neutral organization to investigate complaints and grievances about child protection services, make recommendations about system improvements, and serve as a resource for persons involved in the child welfare system.
- The *Independent Ethics Commission* (IEC) hears complaints, issues findings, assesses penalties, and issues advisory opinions on ethics-related matters concerning public officers, state legislators, local government officials, or government employees.
- The *Office of Public Guardianship* (OPG) is a pilot program that provides legal guardianship services for incapacitated and indigent adults who have no other guardianship prospects in Denver County.

Each of the independent agencies submits a separate budget request which is not reviewed or approved by either the Chief Justice or the Governor's Office of State Planning and Budgeting. Thus, it is up to the General Assembly to evaluate the relative merits of the budget initiatives contained in the seven budget requests that are submitted by Judicial Branch agencies.

SUMMARY: FY 2020-21 APPROPRIATION AND RECOMMENDATION

JUDICIAL DEPARTMENT: RECOMMENDED CHANGES FOR FY 2020-21						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2020-21 APPROPRIATION						
HB 20-1360 (Long Bill)	\$827,340,205	\$590,680,495	\$176,117,213	\$56,117,497	\$4,425,000	4,945.8
Other legislation	(9,930,535)	(10,310,658)	380,123	0	0	0.0
CURRENT FY 2020-21 APPROPRIATION:	\$817,409,670	\$580,369,837	\$176,497,336	\$56,117,497	\$4,425,000	4,945.8
RECOMMENDED CHANGES						
Current FY 2020-21 Appropriation	\$817,409,670	580,369,837	\$176,497,336	\$56,117,497	\$4,425,000	4,945.8
ORPC S1/BA1 Increase in appts and costs	2,062,949	2,062,949	0	0	0	0.0
JUD S1 Exonerated persons	64,940	64,940	0	0	0	0.0
NP1 Annual fleet true-up	2,852	2,852	0	0	0	0.0
JUD S2 Footnote 65/HB20-1368	0	125,230	(125,230)	0	0	0.0
Staff-initiated (I) Note correction	0	0	0	0	0	0.0
OADC S1 Caseload decrease	(4,520,835)	(4,520,835)	0	0	0	0.0
RECOMMENDED FY 2020-21 APPROPRIATION:	\$815,019,576	\$578,104,973	\$176,372,106	\$56,117,497	\$4,425,000	4,945.8
RECOMMENDED INCREASE/(DECREASE)	(\$2,390,094)	(\$2,264,864)	(\$125,230)	\$0	\$0	0.0
Percentage Change	(0.3%)	(0.4%)	(0.1%)	0.0%	0.0%	0.0%
FY 2020-21 EXECUTIVE REQUEST						
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	\$0	(0.0)

REQUEST/RECOMMENDATION DESCRIPTIONS

ORPC S1/BA1 INCREASE IN APPTS AND COSTS: The Office of the Respondent Parents' Counsel (ORPC) requests \$2,062,949 General Fund in FY 2020-21 and FY 2021-22 for increases for Court-appointed Counsel and Mandated Costs due to an increase in ORPC appointments and costs per appointment. The recommendation is to approve the request.

JUD S1 EXONERATED PERSONS: The Department requested \$64,940 General Fund for an exonerated persons payout through the interim supplemental process. The Joint Budget Committee approved this request on September 18, 2020. Staff will include the approved adjustments in the supplemental bill for the Branch. No further action is required.

NP1 ANNUAL FLEET TRUE-UP: The request includes an increase of \$2,852 General Fund for an adjustment to the Department's share of expenses related to leasing vehicles through the Department of Personnel. This request item will be addressed in a separate staff supplemental presentation for the Department of Personnel. Staff will incorporate the Committee's action into the supplemental bill for the Judicial Branch. The dollar amount in the summary table above represents the requested appropriation change.

JUD S2 FOOTNOTE 65/HB20-1368: The request includes two components. First, the request includes an increase of \$125,230 General Fund and an associated cash fund decrease in the same amount to correct an error that resulted in a negative General Fund appropriation in the IT

Infrastructure line item. Second, the request updates Long Bill Footnote 65 to reflect the final fund sources included in the FY 2020-21 Long Bill. The recommendation is to approve the request.

STAFF-INITIATED (I) NOTE CORRECTION: The recommendation includes a technical correction to the (I) Note totals included in the FY 2020-21 Long Bill (H.B. 20-1360) for the Judicial Branch. The Long Bill includes a total of \$41,075,017 cash funds that are included for informational purposes only. The correct total should be \$41,603,063.

OADC S1 CASELOAD DECREASE: The Office of the Alternate Defense Counsel (OADC) requests a decrease of \$4,520,835 General Fund in FY 2020-21 to reflect a decrease in caseload. This includes a decrease of \$4.2 million for the Conflicts of Interest Contracts line item and \$0.3 million for Mandated Costs. The recommendation is to approve the request.

JUD PRIORITIZED SUPPLEMENTAL REQUESTS

JUD S1 EXONERATED PERSONS INTERIM SUPPLEMENTAL

	REQUEST	RECOMMENDATION
TOTAL	\$64,940	\$64,940
FTE	0.0	0.0
General Fund	64,940	64,940
Cash Funds	0	0
Federal Funds	0	0

DEPARTMENT REQUEST: The Department requested \$64,940 General Fund during the interim supplemental process for an exonerated persons payout.

SUMMARY: House Bill 13-1230 (Compensation for Persons Who Are Exonerated) created a state compensation program for persons who are found to be actually innocent of felony crimes after serving time in jail, prison, or juvenile placement. If found actually innocent, the exonerated person is eligible to receive compensation. On August 11, 2020, the Sixth District Court issued an order directing the State Court Administrator to compensate Anthony Israel Fitts, an exonerated person, within 14 days. Mr. Fitts was incarcerated from September 28, 2018 through May 14, 2019 (about 7.5 months). The Court ordered compensation to Mr. Fitts in the amount of \$46,220 and compensation to his attorney in the amount of \$18,720. The State Court Administrator made these payments on August 14, 2020.

For the full supplemental analysis, see the document presented on September 18, 2020: http://leg.colorado.gov/sites/default/files/jud_09-18-20.pdf.

COMMITTEE ACTION: The Joint Budget Committee approved this interim supplemental request on September 18, 2020. Staff will include the approved adjustments in the supplemental bill for the Branch. No further action is required.

JUD S2 FOOTNOTE 65/HB20-1368 TECHNICAL CORRECTION

	REQUEST	RECOMMENDATION
TOTAL	\$0	\$0
FTE	0.0	0.0
General Fund	125,230	125,230
Cash Funds	(125,230)	(125,230)
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**

[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff and the Department agree that this request is the result of a technical error.

DEPARTMENT REQUEST: The request includes two components. First, the request includes an increase of \$125,230 General Fund and an associated cash fund decrease in the same amount to correct an error that resulted in a negative General Fund appropriation in the IT Infrastructure line item. Second, the request updates Long Bill Footnote 65 to reflect the final fund sources included in the FY 2020-21 Long Bill. The recommendation is to approve the request.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the request.

STAFF ANALYSIS:

HB20-1368 TECHNICAL CORRECTION

As part of budget balancing, the General Fund appropriation for the IT Infrastructure line item in the Long Bill (H.B. 20-1360) was eliminated and refinanced with cash funds, leaving a total amount of \$16,101,490 cash funds from the Judicial Department Information Technology Cash Fund.

House Bill 20-1368 delays the implementation of H.B. 19-1229, which created the Colorado Electronic Preservation of Abandoned Estate Planning Documents Act. The act required the Judicial Department to electronically preserve abandoned estate planning documents beginning January 1, 2021, and created the Electronic Preservation of Abandoned Estate Planning Documents Cash Fund to collect fees used to cover the cost of electronically preserving estate planning documents. The fiscal note for House Bill 19-1229 assumed that the cash fund would not have enough revenue to cover the expenditures created by the bill until individuals could access the electronic documents system. Due to this, H.B. 19-1229 included a General Fund appropriation to cover the first six months of the program implementation period.

H.B. 20-1368 decreased total General Fund appropriations in the Judicial Department by \$153,377 and 0.3 FTE in FY 2020-21 and \$83,602 and 0.8 FTE in FY 2021-22. Specifically, the bill reduced the appropriation to the IT Infrastructure line item by \$125,230 General Fund in FY 2020-21.

The General Fund amount for H.B. 19-1229 was included in the total when the refinance of General Fund to cash funds occurred. **Therefore, the enactment of both H.B. 20-1360 and H.B. 20-1368 resulted in a negative General Fund appropriation of \$125,230.** This also resulted in an increase in the same amount of cash funds that are no longer required in FY 2020-21 because H.B. 20-1368 delayed the implementation of the program for which that cash fund appropriation was required. Therefore, the Department is requesting a reduction for that amount.

Staff recommends approval of the request.

FOOTNOTE 65

Long Bill Footnote 65 expresses the General Assembly's intent that a portion of the General Fund appropriation for Offender Treatment and Services be used to provide treatment and services for offenders participating in Veterans Treatment Courts, including peer mentoring services. For FY 2020-21, the footnote identified this amount as \$624,877 General Fund. However, as part of budget balancing/refinancing actions, the FY 2020-21 Long Bill included only \$269,464 General Fund in this line item. The total appropriation for this line item is \$19.3 million total funds. The FY 2020-21 appropriation is slightly higher than the FY 2019-20 total appropriation of \$19.0 million (including \$924,877 General Fund).

The Department proposes changing the footnote to strike “General Fund”, indicating that \$624,877 of the total appropriation be used for this purpose (eliminating the specific fund source).

Alternatively, the Committee could choose instead to change the amount of General Fund, indicating the full General Fund appropriation (\$269,464) be used for this purpose. This would reduce the amount dedicated to Veterans Treatment Courts, but increase the amount of funding available for other programs within the line item.

Staff recommends the Committee approve the Department request to update the footnote. Since the total appropriation for this line item is similar to the FY 2019-20 appropriation, maintaining the previous footnote amount while changing the fund source seems appropriate, and in line with the General Assembly’s intent.

JUD STAFF-INITIATED SUPPLEMENTAL REQUESTS

STAFF-INITIATED – (I) NOTE TECHNICAL CORRECTION

	REQUEST	RECOMMENDATION
TOTAL	\$0	\$0
FTE	0.0	0.0
General Fund	0	0
Cash Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? YES

[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: This was a technical error in calculating the original appropriation.

DEPARTMENT REQUEST: The Department did not request this adjustment. However, they are aware of staff’s recommendation and have no concerns.

STAFF RECOMMENDATION: Staff recommends that the Committee approve a technical correction to the (I) note totals included in the FY 2020-21 Long Bill (H.B. 20-1360) for the Judicial Branch. The Long Bill includes a total of \$41,075,017 cash funds that are included for informational purposes only. The correct total should be \$41,603,063.

STAFF ANALYSIS: This recommendation simply fixes an error in calculating informational only fund totals in the Long Bill.

INDEPENDENT AGENCY PRIORITIZED REQUESTS

As noted previously, each of the independent agencies submits a separate budget request which is not reviewed or approved by either the Chief Justice or the Governor's Office of State Planning and Budgeting. Thus, it is up to the General Assembly to evaluate and synthesize the budget requests that are submitted by Judicial Branch agencies. In attempting to analyze the caseload requests received by two independent agencies, staff identified a few considerations that may be helpful for the Committee in reviewing the requests and recommendations.

- Overall, court filings and caseload numbers for the Judicial Branch dropped in FY 2019-20 due to COVID-19. All Judicial Branch agencies anticipate there will be an increase to their caseloads, filings, and appointments when courts return to “normal” operations.
- There is general uncertainty about when “normal” operations will resume, when the impact of that surge will be felt, and the degree to which it will impact budgets.
- The “main” Judicial Department and the independent agencies each use their own methodologies to forecast their caseloads/filings/appointments, and each of them have their own unique drivers of these caseloads. For instance, while all of the independent agencies are providing legal representation to indigent clients, the types of cases, the clients, the duration of the appointment, and the point in time at which an appointment is made can vary among the different agencies.

For the supplemental process, staff is recommending approval of the offices’ requests, and is not making staff-initiated recommendations related to other offices that did not submit supplemental requests. For figure setting, staff will attempt to identify a consistent approach to evaluating caseload and budget requests for the Judicial Branch overall (which could include further adjustments for FY 2020-21, if merited).

OADC S1 CASELOAD DECREASE

	REQUEST	RECOMMENDATION
TOTAL	(\$4,520,835)	(\$4,520,835)
FTE	0.0	0.0
General Fund	(4,520,835)	(4,520,835)
Cash Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? YES

[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made.

DEPARTMENT REQUEST: The Office of the Alternate Defense Counsel (OADC) requests a decrease of \$4.5 million General Fund in FY 2020-21 to reflect a decrease in caseload. This includes

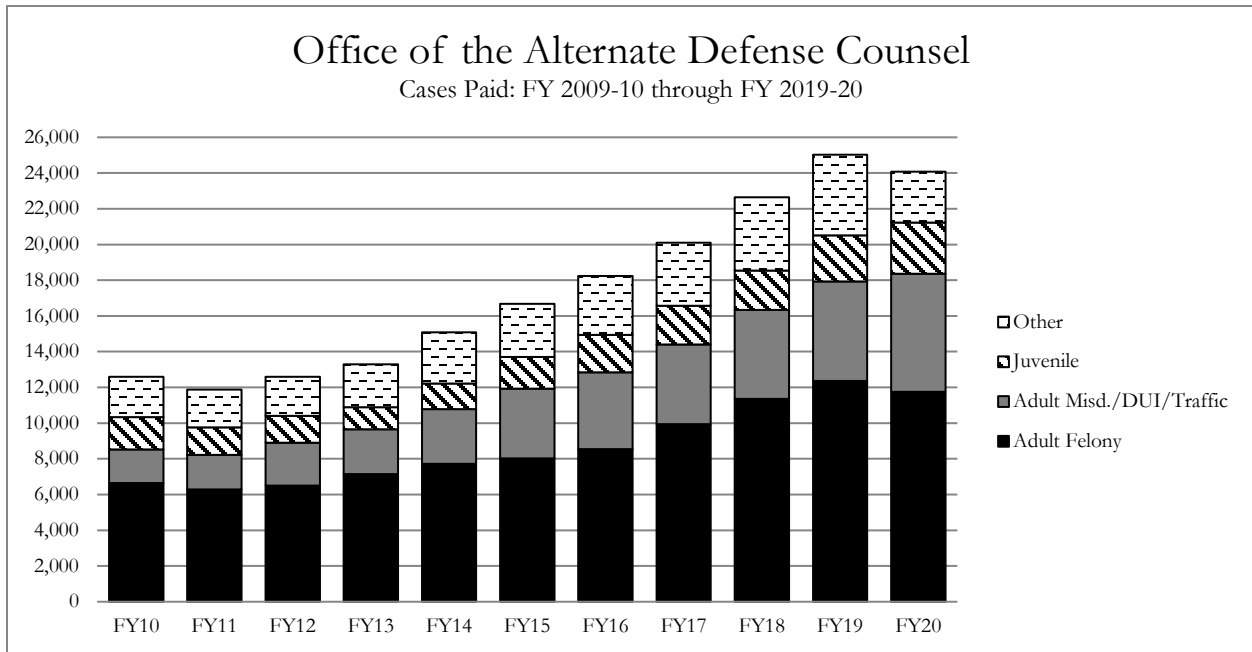
a decrease of \$4.2 million for the Conflicts-of-Interest Contracts line item and \$0.3 million for Mandated Costs.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the OADC’s request for FY 2021-22.

STAFF ANALYSIS:

The Office of the Alternate Defense Counsel (OADC) contracts with private attorneys to represent indigent defendants in cases where the Office of the State Public Defender (OSPD) has an ethical conflict of interest in providing legal representation, often because the client is a witness or a co-defendant in a case in which the OSPD is representing someone.

As illustrated in the following chart, the OADC experienced significant caseload increases between FY 2016-17 and FY 2018-19 (an overall increase of 6,778 cases, a 37.2 percent increase). The OADC experienced increases in every case type, but the most significant increases occurred in adult felony cases (3,813 additional cases, a 44.6 percent increase) and adult misdemeanors, DUI, and Traffic cases (1,280 additional cases, a 29.7 percent increase). Unlike the OSPD, which is staffed with state employees, the OADC contracts with private attorneys. The OADC has routinely submitted requests for budget adjustments to ensure that it has sufficient funding to cover payments for all assigned cases.



The COVID pandemic impacted OADC’s FY 2019-20 caseload and expenditures, with attorney hours on cases falling by 14,157 hours compared to FY 2018-19. Many cases were delayed, either due to cases being pushed out, or fewer cases being heard each day. Contractor travel time was reduced due to many jails and prisons allowing only remote meetings. This decrease has continued into FY 2020-21. Based on FY 2019-20 actuals and year-to-date data for FY 2020-21, the OADC is

requesting a 9.1 percent reduction to the current FY 2020-21 appropriation, or \$4.2 million General Fund.

Staff recommends the Committee approve the OADC FY 2020-21 request. As noted above, staff is relying on the independent agencies’ caseload expectations, which are based on their own unique drivers. Additionally, the staff recommendation factors in prior year reversions and timelines for appointments.

For FY 2019-20, the OADC had significant reversions (\$5.5 million General Fund), even after reductions made via Long Bill add-on for balancing purposes. Additionally, FY 2019-20 included only a partial year (March through June) of COVID impact. Given that COVID is likely to impact nearly all months in FY 2020-21, staff believes this reduction is reasonable and should not impact the OADC’s ability to pay contractors or provide quality representation.

OADC REQUEST COMPARED TO PRIOR YEAR APPROPRIATION AND EXPENDITURES	
	TOTAL
Final FY 2019-20 Expenditures	\$39,471,286
Current FY 2020-21 Appropriation	52,067,382
Requested FY 2020-21 Appropriation	47,546,547

Additionally, OADC appointments tend to be more delayed than other agencies, such as the Office of the State Public Defender (OSPD). While OSPD appointments can occur rather quickly, OADC appointments are made after a conflict has been identified by the OSPD and a referral is processed. This typically pushes out the caseload impact to OADC, and means that a surge of cases when courts return to normal operation could be more delayed for OADC than other agencies.

The OADC’s FY 2021-22 request includes a similar reduction of \$4.5 million General Fund. However, as with all Judicial Branch agencies, the Office expects that caseload will increase again once courts return to more normal operations. Staff will present a recommendation for FY 2021-22 at figure setting, incorporating the most recent data available.

ORPC S1/BA1 INCREASE IN APPOINTMENTS AND COSTS

	REQUEST	RECOMMENDATION
ORPC S1/BA1 INCREASE IN APPOINTMENTS AND COSTS		
TOTAL	\$2,062,949	\$2,062,949
FTE	0.0	0.0
General Fund	2,062,949	2,062,949
Cash Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?	YES
[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	

Explanation: JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made.

DEPARTMENT REQUEST: The Office of the Respondent Parents' Counsel (ORPC) requests \$2,062,949 General Fund in FY 2020-21 and FY 2021-22 for increases for Court-appointed Counsel and Mandated Costs due to an increase in ORPC appointments and costs per appointment.

For FY 2020-21, this increase includes an expected 7.5 percent increase in the number of appointments. Additionally, this includes an expected increase of 4.3 percent in costs for Court-appointed Counsel and an increase of 7.9 percent for Mandated Costs over FY 2019-20 levels.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the ORPC's request.

STAFF ANALYSIS:

Section 13-92-104 (1), C.R.S. charges the ORPC with “enhancing the provision of respondent parent counsel services in Colorado by enhancing the provision and availability of high-quality legal representation for parents involved in dependency and neglect proceedings.” Since 2016, the ORPC has provided contract legal representation to indigent parents whose parental rights are at risk.

ORPC costs are driven by many factors, including the number of cases filed, the number of appointments made, the complexity and cost of individual appointments, and changes in Federal and State law. The two most critical factors are the number of appointments and the cost per appointment.

CASELOAD

Of the independent agencies, ORPC experienced the least dramatic caseload reduction related to COVID-19 in FY 2019-20, with a drop of only 61 cases, or 1.0 percent. The ORPC believes that this decrease is attributable to two conflicting drivers related to COVID-19. First, many organizations (including schools, medical offices, and courts) closed or severely restricted operations, which meant that fewer children were in the presence of mandatory reporters, and/or cases couldn't be filed because the courts were closed. Second, the economic downturn caused many parents to lose their jobs and housing, and limited their ability to adequately feed and care for their children, which could have increased the number of new appointments.

APPOINTMENTS

The number of appointments in Dependency and Neglect (D&N) cases, rather than the number of cases, is one of the critical factors in predicting ORPC costs. The number of RPC appointments is not equal to the number of D&N cases filed because there are usually multiple respondents on each case. From July 1, 2020 through November 30, 2020, there were 1,168 D&N case filings and 2,787 ORPC appointments on those cases. This represents an average increase of 7.5 percent over those same months in FY 2019-20. The number of appointments per filing have gone up from an average of 1.34 in 2016 to 2.36 in 2020.

COSTS PER CASE

Costs per case have been steadily increasing, for both the Court-appointed Counsel (CAC) line item and Mandated Costs line item. The ORPC attributes this increase in part to the growing complexity of cases, which require additional time and resources. Economic impacts not only drive the number of ORPC appointments as more clients become eligible for representation, but also increase the severity and complexity of cases. Mandated Costs include some required expenses, such as translators, as well as other expert services such as family and parent advocates, social workers, investigators, and transcribers.

ORPC is a newer agency which has been working to improve the quality of representation provided to clients, which likely accounts for some of the cost increase.

Average Cost per Closed Appointment by Long Bill Line								
	FY18		FY19		FY20		FY21	
	FY18	Percentage Change	FY19	Percentage Change	FY20	Percentage Change	through 12/10	Percentage Change
CAC - average for all contractor types	\$ 1,864	-0.9%	\$ 2,250	20.7%	\$ 2,577	14.5%	\$ 2,688	4.3%
Mandated - average for all contractor types	\$ 808	-2.7%	\$ 900	11.5%	\$ 839	-6.8%	\$ 905	7.9%

CONSEQUENCES IF NOT FUNDED

The ORPC has no control over the number of cases or appointments. Therefore, if the number of cases and appointments increases as they expect, the Office would have to find savings via actions that would impact the quality of representation provided to clients. Some costs, such as providing experts at termination, are statutorily required. Other costs, however, assist attorneys in defending their clients, such as requesting transcripts from prior hearings, or attempting to secure increased visitation, which could require paid visitation witnesses. If the caseload and appointments increase and the request is not funded, staff would anticipate that impact would be to the quality of representation provided. The Office, at least in the short term, would likely still be able to provide representation and pay their contracted attorneys, but would have to reduce other expenses. This could have a number of impacts, including an increase in appellate caseload, a disparity in the quality of representation to indigent clients, increased and lasting emotional impact for families, and the potential for down-the-line costs or impacts to other departments, such as increased costs to the Department of Human Services for out-of-home placements.

RECOMMENDATION

Staff recommends approval of the ORPC request. The Office does not have control over their caseload or number of appointments, and is statutorily required to increase the quality of representation for indigent clients. While predicting caseload is difficult, it seems reasonable to expect that caseload will increase as courts hopefully return to “normal” operation over the coming year and as students return to in-person learning (which drives reporting).

STATEWIDE COMMON POLICY SUPPLEMENTAL REQUESTS

These requests are not prioritized and are not analyzed in this packet. The JBC will act on these items later when it makes decisions regarding common policies.

DEPARTMENT'S PORTION OF STATEWIDE SUPPLEMENTAL REQUEST	TOTAL	GENERAL FUND	CASH FUNDS	REAPPROP. FUNDS	FEDERAL FUNDS	FTE
JUD Annual fleet true-up	(\$6,033)	(\$6,033)	\$0	\$0	\$0	0.0
OSPD Annual fleet true-up	8,885	8,885	0	0	0	0.0
DEPARTMENT'S TOTAL STATEWIDE SUPPLEMENTAL REQUESTS	\$2,852	\$2,852	\$0	\$0	\$0	0.0

STAFF RECOMMENDATION: The staff recommendation for these requests is pending Committee action on common policy supplementals. Staff asks permission to include the corresponding appropriations in the Department's supplemental bill when the Committee acts on common policy supplementals. If staff believes there is reason to deviate from the common policy, staff will appear before the Committee at a later date to present the relevant analysis.

JBC Staff Supplemental Recommendations - FY 2020-21
Staff Working Document - Does Not Represent Committee Decision

Appendix A: Numbers Pages

	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2020-21 Requested Change	FY 2020-21 Rec'd Change	FY 2020-21 Total w/Rec'd Change
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JUDICIAL DEPARTMENT Brian Boatright, Chief Justice

S1 Exonerated persons

(2) COURTS ADMINISTRATION

(C) Centrally Administered Programs

Compensation for Exonerated Persons	<u>0</u>	<u>0</u>	<u>64,940</u>	<u>64,940</u>	<u>64,940</u>
General Fund	0	0	64,940	64,940	64,940
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0
Total for S1 Exonerated persons	0	0	64,940	64,940	64,940
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	0	0	64,940	64,940	64,940
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

JBC Staff Supplemental Recommendations - FY 2020-21
Staff Working Document - Does Not Represent Committee Decision

	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2020-21 Requested Change	FY 2020-21 Rec'd Change	FY 2020-21 Total w/Rec'd Change
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JUD S2 Footnote 65/HB 20-1368

(2) COURTS ADMINISTRATION

(A) Administration and Technology

Information Technology Infrastructure	<u>12,937,199</u>	<u>15,976,260</u>	<u>0</u>	<u>0</u>	<u>15,976,260</u>
General Fund	890,046	(125,230)	125,230	125,230	0
Cash Funds	12,047,153	16,101,490	(125,230)	(125,230)	15,976,260
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

Total for JUD S2 Footnote 65/HB 20-1368	12,937,199	15,976,260	0	0	15,976,260
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	890,046	(125,230)	125,230	125,230	0
Cash Funds	12,047,153	16,101,490	(125,230)	(125,230)	15,976,260
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

JBC Staff Supplemental Recommendations - FY 2020-21
Staff Working Document - Does Not Represent Committee Decision

	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2020-21 Requested Change	FY 2020-21 Rec'd Change	FY 2020-21 Total w/Rec'd Change
OADC S1 Caseload decrease					
(6) OFFICE OF THE ALTERNATE DEFENSE COUNSEL					
Conflict-of-interest Contracts	<u>35,160,936</u>	<u>46,493,770</u>	<u>(4,230,957)</u>	<u>(4,230,957)</u>	<u>42,262,813</u>
General Fund	35,160,936	46,493,770	(4,230,957)	(4,230,957)	42,262,813
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0
Mandated Costs	<u>1,689,070</u>	<u>3,185,451</u>	<u>(289,878)</u>	<u>(289,878)</u>	<u>2,895,573</u>
General Fund	1,689,070	3,185,451	(289,878)	(289,878)	2,895,573
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0
Total for OADC S1 Caseload decrease	36,850,006	49,679,221	(4,520,835)	(4,520,835)	45,158,386
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	36,850,006	49,679,221	(4,520,835)	(4,520,835)	45,158,386
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

JBC Staff Supplemental Recommendations - FY 2020-21
Staff Working Document - Does Not Represent Committee Decision

	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2020-21 Requested Change	FY 2020-21 Rec'd Change	FY 2020-21 Total w/Rec'd Change
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ORPC S1 Increase in appts and cost

(8) OFFICE OF THE RESPONDENT PARENTS' COUNSEL

Court-appointed Counsel	<u>17,781,549</u>	<u>19,286,624</u>	<u>652,673</u>	<u>652,673</u>	<u>19,939,297</u>
General Fund	17,781,549	19,286,624	652,673	652,673	19,939,297
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0
 Mandated Costs	 <u>2,269,012</u>	 <u>1,538,716</u>	 <u>1,410,276</u>	 <u>1,410,276</u>	 <u>2,948,992</u>
General Fund	2,269,012	1,220,476	1,410,276	1,410,276	2,630,752
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	318,240	0	0	318,240
Federal Funds	0	0	0	0	0

Total for ORPC S1 Increase in appts and cost	20,050,561	20,825,340	2,062,949	2,062,949	22,888,289
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	20,050,561	20,507,100	2,062,949	2,062,949	22,570,049
Cash Funds	0	0	0	0	0
Reappropriated Funds	0	318,240	0	0	318,240
Federal Funds	0	0	0	0	0

JBC Staff Supplemental Recommendations - FY 2020-21
Staff Working Document - Does Not Represent Committee Decision

	FY 2019-20 Actual	FY 2020-21 Appropriation	FY 2020-21 Requested Change	FY 2020-21 Rec'd Change	FY 2020-21 Total w/Rec'd Change
Totals Excluding Pending Items					
JUDICIAL					
TOTALS for ALL Departmental line items	800,530,430	817,409,670	(2,392,946)	(2,392,946)	815,016,724
<i>FTE</i>	<u>4,606.3</u>	<u>4,945.8</u>	<u>0.0</u>	<u>0.0</u>	<u>4,945.8</u>
General Fund	619,647,408	580,369,837	(2,267,716)	(2,267,716)	578,102,121
Cash Funds	138,474,125	176,497,336	(125,230)	(125,230)	176,372,106
Reappropriated Funds	36,390,496	56,117,497	0	0	56,117,497
Federal Funds	6,018,401	4,425,000	0	0	4,425,000

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Christina, JBC Staff (303-866-2149)
DATE January 22, 2021
SUBJECT ORPC S1/BA1 Caseload Request

The Office of the Respondent Parents' Counsel (ORPC) requests \$2,062,949 General Fund in FY 2020-21 and FY 2021-22 for increases for Court-appointed Counsel and Mandated Costs due to an increase in ORPC appointments and costs per appointment. Of this amount, \$1,410,276 is for Mandated Costs and \$652,673 is for Court-appointed Counsel. The original staff write-up for this request is included in the Judicial Branch Supplemental JBC Staff document dated January 21, 2021. This memorandum provides updated options and recommendations related to this request.

As of this week (and following submittal of the supplemental request), the Department has expended over 90 percent of their Mandated Costs appropriation. The Court-appointed Counsel costs have fluctuated, but are currently tracking more closely to the FY 2020-21 appropriation.

JBC Staff asked the ORPC to identify the most vital costs needed to sustain them through the end of the year. The ORPC is very concerned about their ability to sustain their budget through the end of the year and believes that the original request is what they need to adequately provide services and quality representation to their clients through the end of the fiscal year, without concern that they will need to restrict case-related costs by the end of the year.

However, the Mandated Costs line item is the one of most concern to the ORPC. An appropriation of \$1.5 million in FY 2020-21 would cover the expected shortfall related to Mandated Costs and provide some cushion in the Court-appointed Counsel line item. At minimum, the Office believes they need \$1.4 million to sustain costs through the end of the year.

If the Committee is not ready to make a decision today, this decision could be delayed to figure setting and adjustments can be made via a Long Bill add-on. When time is not a concern and additional data can be helpful, staff would recommend this as a good option. In this situation, two factors lead staff to caution against that approach. First, the Office has expended a significant portion of their appropriation at this point in the year. If supplementing this funding is a concern in January, delaying final action until March/April could augment the problem. Second, given the uncertainty around forecasting caseload data, staff isn't convinced that delaying action five weeks (until figure setting for this department) is going to significantly impact decision making. While one more month of data will likely be available, it is staff's opinion that the general uncertainty around forecasting caseload and determining the impact to budgets will not be lessened by an additional month of data.

As previously noted, staff will work with all Judicial Branch agencies, including ORPC, to attempt to develop a consistent approach to caseload adjustments for FYs 2020-21 and 2021-22 during figure setting.

RECOMMENDATION

The staff recommendation is to approve an increase of \$1.5 million, including \$1,410,276 for Mandated Costs and \$100,000 for Court-appointed Counsel.