

JUDICIAL DEPARTMENT AND INDEPENDENT AGENCIES  
FY 2018-19 JOINT BUDGET COMMITTEE HEARING AGENDA

Monday, December 18, 2017  
1:30 pm – 5:00 pm

**1:30-3:00. JUDICIAL DEPARTMENT (including the Supreme Court, Court of Appeals, Courts, Administration, Trial Courts, and Probation)**

**1:30-1:40 INTRODUCTION AND OPENING COMMENTS**

**1:40-2:00 PROBATION**

1. Comment on the importance of good assessment at the front end of the probation process and on the importance of concentrating resources on high risk rather than low risk probationers.
2. Is recidivism the correct measure of probation success? How else can we measure success?
3. Compare supervision and services for intensive supervision probation with those for regular probation.
4. What exactly is private probation?
5. What is the cost differential between private probation and state probation?
6. How does someone who has been placed on probation get assigned to a private probation provider versus state run probation? Is there means testing by the courts to determine who is assigned to private probation since the probationer must pay for it?
7. Has an analysis been done of the effectiveness of the private probation versus state provided probation?

**2:00-2:15 ISSUES**

**Funding Carr Center Controlled Maintenance**

8. Was the Carr Center included S.B. 15-211, the long-term maintenance that the General Assembly passed recently?
9. What is the balance in the Judicial Center Cash Fund? Should more than \$500,000 annually go into a new Controlled Maintenance Cash Fund?
10. Has the Department set up a long range controlled maintenance plan? What provisions are in the lease purchase agreement regarding controlled maintenance and other maintenance? Are there other state buildings that receive this kind of treatment? What is the impact on all the other building costs?

## Consolidated Appropriations for Health, Life, and Dental Expenditures

11. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.
12. Can't Health, Life, and Dental appropriations that are based on past averages do this? How do Department's with comparable divisions do this?
13. Explain why you opposed this HLD appropriation proposal in your response to the request for information? Does the staff proposal address your concerns?

### **2:15-2:45 JUDICIAL REQUESTS (DECISION ITEMS)**

#### JUD R1 System Maintenance Study

14. Are the salary increase the same for each class or, do they differ?
15. Why does the consultant believe these changes are necessary?
16. What exactly does this mean? Is this a salary survey? Does it ripple through the system like salary survey in the executive branch? Who is included in the study?
17. Why is this called a system maintenance study? Was this study considered in the State Auditor's May 2017 performance audit of DPA's annual compensation study?

#### JUD R2 Court Supervisors

18. Could this be done on a trial basis in a few courts or jurisdictions to determine whether it helps? What metrics would be analyzed after implementation to determine whether these changes have helped?
19. What is the current staff to supervisor ratio? Can this be compared to any courts elsewhere? In which particular courts are you planning to increase the supervision ratio?

#### JUD R3 Problem Solving Court Coordinators

20. Is this request designed to increase fidelity to the problem-solving-courts model. Has anyone done an analysis of Colorado's problem solving courts to determine how they compare with the model and whether this request would definitely assist in improving outcomes?
21. Where are the problem solving courts located that would benefit and what is their need?

#### JUD R4 Access to Justice

22. Is this a new position? Will one position be able to accomplish the goals that are being sought by this? How were these efforts coordinated formerly?
23. What sort of cases will benefit from this? Civil? Criminal? Domestic? Other? Will it help individuals with mental and physical disabilities? How?

#### JUD R5 IT Project Management and Information Security Staff

24. Is it possible for the main Judicial Department to buy these services from the Executive Branch rather than doing this itself? Why or why not?
25. Why do they need so many project managers? Can they use a State augmentation contract to hire consultants to do this rather than doing it internally?

#### JUD R6 Interstate Compact FTE Transfer

26. Why is the salary for the new FTE in Judicial higher than the salary for the reduced FTE in Corrections?

#### JUD R7 Courthouse Furnishing

27. Are these items reviewed by the CDC? Is there a priority list? What happens to counties that cannot afford to build, expand, or remodel their courthouses? Where are the challenges statewide?
28. What specifically will be funded by this request? Where? Is some for security? Is there a courthouse security fund that can cover some of these costs?

#### JUD R8 Merchant and Courier Fees

29. If someone must pay a court fee that they can't afford to pay all at once, is there an option to pay over time? If so, is the option to pay over time used frequently?
30. If someone pays with a credit card do they pay extra to cover the merchant fee? How much extra? Is the extra charge enough to cover the merchant fee?

#### JUD R9 E-filing/postage/mailing/processing

31. Why is electronic filing generating paper that must be mailed? Can't it all be done electronically? Is there really a savings from electronic filing as opposed to paper filings?

#### JUD R10 Restorative Justice Cash Fund Spending Authority

32. How well is restorative justice working? Is it affecting caseloads?

33. Provide the July 2016 OMNI report that shows how well the Department's Restorative Justice Pilot Program works. Provide a later report if it is available.

34. Is the restorative justice pilot program still going on? How will this request add to it?

**2:45-3:00 QUESTIONS FROM THE OFFICE OF BEHAVIORAL HEALTH BRIEFING**

35. Describe the Department's ongoing study concerning the pretrial release decision-making process.

36. Describe the Department's efforts related to the implementation of H.B. 16-1410 (concerning court discretion to order inpatient competency evaluations), including related training and technical assistance for judicial officers.

37. [*Background Information: The Department of Human Services is struggling to address continued increases in the number of court orders for inpatient competency restoration services and to comply with the requirements of a related Settlement Agreement. The Committee is interested in identifying a range of solutions that will ensure that: (a) individuals with behavioral health disorders are diverted from the criminal justice system when possible; and (b) those who do become involved in the justice system have access to clinically appropriate behavioral health and competency-related services.*]

The Committee requests that the Department provide feedback concerning the following potential policy options:

- a. Modify current law to expand the minimum information that a competency evaluator must include in a written report to the Court to include:
  - i. Whether the individual who was evaluated has been evaluated for competency or received competency restoration services previously and, if so, any available information about the outcome of the previous evaluation or restoration services.
  - ii. A recommendation concerning the appropriate clinical setting for competency restoration services and whether the individual's competency is likely to be restored within the statutorily allowable timeframe.
- b. Modify current law concerning Court options when a defendant is charged with a low level misdemeanor or petty offense and the competency evaluator's report indicates that the individual is not competent to proceed but competency is likely to be restored within the allowable statutory timeframe. Under this circumstance, provide the Court with two options:
  - (1) allow the defendant to bond out and order restoration services on an outpatient basis; or
  - (2) drop the charges.
- c. Modify current law so that if a defendant is charged with a higher level misdemeanor or a felony and the Court does not release the defendant on bond, the Court must to order restoration services at the place where the defendant is in custody unless the competency evaluator's report recommends a higher level of clinical care. If the evaluator recommends a

higher level of care, authorize the Department of Services to determine the most appropriate location for such services.

- d. If the Court orders a competency evaluation to occur on an inpatient basis, require the Court to make findings identifying the relevant statutory criteria (pursuant to H.B. 16-1410). Consider requiring the Court to make similar findings when it orders inpatient competency restoration treatment.
- e. Under current law, the maximum term of confinement for purposes of receiving competency restoration treatment is a period of time equal to the maximum term of confinement that could be imposed if the defendant were to be found guilty of the charges. Consider modifying this provision to reduce the time allowed for restoration treatment. The Department of Human Services provided two examples from other states:
  - i. Alaska permits the Court to commit a person for restoration treatment for a maximum of 360 days. After 360 days, the charges are dismissed without prejudice and the defendant is remanded for civil commitment proceedings.
  - ii. Connecticut permits the Court to confine a defendant for restoration treatment for the period of the maximum sentence which the defendant could receive on conviction of the charges against him or 18 months, whichever is less. This limitation does not apply to persons charged with certain crimes (e.g., class A felony, some class B felonies, a crime or motor vehicle violation that causes the death of another person, or a class C felony unless good cause is shown). When this time limit is reached, the Court shall either order the defendant released from custody or order the defendant placed with a specific state agency for the purpose of pursuing civil commitment proceedings.
- f. Direct the Department of Human Services to adopt a practice of advising the Court when a defendant meets civil commitment criteria. This would involve a defendant's treatment team providing a letter to the Court, which would be attached to the competency evaluator's report. This would prompt the Court to move forward with civil commitment proceedings rather than requiring ongoing competency restoration treatment and periodic evaluator reports to the Court.
- g. Expand the existing Jail-based Behavioral Health Services program to allow county sheriffs to use the program funding to provide behavioral health services to inmates who have a mental health disorder, regardless of whether the individual has a co-occurring substance use disorder. Consider expanding funding for the program and prioritizing the new funding for rural and frontier jurisdictions, with an emphasis on multi-jurisdictional proposals that would allow rural jurisdictions to work together to develop creative solutions to provide effective behavioral health services within their region.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

38. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially

implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

39. Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2017 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2017>

40. If the Department receives federal funds of any type, please respond to the following:
- a. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2017-18 or 2018-19.
  - b. Are you expecting any changes in federal funding with the passage of the FFY 2017-18 or 2018-19 federal budget? If yes, in which programs, and what is the match requirement for each program?
  - c. Does the Department have a contingency plan if federal funds are eliminated?
41. Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?
42. Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?
43. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

44. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?
45. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of “evidence-based,” indicate which programs are “evidence-based,” and describe the evidence used to support these programs.
46. Please identify how many rules you have promulgated in the past two years (FYs 2015-16 and 2016-17). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department’s rules as a whole? If so, please provide an overview of each analysis.
47. Describe the expected fiscal impact of proposed changes to PERA made by both the Governor’s Office and the PERA Board of Directors. In addition to direct budgetary impacts, please describe any anticipated secondary impacts of an increase in employee contribution rates. For instance, does the Department anticipate a need to increase employee salaries to compensate for the increase in PERA contributions?
48. Senate Bill 17-267 required Departments, other than Education and Transportation, that submit budgets to OSPB to propose a budget that is 2.0 percent below the total funds budget in FY 2017-18. Please highlight the following regarding the 2.0 percent reduction:
- Where these reductions can be found in the Department’s request;
  - What programs are impacted by the reduction; and
  - Total amount of the reduction.
49. Please provide the following information for the Department’s custodial funds and continuously appropriated funds:
- Name of the fund;
  - Amount of funds received;
  - Whether the revenues are one-time or multi-year;
  - Current cash fund balance;
  - Source(s) of the funds;
  - A list of FY 2015-16 and FY 2016-17 expenditures from these funds;
  - Expected uses of the funds in FY 2017-18 and FY 2018-19; and
  - Legal authorization and restrictions/limitations on the Department’s use of these funds.

50. What is the Department's process for engaging in (or disputing) federal land, environmental, jurisdictional, and/or water policy issues? How do you coordinate with other departments, the Governor's Office, local governments, and/or citizens?

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**3:00 – 3:15    BREAK**

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**INTRODUCTIONS AND OPENING COMMENTS****QUESTIONS**

51. What is driving the increase in prosecutions? Is it more crime or is it more filings that DAs are bringing to court?
52. What is driving the increase in misdemeanor cases? Is there any way to contain the costs associated with it? How does this compare with what is happening in other states?
53. Can the caseload carried by a Public Defender be compared with the caseload carried by public defenders in other states? How does Colorado compare?
54. What is the range for the costs for cases handled by the public defender? What is the cost of a typical case? That is the average for the different types of cases, for example those that go to trial and those that do not? Juvenile, misdemeanor, felony, etc. What is the highest and lowest?

OSPD R1 Workload and Caseload Increases.

55. What is necessitating these increases? Is there any way to contain the costs?
56. Where will these FTE be located and how will the locations correspond to caseload and workload?
57. Why isn't the Public Defender requesting additional social workers?
58. Does the Public Defender currently use social workers? Have they been effective? How is success measured?

Consolidated Appropriations for Health, Life, and Dental Expenditures

59. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

Question from the Office of Behavioral Health Briefing

60. *[Background Information: The Department of Human Services is struggling to address continued increases in the number of court orders for inpatient competency restoration services and to comply with the requirements of a related Settlement Agreement. The Committee is interested in identifying a range of solutions that will ensure that: (a) individuals with behavioral health disorders are diverted from the criminal justice system when possible; and (b)*

*those who do become involved in the justice system have access to clinically appropriate behavioral health and competency-related services.]*

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  - i. Whether the individual who was evaluated has been evaluated for competency or received competency restoration services previously and, if so, any available information about the outcome of the previous evaluation or restoration services.
  - ii. A recommendation concerning the appropriate clinical setting for competency restoration services and whether the individual's competency is likely to be restored within the statutorily allowable timeframe.
- b. Modify current law concerning Court options when a defendant is charged with a low level misdemeanor or petty offense and the competency evaluator's report indicates that the individual is not competent to proceed but competency is likely to be restored within the allowable statutory timeframe. Under this circumstance, provide the Court with two options: (1) allow the defendant to bond out and order restoration services on an outpatient basis; or (2) drop the charges.
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- e. Under current law, the maximum term of confinement for purposes of receiving competency restoration treatment is a period of time equal to the maximum term of confinement that could be imposed if the defendant were to be found guilty of the charges. Consider modifying this provision to reduce the time allowed for restoration treatment. The Department of Human Services provided two examples from other states:
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- f. Direct the Department of Human Services to adopt a practice of advising the Court when a defendant meets civil commitment criteria. This would involve a defendant's treatment team providing a letter to the Court, which would be attached to the competency evaluator's report. This would prompt the Court to move forward with civil commitment proceedings rather than requiring ongoing competency restoration treatment and periodic evaluator reports to the Court.
  
- g. Expand the existing Jail-based Behavioral Health Services program to allow county sheriffs to use the program funding to provide behavioral health services to inmates who have a mental health disorder, regardless of whether the individual has a co-occurring substance use disorder. Consider expanding funding for the program and prioritizing the new funding for rural and frontier jurisdictions, with an emphasis on multi-jurisdictional proposals that would allow rural jurisdictions to work together to develop creative solutions to provide effective behavioral health services within their region.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

- 61. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.
  
- 62. Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?
  
- 63. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

64. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?
  65. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of “evidence-based,” indicate which programs are “evidence-based,” and describe the evidence used to support these programs.
  66. Describe the expected fiscal impact of proposed changes to PERA made by both the Governor’s Office and the PERA Board of Directors. In addition to direct budgetary impacts, please describe any anticipated secondary impacts of an increase in employee contribution rates. For instance, does the Department anticipate a need to increase employee salaries to compensate for the increase in PERA contributions?
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### 3:45-4:00 OFFICE OF THE ALTERNATIVE DEFENSE COUNSEL (OADC)

#### INTRODUCTIONS AND OPENING COMMENTS

#### QUESTIONS

67. Please provide a breakdown of the average cost per case for the Alternative Defense Counsel for the categories of juvenile, misdemeanor, felony.

#### OADC R1 Caseload Increase

68. What is driving the increase in caseload? Why is the dollar increase for the Alternative Defense Counsel bigger than the dollar increase for the Public Defender?

#### Contractor Rate Increase Issue

69. Are you having difficulty finding attorneys or other contractors at the current hourly rates? How hard is it to get a contractor?

70. Describe your contractors. Have they recently passed the bar? How much of their practices is devoted to contract hours? Does it just supplement their practice or is it their entire focus? How long do these attorneys typically do this type of work during their careers?

71. Do any of your contractors work exclusively for you? If so, what is their net income? Are we comparing based on this rate or just hourly billing? Are we comparing actual salaries?

72. Is there some way to compare the income of a full time contractor to that of a public defender?

73. Have there been instances of inadequate representation of clients due to rates that are too low?

#### Consolidated Appropriations for Health, Life, and Dental Expenditures

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**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

- 76. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.
  
- 77. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?
  
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79. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of “evidence-based,” indicate which programs are “evidence-based,” and describe the evidence used to support these programs.

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## INTRODUCTIONS AND OPENING COMMENTS

## QUESTIONS

80. A DHS review of who requested or recommended congregate care placement for children who are in congregate care showed that it was a Guardian ad litem (GAL) who requested or recommended this level of care in 24.2% of cases in FY 2015 Quarter 1 and 18.2% in FY 15 Q2. This makes GALs the second largest source of requests or recommendations after County Departments. Please comment on this large number of GAL requests or recommendations.
81. a. What is your opinion regarding the CDHS Proposal to Reduce “Congregate Placements” by changing state law to increase the State cost share for counties who utilize foster care to a 90% state share/10% county share and to reduce the amount of the State cost share for counties utilizing congregate care to 80% state share/20% county share?
- b. What role do courts and legal advocates play in the use of congregate care for children in child welfare? What role do county department’s play in the use of congregate care? In your opinion, are these roles appropriate?
- c. Comment on the general adequacy of the child welfare system and the availability of appropriate services. What are the gaps that need to be filled?

OCR R1 Caseload/Workload adjustment

82. Why are we decreasing this as compared to increasing R2?

OADC R3 Contractor rate increase

83. Can Department of Personnel in the Executive Branch or anyone else provide assistance on HR matters like job classification decisions?
84. Describe your progress in switching from fixed payment contracts to hourly rates. What percentage of your contracts are still fixed payment?

Consolidated Appropriations for Health, Life, and Dental Expenditures

85. Judicial Branch agencies have opposed the consolidation of the Branch’s appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

Questions from the Child Welfare briefing

86. What information does the judge take under consideration when making the determination that an out of home placement is in the best interest of a child? Does the judge consider input from county child welfare case workers? Do judicial districts employ their own case workers and how do these positions interact and collaborate with county case workers in developing recommendations in child abuse and neglect cases? Does the judicial branch or district have funding to pay for some of the costs of out of home placements when those placements are contrary to the original recommendation made by the county child welfare agency?

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

87. Please provide written input on HCPF's request to move the Children's Habilitation Residential Program waiver from the Division of Child Welfare in DHS to the Office of Community Living in HCPF; and on the request that statute be changed to allow access to waiver services without a dependency and neglect finding and out of home placement of the child. Please see Section 25.5-5-306, C.R.S.

88. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

89. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

90. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

91. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of "evidence-based," indicate which programs are "evidence-based," and describe the evidence used to support these programs.

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**4:15-4:30 OFFICE OF THE RESPONDENT PARENT'S COUNSEL (ORPC)**

**INTRODUCTIONS AND OPENING COMMENTS**

**QUESTIONS**

92. Has the method that the ORPC uses to pay the contractors who provide representation for parents changed recently? Describe progress in switching from fixed payment contracts to hourly rates. What percentage of your contracts are still fixed payment? Has the change affected the number of appeals that are filed and paid for by ORPC or other aspects of your operations?
93. A DHS review of who requested or recommended congregate care placement for children who are in congregate care showed that it was a Guardian ad litem (GAL) who requested or recommended this level of care in 24.2% of cases in FY 2015 Quarter 1 and 18.2% in FY 15 Q2. This makes GALs the second largest source of requests or recommendations after County Departments. Please comment on the number of GAL requests or recommendations.
94. Please provide a sense of caseload trends in the Office of RPC.
95. a. What is your opinion regarding the CDHS Proposal to Reduce “Congregate Placements” by changing state law to increase the State cost share for counties who utilize foster care to a 90% state share/10% county share and to reduce the amount of the State cost share for counties utilizing congregate care to 80% state share/20% county share?
- b. What role do courts and legal advocates play in the use of congregate care for children in child welfare? What role do county department’s play in the use of congregate care? In your opinion, are these roles appropriate?
- c. Comment on the general adequacy of the child welfare system and the availability of appropriate services. What are the gaps that need to be filled?
96. What information does the judge take under consideration when making the determination that an out of home placement is in the best interest of a child? Does the judge consider input from county child welfare case workers? Do judicial districts employ their own case workers and how do these positions interact and collaborate with county case workers in developing recommendations in child abuse and neglect cases? Does the judicial branch or district have funding to pay for some of the costs of out of home placements when those placements are contrary to the original recommendation made by the county child welfare agency?
97. Please discuss how the Office of Respondent Parents’ Counsel is implementing the requirements defined by statute and rule concerning child welfare abuse and neglect cases. How are members of the office working with county child welfare case workers to ensure timely and appropriate decisions for children and parents? What challenges are members of your office facing when representing parents and when working with representatives of the county's child welfare agency? Does your office work with the Office of the Child's Representative to ensure that the best interests of all parties involved are achieved?

#### ORPC R1 Continuation of Social Worker Pilot Program

98. Are there preliminary results from year one of the social worker pilot that justify continuing into year 2?

#### ORPC R3 Increase in Contractor Hourly Rates

99. Please provide the reasons for the requested increase.

100. Please provide a status update on the percentage of contracts that are still fixed versus hourly rates and your transition between the two billing systems.

#### ORPC R4 Contract Statistician

101. If the pilot study is extended for another year, is it premature to engage a contract statistician for analysis? Shouldn't this wait for another year?

#### Consolidated Appropriations for Health, Life, and Dental Expenditures

102. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

#### **ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

103. Please provide written input on HCPF's request to move the Children's Habilitation Residential Program waiver from the Division of Child Welfare in DHS to the Office of Community Living in HCPF; and on the request that statute be changed to allow access to waiver services without a dependency and neglect finding and out of home placement of the child. Please see Section 25.5-5-306, C.R.S.

104. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

105. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your

Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

106. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

107. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of “evidence-based,” indicate which programs are “evidence-based,” and describe the evidence used to support these programs.

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## **4:30 – 4:45 OFFICE OF THE CHILD PROTECTION OMBUDSMAN (OCPO)**

### **INTRODUCTIONS AND OPENING COMMENTS**

### **QUESTIONS**

108. Does statute permit the Office of the Child Protection Ombudsman to investigate complaints related to the Division of Youth Services?
109. a. What is your opinion regarding the CDHS Proposal to Reduce “Congregate Placements” by changing state law to increase the State cost share for counties who utilize foster care to a 90% state share/10% county share and to reduce the amount of the State cost share for counties utilizing congregate care to 80% state share/20% county share?
- b. What role do courts and legal advocates play in the use of congregate care for children in child welfare? What role do county department’s play in the use of congregate care? In your opinion, are these roles appropriate?
- c. Comment on the general adequacy of the child welfare system and the availability of appropriate services. What are the gaps that need to be filled?

### **Consolidated Appropriations for Health, Life, and Dental Expenditures**

110. Judicial Branch agencies have opposed the consolidation of the Branch’s appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

### **ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

111. Please provide written input on HCPF's request to move the Children's Habilitation Residential Program waiver from the Division of Child Welfare in DHS to the Office of Community Living in HCPF; and on the request that statute be changed to allow access to waiver services without a dependency and neglect finding and out of home placement of the child. Please see Section 25.5-5-306, C.R.S.
112. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.
113. Please provide an update on the Department’s status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of

Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

114. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

115. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of “evidence-based,” indicate which programs are “evidence-based,” and describe the evidence used to support these programs.

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**INTRODUCTIONS AND OPENING COMMENTS****QUESTIONS**

There are no questions for which the Independent Ethics Commission has been requested to provide verbal answers.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

116. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.
117. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?
118. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.
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**4:50 – 5:00 COLORADO DISTRICT ATTORNEYS ASSOCIATION (CDAC)**

**INTRODUCTIONS AND OPENING COMMENTS**

**QUESTIONS**

119. What is driving the increase in prosecutions? Is it more crimes or is it more filings that DAs are bringing to court? Is there any way to contain the costs associated with it? How does this compare with what is happening in other states?

120. Please update the Committee on e-discovery.

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JUDICIAL DEPARTMENT AND INDEPENDENT AGENCIES  
FY 2018-19 JOINT BUDGET COMMITTEE HEARING AGENDA

Monday, December 18, 2017

1:30 pm – 5:00 pm

**1:30-3:00. JUDICIAL DEPARTMENT (including the Supreme Court, Court of Appeals, Courts, Administration, Trial Courts, and Probation)**

**1:30-1:40 INTRODUCTIONS AND OPENING COMMENTS**

**1:40-2:00 PROBATION**

- 1. Comment on the importance of good assessment at the front end of the probation process and on the importance of concentrating resources on high risk rather than low risk probationers.**

Quality assessments help the probation department to comply with the evidenced-based Risk, Need, and Responsivity principles by providing information about a probationer’s risk level and criminogenic needs. The Risk principle suggests that resources should be prioritized for offenders at higher risk to recidivate; the Need principle suggests that resources should target areas that contribute to criminal behavior (e.g., anti-social peers and anti-social attitudes); and the Responsivity principle indicates that services should be matched to the individual, using cognitive-behavior techniques when possible.<sup>1</sup> Several studies have shown significant reductions in recidivism when agencies conform to these principles.

Quality assessments at the front end of supervision assist officers in determining who should receive a higher level of supervision (Risk principle), as well as what specific areas are contributing to criminal behavior and should be addressed during supervision (Need principle). Assessment results can also help an officer match a probationer to the intervention that is likely to give him or her the best chance to succeed (Responsivity principle).

There are two reasons for concentrating resources on higher risk, rather than low risk, probationers. First, higher risk probationers, by definition, have more criminogenic needs to address. In other words, they have more areas of their life that are contributing to their criminal behavior. Addressing multiple criminogenic needs takes more time, coordination, and resources than it does to address fewer criminogenic needs. Second, low risk individuals are at less risk to reoffend because they have strengths and protective factors present in their lives that contribute to their lower risk level. Protective factors can be things like a supportive family, a stable work history, and pro-social friends—they are the things that protect them from engaging in further criminal activity. Treating a lower risk person like they are higher risk and providing more intensive programming (e.g., higher levels of treatment, more frequent office visits) can have the impact of disrupting those protective factors, while also putting them in closer proximity to high risk people, potentially strengthening anti-social relationships.<sup>2</sup>

<sup>1</sup>Andrews, D. A. (2006), Enhancing Adherence to Risk-Need-Responsivity: Making Quality a Matter of Policy. *Criminology & Public Policy*, 5(3), 595–602. doi:10.1111/j.1745-9133.2006.00394.x

<sup>2</sup>Bonta, J. & Andrews, D. (2017). *The Psychology of Criminal Conduct (6th ed.)*. New York, NY: Routledge.

## **2. Is recidivism the correct measure of probation success? How else can we measure success?**

Recidivism is accepted throughout the country as the most important measure of probation’s success. However, it is not the only measure of success. Probation success can also be measured in other ways, such as program termination, cost avoidance (probation is a lower cost alternative to incarceration), victim satisfaction with probation services, restitution, rehabilitation, skill development, employment, restorative justice events, community service, and an increase in pro-social behavior and a decrease in criminal behavior for individuals sentenced to probation. While some of these measures are readily available, others are less accessible and probation’s ability to analyze and routinely report on all these measures has some limitations.

## **3. Compare supervision and services for intensive supervision probation with those for regular probation.**

Intensive supervision programs are characterized by the increased level of supervision and services. With the exception of Sex Offender Intensive Supervision Probation (SOISP) and Juvenile Intensive Supervision Probation (JISP), entry into intensive programs is driven by assessment results. Sentences to SOISP and JISP are governed by statute and ordered by the court.

Intensive programs are reserved for probationers who, according to risk assessments, present a higher risk to commit a new offenses. An individual in an intensive supervision program will be subject to more contact with his or her probation officer, mandated treatment, and increased verification of employment and education. In addition, the probation officer supervising an intensive supervision probationer will have more collateral contact with family members, social services, and employment agencies, while utilizing surveillance tools such as global positioning devices (GPS), electronic home

monitoring (EHM), and 24-hour drug/alcohol monitoring. These probation officers may also be trained to facilitate cognitive behavioral classes (CBT) at no cost to the probationer.

On the other hand, regular probation requires less intensive supervision. Although a probationer may have a court order for EHM while under regular probation, the use of intensive monitoring occurs with a much smaller proportion of individuals on regular probation, and GPS is rarely used with regular supervision. Similarly, regular probation may include verifications of residency, employment and education, and treatment attendance, but the frequency is less under regular supervision.

As an example, the chart below compares the first phase of LS-Intensive Supervision (LSIP) and SOISP to the three levels of regular supervision.

Contact Type	LSIP	SOISP	Regular		
			Maximum	Medium	Minimum
Face-to-face	4 every 30 days	3-4 every 30 days	2 every 30 days	1 every 30 days	1 every 60 days
Home visit	1 every 30 days	1 every 30 days	1 in first 90 days	As needed	As needed
Work/School	1 every 30 days	As needed	1 in first 30 days	1 every 60 days	As needed
Collateral	1 every 30 days	Regular meetings with CST*	No requirement	No requirement	No requirement
Mandatory treatment	CBT class	Offense-specific treatment	No requirement	No requirement	No requirement

\*Membership and regular participation on Community Supervision Teams is mandated by the Sex Offender Management Board (SOMB)

#### 4. What exactly is private probation?

As permitted in Sections 18-1.3-202 and 19-2-204(4), C.R.S., judicial districts may enter into agreements with public or private entities for the provision of probation services. However, not every judicial district has access to or utilizes a private probation provider. Probation has contracted for private probation services since FY96, due, in part, to the inability for the state’s limited resources to manage the large number of offenders at the level required by standards.

Private probation is reserved for lower risk offenders. These providers are required to supervise individuals according to the Probation Standards issued by the Colorado Supreme Court. Probationers at a private provider are under the same terms and conditions of the court as they would be if they were being supervised by state probation. Private providers meet with probationers approximately every 60 days, monitor compliance with court orders, and track payment of restitution, fines, and fees. In cases where treatment has been ordered, private probation will also verify compliance with and completion of treatment.

#### 5. What is the cost differential between private probation and state probation?

All probationers, whether assigned to state or private probation supervision, are charged a fee of \$50.00 per month. A “state” probationer pays the fee to offset the cost of probation services to the

state. The “private” probationer pays this fee directly to the private entity providing services. Courts can request a review for indigent status. They are also authorized to lower the cost of supervision to an amount the defendant will be able to pay. Reference: §18-1.3-204(2)(a)(V), C.R.S. There is no cost to the state for private probation supervision. It is self-funded by probationers who pay a fee of \$50.00 per month.

Probation calculates a cost of care for regular and intensive *state* supervision for both juveniles and adults as noted below. Cost calculations include all personal services (salary and benefits), operating (fixed, variable, and travel), and all treatment funds. The FTE associated with these costs are apportioned to the various types of supervision (i.e. state probation program) based on the number of probationers in each program.

Because personal services, operating, and treatment funds are not provided by the state to private probation providers, there is not cost of care generated for private supervision.

<b>Annual Cost of Care for State Probation Supervision FY2018</b>		
	<b>Juveniles</b>	<b>Adults</b>
<b>Regular Supervision</b>	\$2,138	\$1,398
<b>Intensive Supervision</b>	\$3,555	\$3,070

**6. How does someone who has been placed on probation get assigned to a private probation provider versus state run probation? Is there means testing by the courts to determine who is assigned to private probation since the probationer must pay for it?**

Only five percent of probationers who are sentenced to private supervision are placed there directly by the sentencing court. The remainder is transferred to private supervision by the probation department after sentencing to probation. The decision to place someone on private supervision is based mainly on the results of the individual’s risk and need assessment. Private supervision is designed for those who are lower risk to recidivate. Another consideration for determining whether someone will be supervised by the state or a private vendor is the extent of treatment service needs. Those with higher treatment needs are more likely to stay in state supervision so they may receive financial assistance for those services and stabilize, if necessary, before moving to private supervision.

**7. Has an analysis been done of the effectiveness of the private probation verses state provided probation?**

No, a specific analysis has not been done. Private probation is used by some districts to provide supplemental support for lower risk adult probationers. Risk is determined by standardized assessments. Higher risk probationers are supervised by state probation. Lower risk probationers are expected to successfully complete probation at a higher rate than higher risk probationers. Each year

the termination data for private probation is published in the Judicial Branch’s Annual Statistical Report (table below).

Private Probation Successful Terminations				
	Regular (Non-DUI)		DUI/DWAI	
	Number	%	Number	%
FY17	2,656	81%	5,032	83%
FY16	2,915	83%	6,434	87%
FY15	3,036	80%	6,655	87%
FY14	3,211	78%	7,207	87%
FY13	3,432	83%	6,975	88%

**2:00-2:15 ISSUES**

**Funding Carr Center Controlled Maintenance**

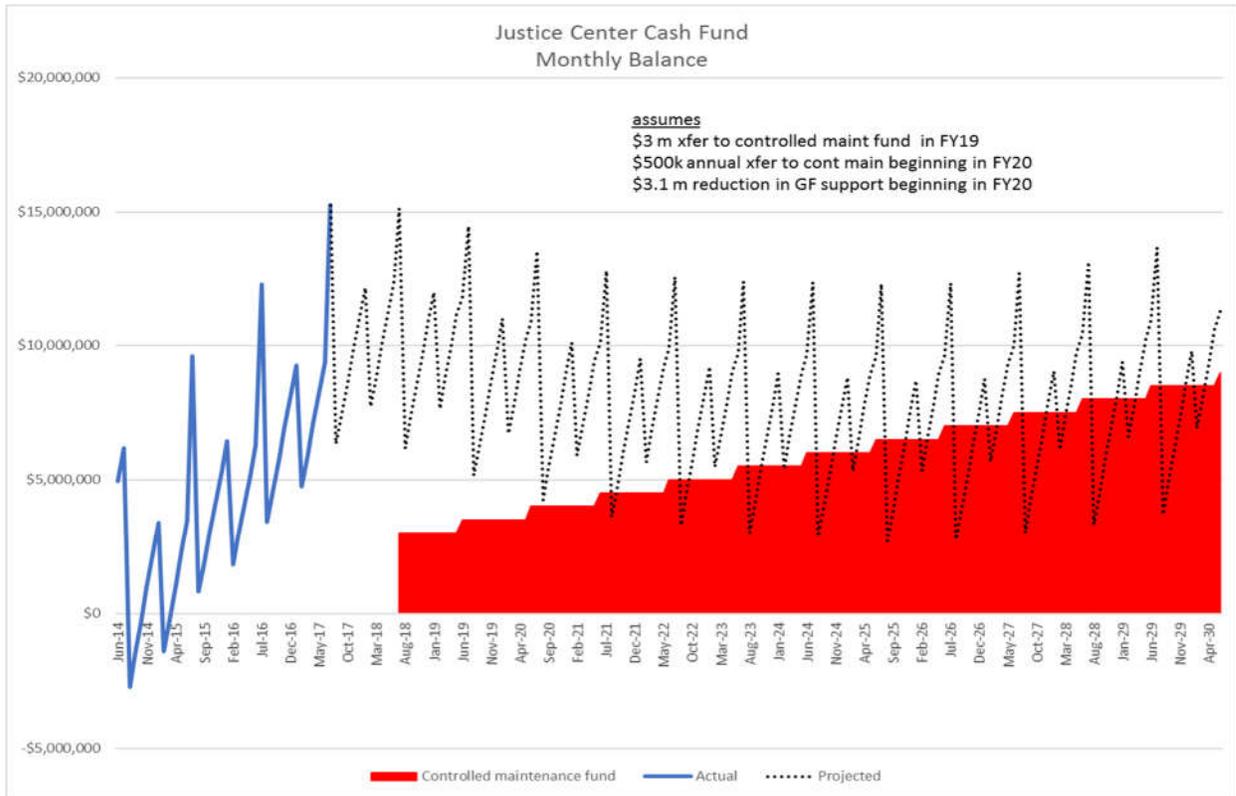
**8. Was the Carr Center included S.B. 15-211, the long-term maintenance that the General Assembly passed recently?**

Judicial was not solicited for fiscal note analysis when this legislation was introduced and is not aware of this legislation. Typically, Title 24 bills do not apply to the courts, and with the Carr building self-funded controlled maintenance and the Carr building appropriation not being part of capital construction, Judicial would not seem to be included.

**9. What is the balance in the Judicial Center Cash Fund? Should more than \$500,000 annually go into a new Controlled Maintenance Cash Fund?**

The Justice Center Cash Fund had an ending fund balance for FY2017 of \$9,387,298. Debt service payments are due twice a year, with the larger payment (~\$13.1 million) due in September and a smaller payment (~\$8.5 million) due in March. This plan ensures sufficient cash in September and March for the debt service payments.

The current plan calls for a one-time transfer of \$3 million with annual transfers of \$500k and a \$3.1 million reduction in GF support in FY20.



Based on the current condition of the building, the Judicial Department believes the current plan is adequate. If the General Assembly determines that a larger annual amount equal to \$1.4 million (which equates to 1% of the insured value of the building) is more appropriate, the Department would suggest lowering the first-year transfer to \$1.4 million and reducing the FY20 GF reduction from \$3.1 million to \$2.1 million to ensure adequate cash flows to cover the debt service payment.

**10. Has the Department set up a long range controlled maintenance plan? What provisions are in the lease purchase agreement regarding controlled maintenance and other maintenance? Are there other state buildings that receive this kind of treatment? What is the impact on all the other building costs?**

Judicial is working with Stream Realty Partners, the building management firm for the Carr Building, and will have a finalized controlled maintenance plan by the end of January.

Appendix B-2 of the COP issuance documents requires that *“The State agrees that, at all times during the Lease Term on and after the date the Projects is Finally Complete, it will maintain, preserve and keep the Projects or cause the Projects to be maintained, preserved and kept, in good repair, working order and condition and will make or cause to be made all necessary and proper repairs, including replacements, if necessary.”*

While not required by the COP issuance, Judicial committed to the General Assembly that the Carr building would self-fund all controlled maintenance so as to not increase the maintenance liability of the State.

After speaking with State Buildings, it is the Department's understanding that Carr Center's self-funded controlled maintenance is unique in Colorado State government. It is also important to remember that all other courthouses in Colorado are owned by the counties. The Carr Center is the only Judicial building owned by the Judicial Department and the State.

The current proposal would have no impact on other building's costs.

### **Consolidated Appropriations for Health, Life, and Dental Expenditures**

- 11. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.**

The Department is very sympathetic to staff's desire to simplify H/L/D calculations at figure setting, however, the Department and each agency feels very strongly that each entity in the Judicial Department is independent and their budgets should be reflective of that fact. Consolidating H/L/D will impose an administrative burden on the Judicial Department and the independents as it will require the generation of accounting documents to transfer H/L/D allocations to each agency that is currently unnecessary with separate H/L/D appropriations.

Further- Judicial struggles with idea of potentially having to use its over expenditure authority on H/L/D when there may be competing higher priority needs. Last year the ADC used over \$900K of the transfer authority for their purposes and the year before the entire million was used. Based on historic usage of the over expenditure authority, there is not a great deal room to accommodate potential H/L/D transfers.

Another question that may arise is whether the State Controller would view this H/L/D consolidation and correspondent transfers as counting against the Department's \$1 million transfer authority granted in 24-75-110 (it would exceed it). The \$1 million-dollar transfer authority is critical to the balancing of the Judicial budget and the Department is reluctant to use it for H/L/D transfers.

- 12. ] Can't Health, Life, and Dental appropriations that are based on past averages do this? How do Department's with comparable divisions do this?**

Past appropriations and averages are not used in the calculation of the request year H/L/D appropriation. Per OSBP instructions H/L/D is calculated utilizing benefit selection choices from the July payroll. Every Department calculates the H/L/D request the same way. How other Executive Department's allocate H/L/D is unknown. It is important to recognize that in the Judicial Branch, the Independent Agencies are not Divisions, they are statutorily separate entities and the transfer of H/L/D would not be the same as it is with an Executive Branch Department transferring H/L/D within its Divisions.

**13. [Rep. Hamner] Explain why you opposed this HLD appropriation proposal in your response to the request for information? Does the staff proposal address your concerns?**

While staff's proposal is doable, we believe it creates unnecessary work for the Judicial Department. To help with staff's concerns about calculating the H/L/D appropriation, the Judicial Department would like to offer the following alternative. The Department of Personnel provides the Judicial Budget Office access to the H/L/D request data for all Judicial agencies. At Figure Setting the Judicial Budget Office would calculate the H/L/D on behalf of each agency in the Judicial Branch thus providing JBC staff with a single contact point for verification of the H/L/D appropriation. This would continue to allow each agency to have its own H/L/D appropriation as they do now. The independent agencies are on-board with this alternative and would ask that it be tried at figure setting this year.

**2:15-2:45 JUDICIAL REQUESTS**

**JUD R1 System Maintenance Study**

**14. Are the salary increase the same for each class or, do they differ?**

The salary increases differ depending on the third-party compensation survey data. The Judicial Department contracted with a third-party consultant (Segal Waters) to determine which classifications are greater than 3% below the market median of a salary range versus the comparable benchmarked median. The benchmark positions indicate if a specific job class (e.g. Clerk of Court III) is below or above the median of the market data. If our classification is more than 3% below the market salary range median, then other positions within that series (i.e. Clerk of Court I-VIII) or similarly situated classifications are also increased by the same percentage to keep consistency within the series or similarly situated classifications.

**15. Why does the consultant believe these changes are necessary?**

Our compensation philosophy is based on Section 13-3-105, C.R.S., which requires the supreme court to prescribe a personnel classification plan for all courts of record to be funded by the state.

The guiding principle of the Judicial Department's salary structure is that that each classification's range should correspond with the median (50%) of the market salaries for benchmarked comparable positions. In essence, in comparing salaries of benchmarked Judicial positions to that of market

benchmark positions, 50% of the market pays less and 50% pay more. Setting salary ranges in this way is similar to the practice that the Executive branch uses to determine appropriate salaries for other state employees. When the compensation study is conducted by the consultant, the recommendations to increase salaries are made based on the benchmark comparisons salaries. If the classification range median is below the median of the benchmark market median by more than 3%, an increase is recommended.

The Judicial Department also takes into consideration the drivers of the available pool of employees and current economic conditions. Each classification's range must be competitive within the hiring pool of candidates for the state. According to the Colorado Business Economic Outlook 2018, unemployment within the State of Colorado has averaged 2.5% for 2017, which is one of the lowest in the country and has caused a strain on the pool of qualified candidates. If salaries are below market, recruitment and retention becomes much more difficult due to higher prevailing wages offered within the state, particularly in the Denver metro and front range areas.

To remain competitive within the current economic conditions, the Judicial Department strives to match market pay ranges when hiring new employees. Initial offer amounts increase systematically with any projected market increases year over year. When initial offers increase but pay of current employees does not, equity of pay is skewed and employees with many years of experience are making at or close to new hire wages. By targeting the 3% to market on ranges and passing along those increases to the current employees, we are able to defray issues of salary compression. To use any higher amount of variance from market for our pay ranges will precipitate some salary compression as well.

**16. What exactly does this mean? Is this a salary survey? Does it ripple through the system like salary survey in the executive branch? Who is included in the study?**

A system maintenance study is the mechanism to provide appropriate salaries to Judicial Department employees. The Judicial Department conducts an annual compensation study, which is separate from the Executive Branch. The compensation study utilized many sources of comparable salary data, including the Executive Branch classification system, data from the private sector (for Information Technology positions only), other state judicial branches, and other governmental entities. Segal Waters, the third-party consultant, placed a heavy emphasis on similarly situated court systems, analyzing courts serving similar populations and possessing a unified organizational structure. Segal Waters identified 100 market benchmarks for the Department's 209 job classifications, of which 76 of the Department's job classifications were found to have competitive salary ranges. We are attempting to address those that are not competitive. Judicial Officers were not included in the Segal report. When using the consultant data within the Judicial compensation report, it was revealed that while a majority of positions are within the acceptable range of the market, 54 of the 209 individual salary ranges are starting to lag compared to the overall market used by Judicial.

**17. Why is this called a system maintenance study? Was this study considered in the State Auditor's May 2017 performance audit of DPA's annual compensation study?**

The term "system maintenance study" is used in the budget request primarily because the DPA POTS request form refers to these types of salary adjustments as System Maintenance Studies. Segal Waters identified the report as an annual compensation report. In essence, we are studying the salary structures used in Judicial to maintain the appropriate salary structure to be competitive within the market.

No, the Judicial system maintenance study studies are separate from the Executive Branch compensation study based on Colorado Revised Statute 13-3-105. Different criteria are used to determine appropriate salary ranges for a judicial job classification from what the executive branch uses.

**JUD R2 Court Supervisors**

**18. Could this be done on a trial basis in a few courts or jurisdictions to determine whether it helps? What metrics would be analyzed after implementation to determine whether these changes have helped?**

Due to the importance of these positions, the Judicial Department requested the FTE needed to achieve an 8:1 court staff to supervisor ratio at the current staffing levels statewide. However, the Judicial Department can allocate supervisor FTE in phases if the General Assembly funds less than the full request.

As discussed in the decision item, there are a number of metrics the Judicial Department will review to assess the impact additional supervisors will have on trial court operations. These metrics are explicitly tied to the areas of anticipated impact. Trial court supervisors play an essential role in monitoring data integrity for the courts, and funding additional supervisors for trial courts is expected to allow for increased focus on data integrity. Trial courts have developed tools to monitor some of the most critical events and aspects of trial court data, such as disposition of criminal charges, timelines of sentence data entry, sex offender and domestic violence status. One of the ways the Department will measure the impact of additional supervisors on data integrity is by tracking the frequency data integrity reports are run and the results of those reporting measures.

Adequately staffing supervisor positions will help create more manageable lines of control and will ease the workload coverage demands on supervisors. allowing supervisors more time for training and coaching employees to ensure optimal performance. The impact to employee job satisfaction (of both supervisors and direct reports) and morale will be monitored through analysis of the employee satisfaction survey, turnover data, and exit interviews (when available). Beyond the internal benefits, the addition of these positions is expected to translate to improved customer experiences with the trial courts as well. Access and Fairness surveys regarding court users' experiences with the courts will be used to help assess the impact of improving the staff-to-supervisor ratio on the customer service the court provides.

**19. What is the current staff to supervisor ratio? Can this be compared to any courts elsewhere? In which particular courts are you planning to increase the supervision ratio?**

Prior to the current model, the supervisor ratio for trial courts was 10 staff members for every supervisor. This ratio was defined in policy but was not formally implemented into workload models. As part of the update to the trial court staff workload model completed in 2017, the supervisor ratio for trial courts was reviewed. Variations in court structures nationally make state-to-state comparisons difficult. The Human Resources Division of the State Court Administrator's Office conducted an analysis of private sector span of control research to assess the appropriate supervisor ratio for trial court staff. The analysis focused on key factors identified by the Society for Human Resources Management including: organization size, workforce skill level, organizational culture, and manager's responsibilities (SHRM, April 2014). The analysis concluded that eight direct reports to one supervisor, or an 8:1 ratio, is the appropriate supervision ratio given the increase in complexity within the court systems and the desire of the courts to increase development of the employees. This ratio applies to the traditional case processing positions or those positions that function similarly within the court structure.

The exact location of the supervisor FTE will depend on the number of FTE funded by the General Assembly along with updated caseload information analyzed just prior to the start of fiscal year 2019 to help ensure that any new FTE are allocated to locations with the greatest workload needs.

**JUD R3 Problem Solving Court Coordinators**

**20. Is this request designed to increase fidelity to the problem-solving-courts model. Has anyone done an analysis of Colorado's problem solving courts to determine how they compare with the model and whether this request would definitely assist in improving outcomes?**

Coordinators are the local program managers of problem solving courts. They are responsible for ensuring fidelity to evidence-based practices. This includes data collection and analysis, training, and ensuring policies and procedures align with current research. Having adequate coordinator resources has a direct impact on fidelity to the problem solving court model, thereby improving outcomes.

The Colorado Problem Solving Court Advisory Committee developed a Best Practice Manual and Standards for programs. The Best Practice Manual and Standards use national research to determine the evidence based practices that should be implemented in a problem solving court. Problem solving court research is among the most thoroughly developed program research available for courts. The 2012 Colorado statewide evaluation found that the Adult and DUI courts taken as a whole were following the 10 key components and best practices within each component.

The Advisory Committee just concluded a pilot accreditation process that awarded accreditation to programs following these best practices and standards. Programs are required to submit policies and procedures, program data and confirmation compliance with each standard. There is also an option of a site visit by committee members to observe the program and interview team members. The accreditation program is transitioning out of the pilot and will be taking applications for accreditation

on a biannual basis. In addition, on-going training and technical assistance are used to encourage all problem solving courts to implement proven best practices.

**21. Where are the problem solving courts located that would benefit and what is their need?**

A weighted caseload study for the coordinator position was completed in 2017. From the study a weighted caseload model was developed to determine the number of coordinators required across the state. This model also serves to inform the allocation process. Fifteen of the twenty judicial districts that have problem solving courts either have no coordinator or an inadequate number of coordinators to support their docket(s) with six being understaffed at 40% and below. The exact location of the coordinator FTE will depend on the number of FTE funded by the General Assembly along with updated caseload information analyzed just prior to the start of fiscal year 2019 to help ensure that any new FTE are allocated to locations with the greatest workload needs.

**JUD R4 Access to Justice**

**22. Is this a new position? Will one position be able to accomplish the goals that are being sought by this? How were these efforts coordinated formerly?**

This is a new position. The one FTE requested is believed to be sufficient because the intent of the position is not to provide direct services, but rather to increase coordination and cooperation and avoid duplication among the many component parts of the system. This will allow Judicial to take full advantage of the most successful practices and initiatives in the state.

Currently, the efforts are deployed in a siloed manner, with particular resources and approaches directed toward specific targeted groups or issues. For example, the Department's Sherlocks are directed by a statewide Sherlock coordinator, but that position also has other responsibilities and does not direct language access programs or family court facilitators. This position, if funded, provides the ability to examine each of the existing programs, identify potential overlaps to maximize service delivery within current resource levels, and replicate the successful components across multiple programs.

**23. What sort of cases will benefit from this? Civil? Criminal? Domestic? Other? Will it help individuals with mental and physical disabilities? How?**

The position will focus on non-criminal cases. The position will help individuals with mental and physical disabilities by focusing on the gaps that exist within the current array of dedicated resources, assessing the resources that are currently deployed to assist other targeted populations and identify expansion of existing solutions to other populations. Further, the position will analyze the reasons for the existing justice gap and studying creative solutions being considered in other states and other countries.

## **JUD R5 IT Project Management and Information Security Staff**

### **24. Is it possible for the main Judicial Department to buy these services from the Executive Branch rather than doing this itself? Why or why not?**

The Department has become very reliant on information technology to run the business operations of the courts and probation, which requires continual enhancements and support of critical systems and applications to ensure justice is served in the State of Colorado. Current and future projects will require dedicated project managers and product owners who have a deep understanding of the Department's business to ensure IT systems and applications meet the needs of our customers. While the project management services provided by the Executive Branch may prove beneficial for state agencies in which there is greater overlap between the programs and systems the Executive Branch supports, the Judicial Department requires a full-time, devoted project management office (PMO) that understand the business for the courts and are capable of orchestrating and delivering complex IT projects to meet the unique needs of the Department. Additionally, the Executive Branch is unable to provide product owner services, and a cost analysis for project management services provided by the Executive Branch will be more than what the Department is requesting for five (5) FTE.

The Department currently collaborates with the Office of Information Technology (OIT) to provide network security at the state's network perimeter. The Department utilizes and receives information from OIT network perimeter resources (MS-ISAC) to facilitate increased network security and forensic investigation. Providing this access to the Department's information security team builds layered security and allows OIT to focus its resources on the network security concerns of the agencies it supports. The Department's request for two (2) security FTE is necessary to provide an additional layer of information security required to support and protect Department resources for over 30,000 attorneys, the public, other state and local agencies, and over 4,000 internal users. The Department has specific network and system requirements related to PCI and PII data that require specialized care, knowledge, and access to ensure proper transport of the data on the Department's network. This requires on-site staff who are familiar with the Department's network topology and are intricately involved with the Department's network team to ensure data traversing its statewide network is properly secured according to Department standards. The addition of two (2) information security staff will ensure the Department can meet the unique needs of the Department, adhere to compliance requirements, and provide timely network security services.

### **25. Why do they need so many project managers? Can they use a State augmentation contract to hire consultants to do this rather than doing it internally?**

The Department is requesting five (5) FTE to establish a project management office (PMO) to help with the large number of active projects (30 total projects for 2018), as well as those in the product backlog, which is a prioritized list of clearly identified product features, systems upgrades, enhancements, and development efforts. The Department's PMO will consist of one Program Manager, two Project Managers, and two Product Owners. Each role within the PMO serves different functions to ensure the Department achieves its goal of delivering consistent, standard, and repeatable execution of projects.

The Program Manger and Project Managers will be responsible for the initiation, planning, execution, control, and closing of projects, while the Product Owner's primary role is building the link between the business stakeholders and the project execution teams. Product Owners will need to possess several years of experience working in either the courts or probation and have subject matter expert knowledge and experience using the software or technology desired by the business unit they support. It is the Product Owner's job to understand the direction of the business, needs of the users, and how to properly relay that information to the Program Manager, Project Managers, and project execution team.

In FY17, the Department issued a request for proposal (RFP) for staff augmentation services to assist with projects that require additional staff to complete, as well as provide consulting services. Due to the extremely high cost of staff augmentation services, the Department must limit the use of staff augmentation services for smaller, non-business essential projects requiring less maintenance and enhancements. If the Department were to utilize staff augmentation services for one Program Manager, two Project Mangers, and two Product Owners, the total annual cost would nearly double the Department's request of \$605,421 for five FTE to establish a PMO.

#### **JUD R6 Interstate Compact FTE Transfer**

##### **26. Why is the salary for the new FTE in Judicial higher than the salary for the reduced FTE in Corrections?**

Currently, these positions in the DOC are classified as administrative assistants, requiring a high school diploma or GED and 3 years of experience in an occupational field related to the work assigned to the position. Appropriate education can substitute for the required experience on a year-for-year basis.

Based on what the Interstate Compact Specialist will be required to do, the Department believes that, at a minimum, an Associate's degree should be required for these positions, in addition to some probation/interstate experience. Each state's IC Office is responsible for quality control, to ensure compliance with the National Audit Standards. In some states, these positions require not only a BS/BA degree, but also experience in the interstate field, due to the expectation that the IC Office is the quality control for their state.

The Judicial Department is requesting an additional \$30,628 General Fund and \$2,460 Cash Fund to align compensation of these positions to the similar Judicial job descriptions and responsibilities. Further this request includes on-going operating and one-time capital costs, in addition to 10.15% for PERA and the 1.45% for Medicare.

#### **JUD R7 Courthouse Furnishing**

**27. Are these items reviewed by the CDC? Is there a priority list? What happens to counties that cannot afford to build, expand, or remodel their courthouses? Where are the challenges statewide?**

These projects are not reviewed by the CDC as state dollars are only being used for courthouse furnishings, AV, and technology in facilities provided by the counties. Further, there is no prioritization as individual counties are making decisions to build/expand or remodel their facilities and it's the State's obligation to furnish court facilities within these structures. For FY18 the single largest project request is for the furnishing of the new courthouse facility in Alamosa County at \$1.5 million.

The technology-only projects include replacing and improving telephone systems used by the courts and probation in the courthouses as these are Department responsibilities. In addition to telephone systems, the Department is responsible for installing and maintaining the audio-visual equipment used in the courtrooms. These projects are prioritized based on the current condition of the equipment and the expected remaining life cycle.

Section 13-1-301, C.R.S., creates the Underfunded Courthouse Facility Cash Fund to provide funding for courthouse facility projects in the counties with the most limited financial resources. The legislation is intended to identify the measurable aspects of a county that may indicate limited financial resources to complete a courthouse facility improvement project. The Commission works with the State Demographer at the Department of Local Affairs to obtain this data and publishes the list of eligible counties for each grant round. Counties must meet at least two of the following four pieces of criteria to be eligible to apply for and receive grants:

1. Counties in which the total population is below the state median;
2. Counties in which the per capita income is below the state median;
3. Counties in which the property tax revenues are below the state median; or
4. Counties in which the county population below the federal poverty line is above the state median.

The General Assembly has made an annual appropriation to the Cash Fund for each year, beginning in Fiscal Year 2015. The initial appropriation included in House Bill 14-1096 was \$700,000. The General Assembly has appropriated \$2,000,000 annually for Fiscal Years 2016, 2017 and 2018. The Underfunded Courthouse Facility Commission is charged with providing grants to eligible counties in accordance with Section 13-1-301, C.R.S.

The grants can be used to pay for master planning services for a courthouse project, matching or leveraging additional grant funds or to address emergency needs due to the imminent closure of a courthouse. Grant funds cannot be used to pay for furniture, fixtures, or equipment. In addition to these limitations, grant funds cannot be used as the sole source of funding for new construction, unless the need is associated with the imminent closure of a courthouse.

In addition to this funding source, many counties apply for and receive grant funds from the Department of Local Affairs and the State Historical Fund to address their county courthouse needs. This can include very large grants to assist in the construction of a new courthouse to small-scale grants for maintenance and renovation related projects. The Department's Underfunded Courthouse Facility Commission partners with these state agencies on projects to provide the most financial assistance possible. These grant funds can be used as matching funds for each other which results in greater benefit to the neediest counties.

### **Where are the challenges statewide?**

The challenges occur mainly in the counties that meet the eligibility criteria for the Underfunded Courthouse program. These counties are the more rural, less affluent counties that do not have sufficient county budget reserves to undertake large capital projects. As a result, they must seek grant funding to complete these projects. The Underfunded Courthouse Commission reviews the totality of all application projects including overall financial condition of the county. Counties that meet all four pieces of criteria are deemed to be the highest priority counties. For Fiscal Year 2018, there are 20 counties that meet all four pieces of criteria and an additional 21 counties that are eligible for a grant. These numbers have remained relatively constant since the beginning of the program with only a few counties moving to or from high priority and moving from eligible to ineligible.

Section 13-3-108, C.R.S., state that the counties have the responsibility of providing and maintaining adequate courtrooms and other court facilities. The judicial districts and the Office of the State Court Administrator work with the counties to address the needs of the courts. As noted above, the Department provides the furniture and equipment for the courts and probation staff in the facilities provided by the counties.

### **2017 Interim Committee on County Courthouse and County Jail Funding and Overcrowding Solutions:**

During the 2017 legislative session, Senator Leroy Garcia (Pueblo) requested that an interim study committee be formed to study State and local public safety solutions related to:

- the current cost of maintaining and staffing county courthouses, jail facilities, and justice centers in each county;
- the current availability of state resources to aid in the funding of county courthouse facilities, including the Underfunded Courthouse Cash Fund and the Courthouse Security Cash Fund;
- the current availability of state resources to aid in the funding of, and overcrowding issues in, county jail facilities;
- approaches to increase state funds for county courthouses and jails, including the creation or alteration of grant programs for courthouse and jail construction, maintenance, and staffing;

- reforms in sentencing, probation, or parole policies that encourage the use of county jail facilities in place of Department of Corrections facilities or diversion programs; and
- approaches to address the growing problems of heroin and prescription opiate addiction and mental health issues that result in growing jail populations, including those of drug courts, mental health courts, rehabilitation efforts, and other diversion methods.

The Committee met five times during the Summer and Fall, hearing testimony from various stakeholders on the topics listed above. Staff from the Judicial Department presented information to the Committee on both the Underfunded Courthouse Facility program and the Courthouse Security program. Much of the discussion centered on jail overcrowding issues and methods and approaches to reduce overcrowding and costs incurred by the counties related to their jails. The Committee anticipates moving forward with draft legislation this session.

**28. What specifically will be funded by this request? Where? Is some for security? Is there a courthouse security fund that can cover some of these costs?**

Here is the list of projects for FY19:

### Court House Furnishings

District	Location	Project	Audio Visual	Furnishings	Technology	Total Project
02PA	Denver	Replace and redesign clerical/reception area on 5 & 6 to allow for better customer service and improve the		\$35,550		\$35,550
02TC	Denver	Finish one shelled courtroom (5E) for District Court.	\$90,381	\$48,500	\$16,705	\$155,586
05TC	Summitt	Replace the theater seating in Courtrooms 1 & 2 with oak bench seating from CCI.	\$300	\$24,000		\$24,300
11TC	Fremont	Current space has been used as storage to be finished as a courtroom on the second floor.	\$45,000	\$33,500	\$35,430	\$113,930
12TC	Alamosa	New construction of courthouse facility.	\$474,464	\$712,100	\$367,900	\$1,554,464
<b>TOTAL:</b>			<b>\$610,145</b>	<b>\$853,650</b>	<b>\$420,035</b>	<b>\$1,883,830</b>

### IT Technology Infrastructure

District	Location	Project	Audio Visual	Furnishings	Technology	Total Project
01TC	Jefferson	Continue replacement of courtroom audio visual systems.	\$138,000			\$138,000
04TC	El Paso	Continue replacement of courtroom audio visual systems.	\$226,380			\$226,380
04TC	Teller	Continue replacement of courtroom audio visual systems.	\$50,000		\$10,000	\$60,000
18TC	Arapahoe	New telephone system in probation office (Aurora).			\$42,500	\$42,500
18TC	Arapahoe	New telephone system in probation office (Littleton).			\$42,500	\$42,500
18PB	Arapahoe	New telephone system in courthouse (Littleton).			\$167,000	\$167,000
18PB	Arapahoe	New telephone system in courthouse (Centennial).			\$315,000	\$315,000
18TC	Douglas	New telephone system in courthouse.			\$125,000	\$125,000
18TC	Elbert	New telephone system in courthouse.			\$42,000	\$42,000
18TC	Lincoln	New telephone system in courthouse.			\$42,000	\$42,000
19TC	Weld	Replace courtroom audio visual system.	\$30,000		\$3,750	\$33,750
19TC	Weld	Replace docket monitors in all court buildings.	\$35,400			\$35,400
<b>TOTAL:</b>			<b>\$479,780</b>		<b>\$789,750</b>	<b>\$1,269,530</b>

<b>REQUEST TOTAL: \$1,089,925 \$853,650 \$1,209,785 \$3,153,360</b>
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There is a separate Court House Security Cash Fund and Commission created by Section 13-1-201, C.R.S. The Commission is awarding nearly \$2.9 million for courthouse security personnel and equipment to the various counties in calendar year 2018.

#### **JUD R8 Merchant and Courier Fees**

**29. If someone must pay a court fee that they can't afford to pay all at once, is there an option to pay over time? If so, is the option to pay over time used frequently?**

Yes, there is a collections investigator assigned to every court location in the state. They will work with a defendant's individual circumstances to determine their ability to pay, and will make a customized payment plan with that defendant for a \$25 annual time payment fee. Payment plans are frequently requested.

**30. If someone pays with a credit card do they pay extra to cover the merchant fee? How much extra? Is the extra charge enough to cover the merchant fee?**

If someone is paying court fines and fees with a credit card there is no merchant fee to the payer as the Judicial Department incurs the cost and this is the basis of Decision Item request number eight. The use of credit cards is growing and the request is for additional dollars to pay these additional merchant fees. If the Department was to stop paying the merchant fees and pass them on to the payer, there is a concern that collection rates may decline as the convenience of using a credit card would not be available.

#### **JUD R9 E-filing/postage/mailing/processing**

##### **31. Why is electronic filing generating paper that must be mailed? Can't it all be done electronically? Is there really a savings from electronic filing as opposed to paper filings?**

The E-filing system does not generate more paper, it just hasn't eliminated all mailing costs.

Electronic filing is a savings compared to paper filings both in staff time and in mailing costs. The majority of filing transactions take place electronically and do not incur mailing costs to the courts. Self-represented parties along with a small category of ancillary parties in court cases do not have access to the e-filing system and require paper mailing. As a result, some level of paper mailing costs are anticipated to remain.

#### **JUD R10 Restorative Justice Cash Fund Spending Authority**

##### **32. How well is restorative justice working? Is it affecting caseloads?**

Analysis of recidivism data suggests that restorative justice (RJ) provides a positive alternative for juveniles. Of juveniles who had exited the RJ diversion program and successfully completed their RJ contract, **8.5%** recidivated in the one year after participation.

While it is not possible to calculate what the recidivism rate would be for these juveniles without restorative justice programming, the restorative justice recidivism rate from the initial full year of data is lower than other juvenile diversion programs that are not offering restorative justice programming (**13.8%**)<sup>1</sup> from the same time period.

The majority of juveniles served by the RJ diversion program are pre-file cases within the district attorney's office. If a juvenile successfully completes the program charges will not be filed by the district attorney, thus diverting youth from the juvenile justice system. It is important to keep in mind that the volume of new court case filings is driven by a number of factors. The Department does not have data that demonstrate a direct correlation of the effects RJ diversion programming has on juvenile diversion or delinquency caseloads. However, 901 juveniles were referred and participated in RJ

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<sup>1</sup> Omni FY 17 Restorative Justice Evaluation Report pg. 32

diversion programming from reporting periods FY15 through FY 17. The recidivism data collected thus far suggests RJ could have a mitigating impact on the size of juvenile delinquency caseloads.

Studies have found consistently high levels of victim satisfaction with restorative justice processes and higher levels of satisfaction when compared to victims who went through the traditional court process.<sup>2</sup> Participants in the RJ diversion program overwhelmingly indicated their satisfaction with their restorative justice experience—**95% of juveniles, 96% of victims and 98% of community members** reported being satisfied or strongly satisfied with their RJ experience.

**33. Provide the July 2016 OMNI report that shows how well the Department’s Restorative Justice Pilot Program works. Provide a later report if it is available.**

The link to the most recent report is:

[https://rjcolorado.worldsecuresystems.com/literature\\_171706/Restorative\\_Justice\\_Evaluation\\_Report\\_FY\\_2017](https://rjcolorado.worldsecuresystems.com/literature_171706/Restorative_Justice_Evaluation_Report_FY_2017)

**34. Is the restorative justice pilot program still going on? How will this request add to it?**

Per statute, the RJ pilot program created in HB 13-1254 ended on December 31, 2015. However, in order to gather sufficient data to demonstrate the efficacy of RJ as an effective intervention, we continue to evaluate three of the original pilot programs and expanded the evaluation to include five additional RJ programs. We are currently funding and evaluating eight RJ programs in the following judicial districts: 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 19<sup>th</sup> and two programs in the 20<sup>th</sup>.

Increasing spending authority from the Restorative Justice Surcharge Cash Fund would allow RJ programming to be expanded to other Judicial Districts and to new target populations. Further evaluation and support of RJ programs will produce more robust data and assessment of program fidelity. Most importantly, we will be able to divert more youth from the juvenile justice system, decrease recidivism and enhance victim, offender and community satisfaction.

**2:45-3:00 QUESTIONS FROM THE OFFICE OF BEHAVIORAL HEALTH BRIEFING**

**35. Describe the Department’s ongoing study concerning the pretrial release decision-making process.**

The Colorado Judicial Department convened a working group to study pretrial release and bond in the state of Colorado. The working group is reviewing statistics and practices to determine where improvements may be made and has developed a partnership with the Colorado Criminal and Juvenile

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<sup>2</sup> Brooks, A. (2013). Moving forward: Two approaches to repairing the harm through restorative justice pg. 16-17

Justice subcommittee to develop policy recommendations for the future. Additionally, in the last six months the working group has arranged for and provided training on pretrial release and bond reform trends across the nation to all Chief Judges and approximately 100 Judges across the state.

**36. Describe the Department’s efforts related to the implementation of H.B. 16-1410 (concerning court discretion to order inpatient competency evaluations), including related training and technical assistance for judicial officers.**

The Judicial Department has made significant progress on encouraging judges to make outpatient orders for competency evaluation when possible. As noted in the JBC staff briefing document for the DHS interim Supplemental Request, orders for inpatient evaluation have dropped as a percentage of total orders from 32.2 percent in FY2013 to 15.8 percent in FY 17. The Department’s efforts are detailed below.

- The Judicial Department’s legal counsel informed all judges of the statutory changes in H.B. 16-1410 via e-mail on July 11, 2016.
- CMHIP presented a session at the annual Judicial Conference on September 12, 2016 entitled, “Insanity and Competency, Understanding the Landscape.”
- In the fall of 2016, the Department devoted one staff member to work with CMHIP in their “Lean” planning process, geared toward streamlining the competency evaluation order procedure. As a result, this staff member has been instrumental in introducing new codes, generating competency order reports, and implementing statewide training on competency and restoration orders.
  - In January 2017, codes were added to the computer system to allow us to identify any case with a competency order.
  - Beginning in fall 2017, eight regional training staff monitor daily reports and address any concerns directly with court division staff. Concerns may include incorrect coding and use of incorrect forms.
  - Each of the regional trainers has offered over a dozen opportunities for training on the competency order process for judges and division staff in their region. Trainers emphasize that all competency orders should be made to the least restrictive setting.
  - Judicial staff and CMHIP staff presented two training sessions at the annual conference for clerks in the fall of 2017.

The State Court Administrators Office has established a central e-mail address for CMHIP to report any competency orders of concern. Once reported, the Department will bring the order to the attention of the issuing judge for appropriate clarification.

- DHS has identified a list of inpatient competency evaluation and restorations for defendants who may have been served in a less restrictive/outpatient setting. The list comprises defendants with non-felony charges who also demonstrated no indices of clinical acuity during the first 60 days of their hospitalization. DHS has recently provided case identifying information for these cases, which will be shared with judges for their review as a training tool in making future inpatient or outpatient orders.
- A new version of the competency order form is scheduled for release after the first of the year. The new order form is designed to require judges to specify the exact circumstance under section 16-8.5-105, C.R.S., which allows the order to be made on an inpatient basis.

**37. [Staff-suggested] [Background Information: The Department of Human Services is struggling to address continued increases in the number of court orders for inpatient competency restoration services and to comply with the requirements of a related Settlement Agreement. The Committee is interested in identifying a range of solutions that will ensure that: (a) individuals with behavioral health disorders are diverted from the criminal justice system when possible; and (b) those who do become involved in the justice system have access to clinically appropriate behavioral health and competency-related services.]**

The Committee requests that the Department provide feedback concerning the following potential policy options:

**a. Modify current law to expand the minimum information that a competency evaluator must include in a written report to the Court to include:**

**i. Whether the individual who was evaluated has been evaluated for competency or received competency restoration services previously and, if so, any available information about the outcome of the previous evaluation or restoration services.**

This information would be helpful to the trial court, especially if the defendant has been shown to be “non-restorable” or in need of a lengthy restoration process. It should be noted that the evaluator may not be aware of all previous competency evaluations, especially those done by someone other than the Department of Human Services or competency evaluations and restoration services conducted in another state.

**ii. A recommendation concerning the appropriate clinical setting for competency restoration services and whether the individual’s competency is likely to be restored within the statutorily allowable timeframe.**

This information would be helpful to the court. However, it should be noted that there is generally a lack of restoration services available; and until the recent supplemental to DHS, in many cases, there was not a viable source of restoration funding. With the allocation of funds for restoration, this concern may be alleviated.

**b. Modify current law concerning Court options when a defendant is charged with a low level misdemeanor or petty offense and the competency evaluator’s report indicates that the individual is not competent to proceed but competency is likely to be restored within the allowable statutory timeframe. Under this circumstance, provide the Court with two options: (1) allow the defendant to bond out and order restoration services on an outpatient basis; or (2) drop the charges.**

This suggestion would be problematic. Lower level misdemeanors may involve domestic violence or other victims’ rights issues. Third degree misdemeanors can involve very serious domestic violence. In addition, a judge may be aware of prior cases that would caution against a defendant being released pending restoration. Under current law, the court already has the

ability to order the defendant released on bond when appropriate. We oppose curtailing judicial discretion in this instance.

More importantly, as to the second option, the court should not decide on its own to drop charges. This is an Executive function reserved to the district attorney. It would be inappropriate to invest the court with the authority to drop charges.

- c. **Modify current law so that if a defendant is charged with a higher level misdemeanor or a felony and the Court does not release the defendant on bond, the Court must to order restoration services at the place where the defendant is in custody unless the competency evaluator's report recommends a higher level of clinical care. If the evaluator recommends a higher level of care, authorize the Department of Services to determine the most appropriate location for such services.**

The Judicial Department is in support of the idea that the evaluator would make a recommendation as to the appropriate setting for restoration. However, judges should retain discretion to change this placement based on specific facts. For example, some jails do not have areas to segregate these defendants which may lead to a longer period of time to achieve restoration or inability to restore at all. Some defendants have been successfully restored at CMHIP only to decompensate when returned to jail.

Attorneys have the perception and often argue that the services provided at CMHIP are more reliable than in other settings. This perception may or may not be true. Courts do not have a vested interest in the location of services as long as those services are appropriately provided. The evaluators are the experts in this topic and having their input will be invaluable to the judge in making a placement decision.

- d. **If the Court orders a competency evaluation to occur on an inpatient basis, require the Court to make findings identifying the relevant statutory criteria (pursuant to H.B. 16-1410). Consider requiring the Court to make similar findings when it orders inpatient competency restoration treatment.**

The Judicial Department does not object to these suggestions. Criteria for restoration order placement may need to vary from the criteria currently provided for competency in section 16-8.5-105,C.R.S.

- e. **Under current law, the maximum term of confinement for purposes of receiving competency restoration treatment is a period of time equal to the maximum term of confinement that could be imposed if the defendant were to be found guilty of the charges. Consider modifying this provision to reduce the time allowed for restoration treatment. The Department of Human Services provided two examples from other states:**
  - i. **Alaska permits the Court to commit a person for restoration treatment for a maximum of 360 days. After 360 days, the charges are dismissed without prejudice and the defendant is remanded for civil commitment proceedings.**

- ii. **Connecticut permits the Court to confine a defendant for restoration treatment for the period of the maximum sentence which the defendant could receive on conviction of the charges against him or 18 months, whichever is less. This limitation does not apply to persons charged with certain crimes (e.g., class A felony, some class B felonies, a crime or motor vehicle violation that causes the death of another person, or a class C felony unless good cause is shown). When this time limit is reached, the Court shall either order the defendant released from custody or order the defendant placed with a specific state agency for the purpose of pursuing civil commitment proceedings.**

In general, the Judicial Department would not object to adding a time limit for restoration to the statute. Currently, a defendant can be held for restoration up to the maximum term of confinement which can be years or decades. This is a very long time to hold a defendant without adjudication on the merits of the case.

Without seeing the details of these proposals, the Department cannot definitively comment on the impact of these suggestions nor is it appropriate for the Department to lend endorsement to legislation of this nature. However, the brief discussion above raises questions about how such a law would be implemented: Would the criminal case be converted to a civil commitment case before the same judge or would the case be referred to the probate court? Would the county attorney's office be charged with handling the civil commitment case? Is the defendant represented by a public defender or would a GAL be appointed? How does the victim's rights amendment apply in these cases? Does the statute of limitation toll for the period of time the finding of no competency remains in effect and what happens if a defendant is later restored? It should be noted that these proposals will involve additional costs to other agencies to implement. Due to the complexity of this proposal it would be advisable to work with a multi-disciplinary group such as Colorado Criminal and Juvenile Justice Commission (CCJJ) to define roles and clarify how these proposals would be adapted to Colorado.

- f. **Direct the Department of Human Services to adopt a practice of advising the Court when a defendant meets civil commitment criteria. This would involve a defendant's treatment team providing a letter to the Court, which would be attached to the competency evaluator's report. This would prompt the Court to move forward with civil commitment proceedings rather than requiring ongoing competency restoration treatment and periodic evaluator reports to the Court.**

Providing information about whether the defendant meets the criteria for civil commitment would be helpful to the judge. Upon notification that the defendant meets the criteria for civil commitment, the court should retain the discretion of whether to move forward with an attempt at restoration or a referral to the probate court for commitment proceedings.

- g. **Expand the existing Jail-based Behavioral Health Services program to allow county sheriffs to use the program funding to provide behavioral health services to inmates who have a mental health disorder, regardless of whether the individual has a co-occurring substance use disorder. Consider expanding funding for the program and prioritizing the new funding for rural and frontier jurisdictions, with an emphasis on multi-jurisdictional proposals that**

**would allow rural jurisdictions to work together to develop creative solutions to provide effective behavioral health services within their region.**

The Judicial Department is in support of allowing flexibility in use of treatment funds. In doing this, it is imperative that more funds be added. Otherwise, additional treatment for mentally ill defendants will come at the expense of drug treatment resources. Judges from across the state note that treatment funds are inadequate both in rural and in urban areas. Increasing jail-based treatment funding increases the likelihood that defendants will be able to function when released into the community.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

**38. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.**

All legislation affecting the Judicial Department has been implemented.

**39. Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2017 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.**

**<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2017>**

The Judicial Department has two high priority outstanding audit recommendations stemming from the April 2014 performance audit of Victim's Restitution. Recommendation Nos. 5B & 5D cover developing and implementing policies and automated procedures for handling joint and several restitution and calculating and assessing interest on joint and several restitution. The Department will implement updates to the online case management system during the first quarter of 2018. The exact date will be determined by ITS. This effort will fully address all issues associated with the audit's review of restitution. The original implementation date for Recommendation No. 5D was June 2018 and the revised implementation date for Recommendation No. 5B is also June 2018. The Judicial Department will fully implement both recommendations by the implementation date provided to the Office of the State Auditor.

**40. If the Department receives federal funds of any type, please respond to the following:**

**a. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2017-18 or 2018-19.**

The Department does not anticipate any sanctions to its federally funded programs.

**b. Are you expecting any changes in federal funding with the passage of the FFY 2017-18 or 2018-19 federal budget? If yes, in which programs, and what is the match requirement for each program?**

For the Trial Courts the Department anticipates funding changes in these federal grants:

(1) Statewide Systems Improvement Program (SSIP): This program was technically considered a cooperative agreement and not a grant. The SSIP funding for Office of Juvenile Justice and Delinquency Prevention (OJJDP) will not be renewed after 2018-2019; however, it is not due to the federal budget it was a policy decision by OJJDP to reallocate funds to Family Treatment Drug Courts. Funding was not guaranteed beyond 2018-2019; however, we did expect to have the opportunity to apply for year 2 and year 3 of implementation funding. The Department will no longer have those options and is seeking funding to keep the program operational beyond September 2018. Match: 25% cash or in-kind.

(2) Court Improvement Program: Grant funding through the Children Bureau is part of this budget cycle and two thirds of the funding needs to be reauthorized 2018-2019. The Department is expecting changes in funding and expects the programs to be renewed. Match: 25% cash or in-kind.

(3) Access and Visitation Grant (AV): Office of Dispute Resolution receives this grant from Administration of Children and Families and we have not reason to believe this program will be impacted by budget. Match: 25% cash or in-kind.

**c. Does the Department have a contingency plan if federal funds are eliminated?**

The Department does not anticipate asking for state funds to backfill any federal funding reductions or changes at this time.

**41. Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?**

None at this time.

**42. Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?**

Turnover and Vacancy Information as requested: General Assumptions About the Data:

*Does not include, contract employees or law clerks as they separate regularly due to end of contracts and can skew turnover rates.*

Turnover rate is calculated by Count of separated employees / Count of active employees \*100

<b>FY17 Turnover</b>	
State Court Administrator's Office	14.1%
Probation	7.7%
Trial Courts	12.3%
<b>Average Overall Statewide</b>	<b>10.7%</b>

Court Judicial Assistant*	16.6%
Support Services*	16.7%

The Court Judicial Assistant and Support Services positions are found within the Trial Courts and Probation departments respectively. These positions have been highlighted here as they represent the lowest compensated positions, the largest number of incumbents, and they have the highest rates of turnover.

Per the Executive Branch's Annual Workforce report; The Executive Branch turnover rate for FY 17 is at 14.4%, compared to the Judicial Branch's Turnover Rate for FY 17 at 10.7%. The Judicial Department credits much of this low turnover rate to the efforts made towards compression mitigation through Judicial compensation policies.

<b>Judicial Vacancy Rate as of October 31, 2017</b>	
<b>Program</b>	<b>Vacancy Rate</b>
Appellate	2.7%
Probation	3.4%
SCAO	14.5%
Trial Court	5.3%
<b>Overall Judicial Department</b>	<b>5.2%</b>

The Judicial Department's Pay for Performance (referred to as Merit Pay in the Executive Branch) increases provide a mechanism to move employees up the salary range and provide room for salary growth. The limited funding or lack of funding for Pay for Performance increases creates ever increasing compression issues at the lower ends of the salary ranges. The Judicial Department has been able to partially offset this issue by providing approved realignment increases to employee base salaries. This has been a long-standing, standard practice for the Department. It is critical that the Judicial Department continue this practice to offset further compression issues which occur when new

employees are brought in at or near the rate of pay of others in the same classification with longer lengths of service. For many years, the Executive Branch has taken a different approach. The Executive Branch's practice of range realignment is to move salary ranges by the determined percentage, and only those incumbents below the new range minimums are moved within the range. All other incumbents stay at their current rate of pay. This has resulted in compression problems for many Executive Departments. The Judicial Department has attempted to avoid this issue by providing the realignment increase to all incumbents when a salary range is realigned.

While we are unable to speak to the impact of this approach on the Executive Branch's turnover and vacancy rates, it is our assessment that Judicial's practice of providing the incumbent increase has assisted the Judicial Department in reducing the impact on retention of staff (please see data found below).

**43. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?**

(1) The Department's information security team supports the Department by providing security guidance, risk management, security architecture, and security operations that enable the Department to achieve its business goals in a secure manner. In FY17 and FY18, the Department's information security team expanded to include specialists in systems security, network security, and application security to increase the Department's information security posture through the implementation of information security technologies and best practices. The Department's information security team is focused on integrating security at all levels of business. The priorities include implementation of behavior based endpoint security, implementation and configuration of enterprise security log collection and correlation engine, security awareness training, and improving asset management and standard system and network configurations.

The Department's information security team also participates in audits performed by the Office of the State Auditor (OSA) and prioritizes any findings for remediation, completing the remediation in accordance with the recommended timelines. In addition to performing remediation according to OSA audits, the Department continues to implement security controls and improve processes proactively, rather than reactively, strengthen its information security posture. The Department will undergo an information security assessment in the spring of 2018 by an external vendor.

(2) The Department's information security team collaborates with the State Office of Information

Security in the following areas:

- Security operations;
- Threat identification;
- Product review;
- Network security controls;
- Incident reporting; and
- Alignment with the Colorado Information Security Policies.

Additionally, the State CISO and the Department's information security manager (ISM) have met to discuss current and future information security initiatives, as well as security controls needed to combat cyber threats. The Department's ISM attends meetings held by the Office of Information Security when possible to maintain collaboration and visibility for cybersecurity initiatives.

- (3) In 2013, the Department pursued an independent security assessment by an outside entity who performed penetration testing, vulnerability assessment, and an assessment of the Department's cyber security framework and policies. In 2014, the Office of the State Auditor performed a vulnerability assessment of two Department enterprise systems, as well as an assessment of the Department's information security policies and procedures. Additionally, the Department issued an RFP in FY18 to perform another penetration and vulnerability assessment of its information security posture. The Department's information security team is currently in the process of awarding a contract.
- (4) In FY17, the Department did receive funding to hire a dedicated team of cybersecurity personnel.
- (5) In addition to the response provided in question number two (2), the Department ISM develops and submits an annual Agency Cyber Security Plan that is reviewed and signed by the State Court Administrator and submitted to the State CISO.
- (6) Unique to the Department is the need to work with other state, county, and local law enforcement agencies who must adhere to Judicial policies and procedures, as well as CJIS cybersecurity policies and procedures, necessary for the integration of data exchange programs and security operations at each Judicial location around the state. While ensuring proper information and physical security controls, the Department must be mindful of other external requirements that affect court proceedings such as historic building requirements and the need to support over 100 remote locations and their networks.
- (7) The Department does handle private or sensitive data. The Department's information security team works with other Department business units to implement security controls to protect data that is classified as private or sensitive information. Some of these controls include utilizing email encryption technology to encrypt sensitive information contained in email, applying access control policies to data stored on file shares, and training regarding proper handling of private or sensitive data.

(8) One security control the Department uses to protect sensitive information is the use of Barracuda's email appliance, which provides email ingress and egress security filtering, as well as encryption functionality. Sensitive data on file shares is protected using a combination of file permissions, and where appropriate, using 7zip file encryption utility. The information security team is currently reviewing enterprise encryption solutions that will provide more robust and comprehensive file encryption. Additional security measures the Department security team has implemented to protect sensitive information include: firewalls, intrusion prevention, web proxy filtering, event monitoring and alerting of suspicious traffic, endpoint security with behavior analytics, role based access controls, system level security policies, and improved processes for data handling.

**44. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?**

The Department's Court Services and Probation Divisions utilize researched best practices in their operations. Further, each has developed sophisticated staffing models to identify both program need and for the efficient allocation of resources throughout the state. Generally, these models are the basis of budget requests. While improving operational efficiency is always an important consideration for the Department, data accuracy, data integrity and security, and the effective delivery of services are the top priorities.

Budget requests are submitted within the parameters of these priorities.

**45. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of "evidence-based," indicate which programs are "evidence-based," and describe the evidence used to support these programs.**

The Colorado Problem Solving Court Advisory Committee developed a Best Practice Manual and Standards for programs. The Best Practice Manual and Standards use national research to determine the evidence based practices that should be implemented in a problem-solving court. Problem solving court research is among the most thoroughly developed program research available for courts. At this time, problem-solving court funding is not based on whether a program has demonstrated adherence to these practices and standards. However, the Advisory Committee is concluding a pilot accreditation process that would award accreditation to programs following these best practices and standards. On-going training and technical assistance are used to encourage all problem-solving courts to implement proven best practices.

Probation follows the framework of the 8 Principles of Effective Intervention. Some of these can be more accurately defined as evidenced-based programs/practices (e.g. LSI, Cognitive Behavioral Treatment) while others are research-informed or best practices (e.g. SBC). The link below is one of the foundational articles that has driven our work to integrate the 8 principles.

<https://www.doc.ks.gov/community-corrections/resources/Implementing%20EBP%20in%20Community%20Corrections%20The%20Principles%20of%20Effective%20Intervention.pdf>

This impacts budget through the development of workload values for officers and identifying the proper ratio of supervisors to staff. The practices probation engages in drives the amount of time they spend applying the 8 principles, and this helps us define our workload values for officers. Due to the sophistication required to implement these principles, probation staff participates in training and educational practices (e.g. CoPs, QA, skill practice, coaching and feedback sessions) – this time is also calculated into workload values. These workload values translate into FTE need which drives our budget requests.

For probation supervisors, several important factors were considered in the most recent workload study that created the ratio of supervisor (1) to staff (6): understanding of the complexities of the 8 principles and effective programming; providing performance feedback and coaching to staff; and creating a span of control that allows supervisors to function effectively in their role. All of these are informed by research. Just like workload values, the span of control ratio of 6:1 determines the FTE need for supervisors which, in turn, informs our budget requests.

These issues are further laid out in our workload value study report of 2014, pages 19-29 at the following link:

[https://www.courts.state.co.us/judicialnet/files/files/probation/EvaluationProjects/WorkloadValueStudy/CO\\_Probation\\_WLV\\_FINAL\\_Report\\_051914%20.pdf](https://www.courts.state.co.us/judicialnet/files/files/probation/EvaluationProjects/WorkloadValueStudy/CO_Probation_WLV_FINAL_Report_051914%20.pdf)

- 46. Please identify how many rules you have promulgated in the past two years (FYs 2015-16 and 2016-17). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.**

The only rules promulgated by the Department are by the Supreme Court regulating the practice of Law. The Department is exempted from the provisions of Section 24-4-103 (2.5) C.R.S. or Section 24-4-103(4.5).

- 47. Describe the expected fiscal impact of proposed changes to PERA made by both the Governor's Office and the PERA Board of Directors. In addition to direct budgetary impacts, please describe any anticipated secondary impacts of an increase in employee contribution rates. For instance, does the Department anticipate a need to increase employee salaries to compensate for the increase in PERA contributions?**

The impact of the proposed PERA legislation varies depending upon what is passed. From the Department's prospective there are two potential area of fiscal impact. First if the employer contribution rate is increased by 2% then the estimated cost to the Department would be \$5,695,466 based on the July 1st, 2017 payroll. The second provision that will impact the Department is the redefinition of PERA includable salary. The proposed change from net to gross pay could cost the Department about a million dollars.

The Department believes that the adaptation of the proposed common policy salary increases for state employees of 3% is critical as it would offset a proposed 2% employee PERA contribution rate increase. The issue of employee compensation and movement within pay ranges is problematic and has had significant consequences to the state's workforce. An increase in the employee contribution rate to PERA is a small piece of a larger State workforce compensation problem. Providing an employee salary increase sufficient to "offset" an increased employee PERA contribution rate would make the adjustment more tolerable.

**48. Senate Bill 17-267 required Departments, other than Education and Transportation, that submit budgets to OSPB to propose a budget that is 2.0 percent below the total funds budget in FY 2017-18. Please highlight the following regarding the 2.0 percent reduction:**

- **Where these reductions can be found in the Department's request;**
- **What programs are impacted by the reduction; and**
- **Total amount of the reduction.**

The Judicial Department was not identified in the SB17-267 legislation. However, the Department is reviewing all budgets and looking at opportunities for reductions that would not hinder the operations of the courts or probation. The Department anticipates submitting a budget amendment with a small number of budget reductions.

**49. Please provide the following information for the Department's custodial funds and continuously appropriated funds:**

- Name of the fund;
- Amount of funds received;
- Whether the revenues are one-time or multi-year;
- Current cash fund balance;
- Source(s) of the funds;
- A list of FY 2015-16 and FY 2016-17 expenditures from these funds;
- Expected uses of the funds in FY 2017-18 and FY 2018-19; and
- Legal authorization and restrictions/limitations on the Department's use of these funds.

The Department has four funds that are continuously appropriated:

- Supreme Court Library Fund
- Attorney Regulation Cash Fund
- Victim and Witness Assistance and Law Enforcement Fund
- Crime Victim Compensation Fund

A detailed chart answering the above questions is attached on the next page.

**50. What is the Department's process for engaging in (or disputing) federal land, environmental, jurisdictional, and/or water policy issues? How do you coordinate with other departments, the Governor's Office, local governments, and/or citizens?**

N/A to the Judicial Department

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**3:00 – 3:15      BREAK**

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Charts for question 49:

<b>Fund:</b>	Supreme Court Library Fund 700J
<b>Amount of Funds Received FY17:</b>	\$546,758 in FY17
<b>Revenues One time or Multi-Year:</b>	Multi-year
<b>Current cash fund balance:</b>	\$118,041
<b>Sources of Funds:</b>	Appellate Court Filing fees, single client and Pro Hac Vice filings and copier fee recoveries.
<b>Expenditures from the fund in FY16 &amp; FY17</b>	Library Operations. IN FY17 \$242,179 Personnel Services; \$250,788 Operating
<b>Expected Uses of funds FY18 &amp; FY19</b>	\$572,897 for Library Operations
<b>Legal Authorization/Restrictions</b>	13-2-120 C.R.S. Funds to be used for the payment of Library Services

<b>Fund:</b>	Attorney Regulation Cash Fund 7160
<b>Amount of Funds Received FY17:</b>	\$11,145,039 in FY17
<b>Revenues One time or Multi-Year:</b>	Multi-year
<b>Current cash fund balance:</b>	\$9,831,697
<b>Sources of Funds:</b>	Attorney Registration Fees; application fees for law examinations and other various fees.
<b>Expenditures from the fund in FY16 &amp; FY17</b>	\$10,760,535 in FY17 of which \$8,235,402 was for Personnel Services and \$2,525,133 is for Operating
<b>Expected Uses of funds FY18 &amp; FY19</b>	Fund supports the attorney registration and attorney regulation program
<b>Legal Authorization/Restrictions</b>	Colorado Rules of Civil Procedure, Chapter 20, Rule 251.2

More charts for question 49:

<b>Fund:</b>	Victim and Witness Assistance and Law Enforcement Fund #7140
<b>Amount of Funds Received FY17:</b>	\$16,050,705 in FY17
<b>Revenues One time or Multi-Year:</b>	Multi-year
<b>Current cash fund balance:</b>	\$11,116,937
<b>Sources of Funds:</b>	Each adult conviction of a felony, misdemeanor or traffic offense pays a surcharge in an amount equal to any fine imposed.
<b>Expenditures from the fund in FY16 &amp; FY17</b>	\$15,495,051 in FY 17 for intergovernmental payments or transfers to other agencies
<b>Expected Uses of funds FY18 &amp; FY19</b>	\$16,375,000 for intergovernmental payments or transfers to other agencies
<b>Legal Authorization/Restrictions</b>	24-4.2-103(1) C.R.S.

<b>Fund:</b>	Crime Victim Compensation Fund #7130
<b>Amount of Funds Received FY17:</b>	\$18,136,787 in FY17
<b>Revenues One time or Multi-Year:</b>	Multi-year
<b>Current cash fund balance:</b>	\$11,790,312
<b>Sources of Funds:</b>	Each adult conviction of a felony, misdemeanor or traffic offense pays a surcharge in an amount equal to any fine imposed.
<b>Expenditures from the fund in FY16 &amp; FY17</b>	\$11,961,540 for intergovernmental payments or transfers to other agencies
<b>Expected Uses of funds FY18 &amp; FY19</b>	\$13,400,000 Intergovernmental payments or transfers to other agencies.
<b>Legal Authorization/Restrictions</b>	24-4.1-117(1), C.R.S.



**APPEARING ON BEHALF OF THE AGENCY:**

**DOUGLAS K. WILSON**

***COLORADO STATE PUBLIC DEFENDER***

**KAREN S. PORTER**

***Chief Financial Officer***

**Monday, December 18, 2017**

JUDICIAL BRANCH  
FY 2018-19 JOINT BUDGET COMMITTEE HEARING AGENDA

Monday, December 18, 2017  
1:30 pm – 5:00 pm

3:15-3:45 OFFICE OF THE STATE PUBLIC DEFENDER (OSPD)

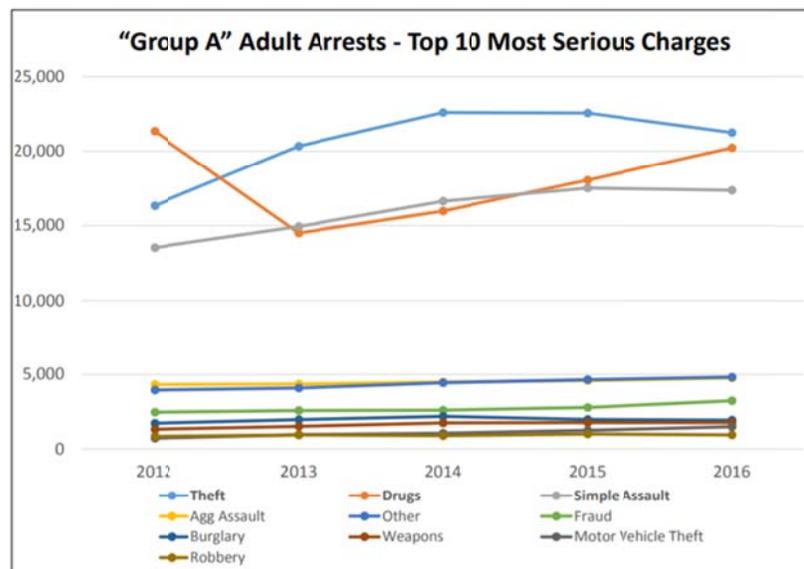
INTRODUCTIONS AND OPENING COMMENTS, AND DISCUSSION OF BUDGET PRIORITIES

- BUDGET PRIORITIES:
  - #R-1, WORKLOAD AND CASELOAD INCREASES
  - #R-2, IT SUPPORT, SECURITY AND DEVELOPMENT
  - #R-3, INTERPRETERS

QUESTIONS FOR THE OSPD

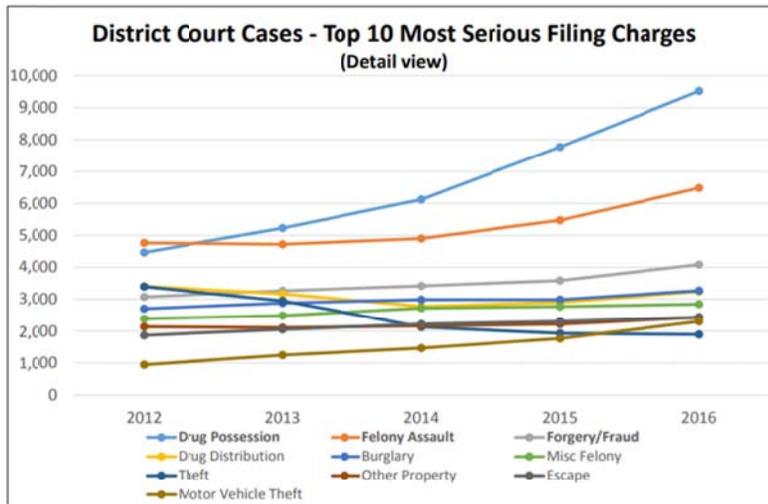
1. What is driving the increase in prosecutions? Is it more crimes or is it more filings that DAs are bringing to court?

*The answers to these questions are unclear. There is an increase in the actual number of crimes because of population increases. But the average number of crimes reported per 100,000 of the population is less than it was a decade ago. The charts below, prepared by the Division of Criminal Justice (DCJ), appear to demonstrate a disproportionate increase in filings over the last few years relative to the increase in arrests. They confirm that the greatest increase in arrests and felony filings is for drug possession.*



Data Sources: National Incident Based Reporting System (NIBRS) "Group A" Arrest records obtained from the Colorado Bureau of Investigation.

Notes: Arrests may contain multiple offenses. The most serious offense (using a crime hierarchy) was selected.



Data Sources: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CIASS) and analyzed by DCJ/ORS.

Notes: The most serious filing charge was found by sorting all the filing charges by felony level and selecting the highest felony. This technique was different from selecting the most serious arrest offense because felony level is not present in the arrest data. As a result the most serious offense selected on the arrest may differ from the most serious charge selected on the case filing. In addition, arrest charges and filed charges may differ due to prosecutorial discretion. District court filings include some juveniles (Direct File).

OSP is looking at numbers published by CBI on reported crimes since the number of reported crimes (the actual crime rate) was not considered in the DCJ analysis. Additional information and analysis is not currently available but should be available for the hearing on Monday, Dec 18<sup>th</sup>.

2. What is driving the increase in misdemeanor cases? Is there any way to contain the costs associated with it? How does this compare with what is happening in other states?

H.B. 14-1032, commonly known as the Rothgerly bill, went into effect January 01, 2014 and resulted in a large increase in misdemeanor cases. FY 2014-15, the first full fiscal year of implementation, saw an increase of 23,345 cases, a 53 percent increase, when compared to FY 2012-13. Since FY2014-15, the number of these cases have leveled off.

OSP Trial Office New Cases Opened										
FY00 & FY2012-FY2017										
Type of Case	2000 Open	2012 Open	2013 Open	2014 Open	2015 Open	2016 Open	2017 Open	2017% of Total Cases	CRG in Cases Since FY00	CRG in Cases Since FY12
Total Felony	36,743	44,396	47,020	50,843	51,028	55,684	60,832	44.2%	3.2%	6.5%
Total Misdemeanor	18,626	43,073	44,299	57,224	67,644	68,437	68,539	49.7%	8.5%	9.7%
Total Juvenile	10,320	7,640	7,218	7,040	8,275	8,267	8,406	6.1%	-1.3%	1.9%
<b>Total All</b>	<b>65,689</b>	<b>95,109</b>	<b>98,537</b>	<b>115,107</b>	<b>126,947</b>	<b>132,388</b>	<b>137,777</b>	<b>100.0%</b>	<b>4.7%</b>	<b>7.7%</b>

However, the number of felony filings have increased dramatically over the past few years. Since FY 2011-12, we have seen a cumulative growth in felony cases of 37 percent. Although felony cases represent 44 percent of our trial cases, they require 63 percent of our resources. Thus, fewer felony cases results in a lower amount of workload needed which ultimately translates to a smaller resource need.

3. Can the caseload carried by a Public Defender be compared with the caseload carried by public defenders in other states? How does Colorado compare?

Caseload is an important factor that is necessary to calculate accurate resource needs but it is not the only factor. Workload is a critical evaluative tool we, and others use for resource requests. For example, large increases in the number of misdemeanor cases will not affect the resources needed nearly as much as if there are large increases in felony cases.

*It is difficult to compare caseloads, in part due to dramatic variances among types of public defender and prosecutor offices. But, as more agencies develop workload standards, it is becoming even more evident that indigent defense is underfunded nationwide.*

4. What is the range for the costs for cases handled by the public defender? What is the cost of a typical case? That is the average for the different types of cases, for example those that go to trial and those that do not? Juvenile, misdemeanor, felony, etc. What is the highest and lowest?

*The average costs of our closed cases range from \$336 for misdemeanors, \$413 for juvenile cases, and \$883 for felonies. The average overall cost per case is \$621.*

OSPD R1 Workload and Caseload Increases.

***Our number one budget priority is to staff our offices with adequate FTE. Our workload study indicates 34.2 attorney FTE are needed to maintain an 85% staffing level.***

5. What is necessitating these increases? Is there any way to contain the costs?

*The workload resources required are primarily directed by which case type (felony, misdemeanor, juvenile) is exhibiting caseload increases. The Judicial Department reported 12.5 percent increases in felony filings in each of the past two years. We have seen an increase of 37 percent in our felony cases over the past five years. The OSPD has not requested or received any trial attorney positions due to normal workload increases over this same period of time.*

*Containment of costs can only be achieved by a decrease in the workload by policy decisions such as:*

- *The elimination of incarceration as a possible punishment;*
- *Diversion of those with behavioral health issues;*
- *Increasing the pre-trial release rate.*

6. Where will these FTE be located and how will the locations correspond to caseload and workload?

*In order to comply with our statutory function, the Office must have the resources and staffing levels to meet the requirements of providing effective representation. FTE will be distributed as indicated by workload needs, which, in part, are tied to caseloads. Projected placements are shown on the chart below.*

District	PD Location	Current # of Attorneys	Attorney Need per Workload Stds - 100% Staffed	Attorney Need for 85% staffing	DI Request
1st	Golden	38	52	43.4	5
2nd	Denver	59.5	76	64.5	5
3rd	Trinidad	4	4	4.1	
4th	Colorado Spgs	60	79	66.1	6
5th	Dillon	5	8	7	2
6th & 22nd	Durango	11	14	12	1
7th	Montrose	8	11	9.1	1
8th	Ft. Collins	22	26	23	1
9th	Glenwood Spgs	6	7	6	
10th	Pueblo	26	28	24.1	
11th	Salida	8.6	13	9.8	1.2
12th	Alamosa	8	12	9.4	1
13th	Sterling	5	6	5	
14th	Steamboat Spgs	6	6	6	
15th & 16th	La Junta	7	10	8.4	1
17th	Brighton	44	59	50.3	5
18th	Arapahoe & Douglas	54	62	54	
19th	Greeley	26	33	28.4	2
20th	Boulder	20	28	23.9	3
Total State		439.1	557	473.1	34.2

7. Why isn't the Public Defender requesting additional social workers?

*We absolutely recognize the value social workers can add to a legal team and that using social workers can result in cost avoidance. However, based on existing shortages and the extreme increases we have experienced in the number of felony cases assigned to our office, we determined our highest priority for FY 2018-19 was for attorneys as they are constitutionally required.*

8. Does the Public Defender currently use social workers? Have they been effective? How is success measured?

*We currently have nine social workers. We have received feedback from various parties (including our attorneys, our clients and Judges) that our social workers are very beneficial to the process and better outcomes are achieved. However, this information has, so far, been anecdotal. The new case management document system we have requested as part of our FY 2018-19 budget item #R-2 is anticipated to capture better data and reports which would be able to document the effectiveness of our social worker program.*

Consolidated Appropriations for Health, Life, and Dental Expenditures

9. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

*All Judicial Branch agencies have discussed this issue and are in agreement with the proposed solution as presented below.*

**Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from**

**consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.**

*The OSPD, along with other Judicial Branch agencies, are very sympathetic to staff's desire to simplify H/L/D calculations at figure setting, however, the we all feel very strongly that each entity in the Judicial Department is independent and their budgets should be reflective of that fact. Consolidating H/L/D will impose an administrative burden on the Judicial Department and the independents as it will require the generation of accounting documents to transfer H/L/D allocations to each agency that is currently unnecessary with separate H/L/D appropriations.*

*Further- the Judicial Department struggles with idea of potentially having to use its over expenditure authority on H/L/D when there may be competing higher priority needs. Last year the ADC used over \$900K of the transfer authority for their purposes and the year before the entire million was used. Based on historic usage of the over expenditure authority, there is not a great deal room to accommodate potential H/L/D transfers.*

*Another question that may arise is whether the State Controller would view this H/L/D consolidation and correspondent transfers as counting against the Department's \$1 million transfer authority granted in 24-75-110 (it would exceed it). The \$1 million-dollar transfer authority is critical to the balancing of the Judicial budget and the Department is reluctant to use it for H/L/D transfers.*

**Can't Health, Life, and Dental appropriations that are based on past averages do this? How do Department's with comparable divisions do this?**

*Past appropriations and averages are not used in the calculation of the request year H/L/D appropriation. Per OSBP instructions H/L/D is calculated utilizing benefit selection choices from the July payroll. Every Department calculates the H/L/D request the same way. How other Executive Department's allocate H/L/D is unknown. It is important to recognize that in the Judicial Branch, the Independent Agencies are not Divisions, they are statutorily separate entities and the transfer of H/L/D would not be the same as it is with an Executive Branch Department transferring H/L/D within its Divisions.*

**Explain why you opposed this HLD appropriation proposal in your response to the request for information? Does the staff proposal address your concerns?**

*While staff's proposal is doable, we believe it creates unnecessary work for the Judicial Department. To help with staff's concerns about calculating the H/L/D appropriation, the Judicial Department and the Independent agencies would like to offer the following alternative. The independent agencies could provide the Judicial Department's Budget Office their HLD request if needed for adjustments at Figure Setting. The Judicial Department's Budget Office would then calculate the H/L/D for each agency in the Judicial Branch. Then, only after final approval of the numbers by each of the independent agencies, the JBC staff would be provided the needed information via a single contact point of the H/L/D appropriation. This would continue to allow each agency to have its own H/L/D appropriation as they do now and retain their fiscal independence. The Judicial Department and all Independent agencies are on-board with this alternative and would ask that it be tried at figure setting this year.*

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#### Questions from the Office of Behavioral Health Briefing

10. [Staff-suggested] [Background Information]: The Department of Human Services is struggling to address continued increases in the number of court orders for inpatient competency restoration services and to comply with the requirements of a related Settlement Agreement. The Committee is interested in identifying a range of solutions that will ensure that: (a) individuals with behavioral health disorders are diverted from the criminal justice system when possible; and (b) those who do

*become involved in the justice system have access to clinically appropriate behavioral health and competency-related services.]*

The Committee requests that the Department provide feedback concerning the following potential policy options:

*OSPD respectfully requests that the potential policy issues presented by the JBC staff in response to the Office of Behavioral Health briefing be scheduled for a separate hearing before the committee with the presence of any and all departments/stakeholders that intersect with these problems. These are complicated policy issues with no easy solutions. They are policy issues that do not directly impact the present budget request of the OSPD, but might impact future requests if the legislature chooses to implement policy changes in the area of behavioral health.*

*It should be noted, however, that OSPD will continue to object to the ever-increasing criminalization of individuals with behavioral health disorders, specifically those who suffer with mental illness resulting in incompetency. The jailing of the mentally ill (due to behaviors caused by that mental illness) is, quite simply, an unjust and wrong-thinking policy choice for Colorado families.*

- a. Modify current law to expand the minimum information that a competency evaluator must include in a written report to the Court to include:
  - i. Whether the individual who was evaluated has been evaluated for competency or received competency restoration services previously and, if so, any available information about the outcome of the previous evaluation or restoration services.
  - ii. A recommendation concerning the appropriate clinical setting for competency restoration services and whether the individual's competency is likely to be restored within the statutorily allowable timeframe.
- b. Modify current law concerning Court options when a defendant is charged with a low level misdemeanor or petty offense and the competency evaluator's report indicates that the individual is not competent to proceed but competency is likely to be restored within the allowable statutory timeframe. Under this circumstance, provide the Court with two options: (1) allow the defendant to bond out and order restoration services on an outpatient basis; or (2) drop the charges.
- c. Modify current law so that if a defendant is charged with a higher level misdemeanor or a felony and the Court does not release the defendant on bond, the Court must to order restoration services at the place where the defendant is in custody unless the competency evaluator's report recommends a higher level of clinical care. If the evaluator recommends a higher level of care, authorize the Department of Services to determine the most appropriate location for such services.
- d. If the Court orders a competency evaluation to occur on an inpatient basis, require the Court to make findings identifying the relevant statutory criteria (pursuant to H.B. 16-1410). Consider requiring the Court to make similar findings when it orders inpatient competency restoration treatment.
- e. Under current law, the maximum term of confinement for purposes of receiving competency restoration treatment is a period of time equal to the maximum term of confinement that could be imposed if the defendant were to be found guilty of the charges. Consider modifying this

provision to reduce the time allowed for restoration treatment. The Department of Human Services provided two examples from other states:

- i. Alaska permits the Court to commit a person for restoration treatment for a maximum of 360 days. After 360 days, the charges are dismissed without prejudice and the defendant is remanded for civil commitment proceedings.
- ii. Connecticut permits the Court to confine a defendant for restoration treatment for the period of the maximum sentence which the defendant could receive on conviction of the charges against him or 18 months, whichever is less. This limitation does not apply to persons charged with certain crimes (e.g., class A felony, some class B felonies, a crime or motor vehicle violation that causes the death of another person, or a class C felony unless good cause is shown). When this time limit is reached, the Court shall either order the defendant released from custody or order the defendant placed with a specific state agency for the purpose of pursuing civil commitment proceedings.
- f. Direct the Department of Human Services to adopt a practice of advising the Court when a defendant meets civil commitment criteria. This would involve a defendant's treatment team providing a letter to the Court, which would be attached to the competency evaluator's report. This would prompt the Court to move forward with civil commitment proceedings rather than requiring ongoing competency restoration treatment and periodic evaluator reports to the Court.
- g. Expand the existing Jail-based Behavioral Health Services program to allow county sheriffs to use the program funding to provide behavioral health services to inmates who have a mental health disorder, regardless of whether the individual has a co-occurring substance use disorder. Consider expanding funding for the program and prioritizing the new funding for rural and frontier jurisdictions, with an emphasis on multi-jurisdictional proposals that would allow rural jurisdictions to work together to develop creative solutions to provide effective behavioral health services within their region.

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**Other questions for which solely written responses are requested**

11. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

*We have fully implemented all legislation.*

12. Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?

*The OSPD's attrition rates for FY17 were 13.5 percent for attorneys, 12.1 percent for investigators, 16.8 percent for administrative assistants and 13.4 percent overall. The office had an average vacancy rate of 1.9 percent. Many factors, such as salary, work location, workload/burnout, career progression and personal decisions all attribute to staffing departures.*

*The statewide compensation policies administered by the Department of Personnel do not help nor hinder our vacancy or turnover issues.*

13. Please provide an update on the Department’s status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

*The OSPD is an independent agency within the Judicial Branch and as such, has limited interactions with the CISO and the Office of Information Technology (OIT).*

*We deal with private and sensitive data as part of representing our clients but this does not present any unique security challenges in protecting the confidentiality of the data. Our staff manage cybersecurity and implement enterprise-wide security with multiple layers of protection including industry standard firewalls, antivirus software, monitoring, and policies and procedures to protect its systems. Our office has an information security officer who performs these functions in addition to other responsibilities outside of security.*

*A cybersecurity audit was conducted in FY 2016-17 which indicated actionable items, leading to a related budget request. Our FY 2018-19 budget request asks for additional funding to add another crucial layer of prevention and detection to the security function that protects our systems and information. New applications, programs and other electronic tools now available and employed by our staff have increased significantly over the past few years. Examples of these include mandatory web applications from the Judicial Department and the Colorado District Attorney’s Office for E-filing and E-discovery, video conferencing with clients from remote locations, and the ever increasing types and complexity of information our staff have to deal with on a case such as body cameras, cell phone extracts, financial information and numerous surveillance systems.*

14. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

*We continue to look at the process of assembling the SMART Act reports as an opportunity to further refine our performance measures, goals, mission and vision to ensure we are continuing to use our resources responsibly and effectively. Although typical performance measures and goals usually center on obtaining specific levels of production, outcomes, or customer service, our strategies are more in line with evaluating the provision of adequate resources in order to fulfill the agencies mission.*

15. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of “evidence-based,” indicate which programs are “evidence-based,” and describe the evidence used to support these programs.

*Our understanding of evidence-based analysis is that it can serve as a framework for informing policy decisions. Over the last two decades the OSPD has consistently applied an independently developed set of statewide workload standards in analyzing our policy decisions. These workload standards take into account the dynamic judicial and criminal environments, including constant technological advancements.*

*Our standards have allowed us to show consistency and fairness in our staff allocations beyond what may be indicated by raw caseload numbers. They are a key component of our ability to manage our offices in a manner that demonstrates the highest level of responsibility to the State of Colorado and to our clients.*

*This approach is in direct alignment with our statutory mandate which is to “provide legal services to indigent persons accused of crimes that are commensurate with those available to non-indigents, and conduct the Office in accordance with the Colorado Rules of Professional Conduct and with the American Bar Association standards relating to the administration of criminal justice, the defense function.” [C.R.S. 21-1-101] Moreover, the mandate to provide legal services is required by the constitutions of Colorado and of the United States. Forty-six years ago, in Gideon v. Wainwright, the United States Supreme Court held that the Sixth Amendment’s guarantee of counsel is a fundamental constitutional right, essential to a fair trial and required appointment of counsel for indigent defendants in both state and federal courts. In order to meet these mandates it is necessary to have a sufficient number of attorneys to provide those legal services commensurate with those provided by the private bar and consistent with relevant state and national standards. The Guidelines for Legal Defense Systems in the United States, developed under a grant from the U.S. Department of Justice, provide that public defender systems should establish maximum caseloads for individual attorneys and that such standards reflect national standards and take into consideration objective statistical data and factors related to local practice.*

16. Describe the expected fiscal impact of proposed changes to PERA made by both the Governor’s Office and the PERA Board of Directors. In addition to direct budgetary impacts, please describe any anticipated secondary impacts of an increase in employee contribution rates. For instance, does the Department anticipate a need to increase employee salaries to compensate for the increase in PERA contributions?

*Both the PERA Board of Directors and the Governor’s Office proposed many changes that would affect all of our past, current and future employees. The result of which, combined with other increasing costs such as insurance, is that state jobs will become less competitive with federal government and private sector jobs.*

*The PERA Board of Director’s proposal recommends a 2 percent increase to the State’s share of PERA as well as an additional 3 percent contribution for employees, starting in 2020. It’s estimated this would cost the state an additional 1.1 Million and employees an additional 1.6 Million per year.*

*The Governor’s Office proposal recommends no increase to the State’s share of PERA but does recommend employees contribute an additional 2 percent, starting in 2019. This change would initially cost our employees an estimated 1.1 Million per year.*

JUDICIAL DEPARTMENT AND INDEPENDENT AGENCIES  
 FY 2018-19 JOINT BUDGET COMMITTEE HEARING AGENDA

Monday, December 18, 2017  
 1:30 pm – 5:00 pm

**3:45-4:00 OFFICE OF THE ALTERNATIVE DEFENSE COUNSEL (OADC)**

Lindy Frolich, Director  
 Darren Cantor, Deputy Director  
 Daniel Nuñez, Controller/Budget Manager

**INTRODUCTIONS AND OPENING COMMENTS**

**QUESTIONS**

67. Please provide a breakdown of the average cost per case for the Alternative Defense Counsel for the categories of juvenile, misdemeanor, felony.

<b>FY17</b>	<b>Average Cost per Case</b>
Adult Felony	\$ 2,152
Juvenile	\$ 866
Misdemeanors	\$ 448

OADC R1 Caseload Increase

68. What is driving the increase in caseload? Why is the dollar increase for the Alternate Defense Counsel bigger than the dollar increase for the Public Defender?

As the chart below indicates, adult felonies (the most costly case-type as indicated above) increased by 14.0% in FY17.

<b>Total Cases by Type</b>	<b>FY16 Actual</b>	<b>FY16 % of Total</b>	<b>FY17 Actual</b>	<b>FY17 % of Total</b>	<b>% increase from FY16-FY17</b>
Adult Felony	10,580	58.0%	12,063	60.0%	14.0%
Juvenile	2,433	13.3%	2,511	12.5%	3.2%
Misdemeanor	5,231	28.7%	5,529	27.5%	5.7%
<b>Grand Total</b>	<b>18,244</b>	<b>100.0%</b>	<b>20,103</b>	<b>100.0%</b>	<b>100.0%</b>

It is difficult to compare the OADC's budget to the OSPD's budget since the OSPD has FTE, while the OADC relies upon independent contractors. Based on the chart in answer to question 67 above, compared to the information on page 8 of the Department's briefing document<sup>1</sup>, the dollar increase for the OADC is going to be more than the dollar increase for the OSPD.

Additionally, there is not always a direct correlation between the OADC's caseload as compared to the OSPD's. As seen in the chart below, there have been fiscal years where the OADC's Active caseload (cases that are worked on in a particular year) has a similar percentage change in caseload compared to the OSPD, and other years where the numbers are dramatically different.

	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17
<b>OADC Cases</b>	12,082	12,474	12,594	11,880	12,585	13,290	15,085	16,680	18,244	20,103
<b>% change</b>		3.2%	1.0%	-5.7%	5.9%	5.6%	13.5%	10.6%	9.4%	10.2%
<b>PD Cases (Active)</b>	114,103	117,472	120,816	122,949	120,498	125,606	142,907	159,814	167,814	175,873
<b>% change</b>		2.95%	2.85%	1.77%	-2.0%	4.24%	13.77%	11.83%	5.01%	4.80%

### Contractor Rate Increase Issue

69. Are you having difficulty finding attorneys or other contractors at the current hourly rates? How hard is it to get a contractor?

In certain parts of the state, we are not having difficulty finding contractors at the present hourly rates. In other parts of the state (especially rural areas), it is difficult to find contractors to handle the cases.

70. Describe your contractors. Have they recently passed the bar? How much of their practices is devoted to contract hours? Does it just supplement their practice or is it their entire focus? How long do these attorneys typically do this type of work during their careers?

Our attorney contractors *generally* have at least five or more years of experience. Some have decades. We rarely contract with a lawyer who recently passed the bar. Every one of our over 400 attorney contractors is an attorney engaged in the private practice of law. As a result, we don't have specific information on the structure of their practice or what percentage of their practice is devoted to OADC work. We have some contractors who rarely take a case, and others who have a significant amount of OADC work.

Our contractors vary widely on the length of time they do our work. Some only do it for a year or two, until they get their private practices thriving (often after leaving the OSPD

<sup>1</sup> Recent data indicates that the OSPD spends an average of \$413 to represent a juvenile defendant, \$336 to represent an adult misdemeanor defendant, and \$833 to represent an adult felony defendant.

or a private law firm) and then stop taking OADC cases, as it pays too little in comparison to private cases. Some do our work for years and years.

71. Do any of your contractors work exclusively for you? If so, what is their net income? Are we comparing based on this rate or just hourly billing? Are we comparing actual salaries?

We believe there are some contractors who do almost exclusively OADC work, although we discourage that. We have no idea what any contractor's net income is. Again, they are independent contractors and we do not have that information.

72. Is there some way to compare the income of a full time contractor to that of a public defender?

We do not have sufficient OSPD salary information to make this comparison. However, even if we did, we would not know what OSPD salary level we would compare to that of one of our contractors. Finally, we could only estimate how many hours an OADC lawyer contractor could actually bill per week, given the administrative tasks for which we do not permit billing.

73. Have there been instances of inadequate representation of clients due to rates that are too low?

We have no way of knowing whether there have been any instances of inadequate representation due to rates being too low.

#### Consolidated Appropriations for Health, Life, and Dental Expenditures

74. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the over expenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

While the Department is sympathetic to staff's desire to simplify HLD calculations at figure setting, each agency feels strongly that each of the entities in the Judicial Department are independent and their budgets should reflect, as much as possible, the costs of their respective organizations. Consolidating HLD will impose an administrative burden on the Judicial Department and the independent agencies, as it will require the generation of accounting documents to transfer HLD allocations to each agency. This is not necessary with the current structure of separate HLD appropriations for each agency.

Judicial has advised that they struggle with the idea of having to use its over-expenditure authority on HLD when there may be competing higher priority needs. Last year the OADC used over \$900K of the transfer authority for their purposes and the year before, the entire million was used by a combination of various agencies. Based

on historic usage of the over-expenditure authority there is not a great deal of room to accommodate potential HLD transfers. Another question that may arise is whether the State Controller would view this HLD consolidation and necessary transfers as counting against the Department's \$1 million transfer authority granted in C.R.S §24-75-110 (which could well exceed that amount in aggregate). This \$1 million-dollar transfer authority is critical to the balancing of the budget and the Department is reluctant to use it for HLD transfers.

Question from the Office of Behavioral Health Briefing

75. *[Staff-suggested] [Background Information: The Department of Human Services is struggling to address continued increases in the number of court orders for inpatient competency restoration services and to comply with the requirements of a related Settlement Agreement. The Committee is interested in identifying a range of solutions that will ensure that: (a) individuals with behavioral health disorders are diverted from the criminal justice system when possible; and (b) those who do become involved in the justice system have access to clinically appropriate behavioral health and competency-related services.]*

The Committee requests that the Department provide feedback concerning the following potential policy options:

We respectfully request that the potential policy issues presented by the JBC staff in response to the Office of Behavioral Health briefing be scheduled for a separate hearing before the committee with the presence of all departments and stakeholders that intersect with these problems. These are complicated policy issues with no easy solutions. They are policy issues that do not directly impact the present budget request of the OADC, but might impact future requests if the legislature chooses to implement policy changes in the area of behavioral health.

The OADC does object to the ever-increasing criminalization of individuals with behavioral health disorders, specifically those who suffer from mental illness resulting in incompetency. The jailing of the mentally ill (due to behaviors caused by that mental illness) is an unjust and poor policy choice for Colorado.

- a. Modify current law to expand the minimum information that a competency evaluator must include in a written report to the Court to include:
  - i. Whether the individual who was evaluated has been evaluated for competency or received competency restoration services previously and, if so, any available information about the outcome of the previous evaluation or restoration services.
  - ii. A recommendation concerning the appropriate clinical setting for competency restoration services and whether the individual's competency is likely to be restored within the statutorily allowable timeframe.
- b. Modify current law concerning Court options when a defendant is charged with a low level misdemeanor or petty offense and the competency evaluator's report indicates that the

individual is not competent to proceed but competency is likely to be restored within the allowable statutory timeframe. Under this circumstance, provide the Court with two options: (1) allow the defendant to bond out and order restoration services on an outpatient basis; or (2) drop the charges.

- c. Modify current law so that if a defendant is charged with a higher level misdemeanor or a felony and the Court does not release the defendant on bond, the Court must to order restoration services at the place where the defendant is in custody unless the competency evaluator's report recommends a higher level of clinical care. If the evaluator recommends a higher level of care, authorize the Department of Services to determine the most appropriate location for such services.
- d. If the Court orders a competency evaluation to occur on an inpatient basis, require the Court to make findings identifying the relevant statutory criteria (pursuant to H.B. 16-1410). Consider requiring the Court to make similar findings when it orders inpatient competency restoration treatment.
- e. Under current law, the maximum term of confinement for purposes of receiving competency restoration treatment is a period of time equal to the maximum term of confinement that could be imposed if the defendant were to be found guilty of the charges. Consider modifying this provision to reduce the time allowed for restoration treatment. The Department of Human Services provided two examples from other states:
  - i. Alaska permits the Court to commit a person for restoration treatment for a maximum of 360 days. After 360 days, the charges are dismissed without prejudice and the defendant is remanded for civil commitment proceedings.
  - ii. Connecticut permits the Court to confine a defendant for restoration treatment for the period of the maximum sentence which the defendant could receive on conviction of the charges against him or 18 months, whichever is less. This limitation does not apply to persons charged with certain crimes (e.g., class A felony, some class B felonies, a crime or motor vehicle violation that causes the death of another person, or a class C felony unless good cause is shown). When this time limit is reached, the Court shall either order the defendant released from custody or order the defendant placed with a specific state agency for the purpose of pursuing civil commitment proceedings.
- f. Direct the Department of Human Services to adopt a practice of advising the Court when a defendant meets civil commitment criteria. This would involve a defendant's treatment team providing a letter to the Court, which would be attached to the competency evaluator's report. This would prompt the Court to move forward with civil commitment proceedings rather than requiring ongoing competency restoration treatment and periodic evaluator reports to the Court.
- g. Expand the existing Jail-based Behavioral Health Services program to allow county sheriffs to use the program funding to provide behavioral health services to inmates who have a mental health disorder, regardless of whether the individual has a co-occurring substance use

disorder. Consider expanding funding for the program and prioritizing the new funding for rural and frontier jurisdictions, with an emphasis on multi-jurisdictional proposals that would allow rural jurisdictions to work together to develop creative solutions to provide effective behavioral health services within their region.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

76. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

**The OADC does not have any outstanding legislation to be implemented.**

77. Cybersecurity Questions:

a. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources.

**The OADC has no plan for increasing levels of cybersecurity, including existing programs and resources. For a description of the Agency's unique cybersecurity processes and tools see h., below.**

b. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)?

**The OADC (as a Judicial Branch Agency) works with independent IT contractors for all cybersecurity measures.**

c. Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity?

**IT infrastructure and policies are reviewed on an ongoing basis by independent IT contractors as part of recurring maintenance tasks and as new threats and vulnerabilities arise.**

d. Do you have dedicated cybersecurity personnel?

**The OADC works with independent IT contractors for all cybersecurity measures.**

e. How do your cybersecurity staff interact with the CISO in OIT?

**The OADC's independent contractors do not interact with CISO or OIT.**

f. What unique security issues does your Department have?

**The OADC has no unique security issues.**

g. Do you handle private or sensitive data?

The Agency maintains billing information on all OADC cases.

h. What unique cybersecurity processes or tools do you use to protect this data?

Data is secured with NTFS permissions through Active Directory. Intrusion prevention is provided by SonicWALL TZ400 running up-to-date SaaS gateway security. All workstations are protected by centrally-managed VIPRE Business endpoint antivirus software. Data is protected by daily on- and off-site backups. All patches to the operating system and Microsoft SQL are installed on a regularly scheduled basis.

78. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

The OADC has been utilizing 'SMART Act' performance analysis and cost savings measures in its budget requests for more than 10 years, and continues to do so today. All performance measures are listed as an appendix in the OADC budget submission and each decision item submitted references corresponding performance measures that will be impacted.

79. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of "evidence-based," indicate which programs are "evidence-based," and describe the evidence used to support these programs.

The OADC utilizes evidence-based analysis and has done so since FY2000-01. The OADC defines 'evidence-based' budgeting as analyzing historical and current data to project and justify budget requests. The OADC utilizes this method when requesting funding for its Training and Conferences, Conflict-of-interest Contracts, and Mandated Costs Long Bill Line Items. The evidence-based analysis currently used to support these programs consists of the following seven measures:

- A. Ensure Adequate Contractor Rates
- B. Contain Case Costs
- C. Provide High-Quality Annual Trainings
- D. Provide Cost-Effective Research Tools and Assistance
- E. Monitor and Evaluate Contractors
- F. Support the use of Evidence Based Practices (EBP)
- G. Strengthen OADC's Juvenile Division



**Office of the**  
**Alternate**  
**Defense**  
**Counsel**

JUDICIAL BRANCH

**Fiscal Year 2018-2019**  
**Budget Presentation**

Lindy Frolich, Director

December 18<sup>th</sup>, 2017

# OPERATION TOKER POKER



Lady Oak Moskowitz John Orn Jon Otasoga Synoy Phannudith Manivong Phannudet Phoukhong Phannudet



Aaron Baca Lucas Belmont Connor Brooks Scott Brooks Ryan Campbell Bradley Coley



Trairong Phannudet Sirideta Rajboumy Sirisack Rajboumy Jeremy Rudnick Justin Ruiz Raymond Ruiz



Michael Corner Gregory Cross Nelson Cuellar Timothy Dowdell Matthew Even Israel Garcia



John Russo Jr. John Russo Sr. Adam Samokishyn Marlene Samokishyn Melissa Samokishyn Michael Samokishyn



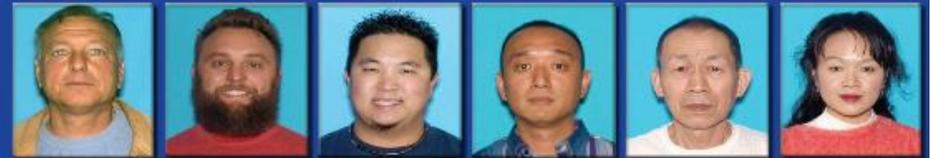
Nicholas Gyori Justin Hanson Daniel Harthorn Cameron Henage James Higgins Huston Iluse



Santino Santori Edward Shu Jerry Shyong Justia Shyong Peter Steel Thomas Stockton



Brian Hunt Matthew Hvizda Jared Jacobsen Hiarui Jiang Zhen Zhen Jiang Christian Jones



Michael Swinyard Jeffrey Teiffel Joel Vlasin Jin Tien Wu Shen Quin Wu Wan Wan Wu



Christen Kozier Jonathan Lee Richard Littler Kevin Marquez Gregory McBride Xian Meunys



Rona Yang Jeremy Youness



## CRIME

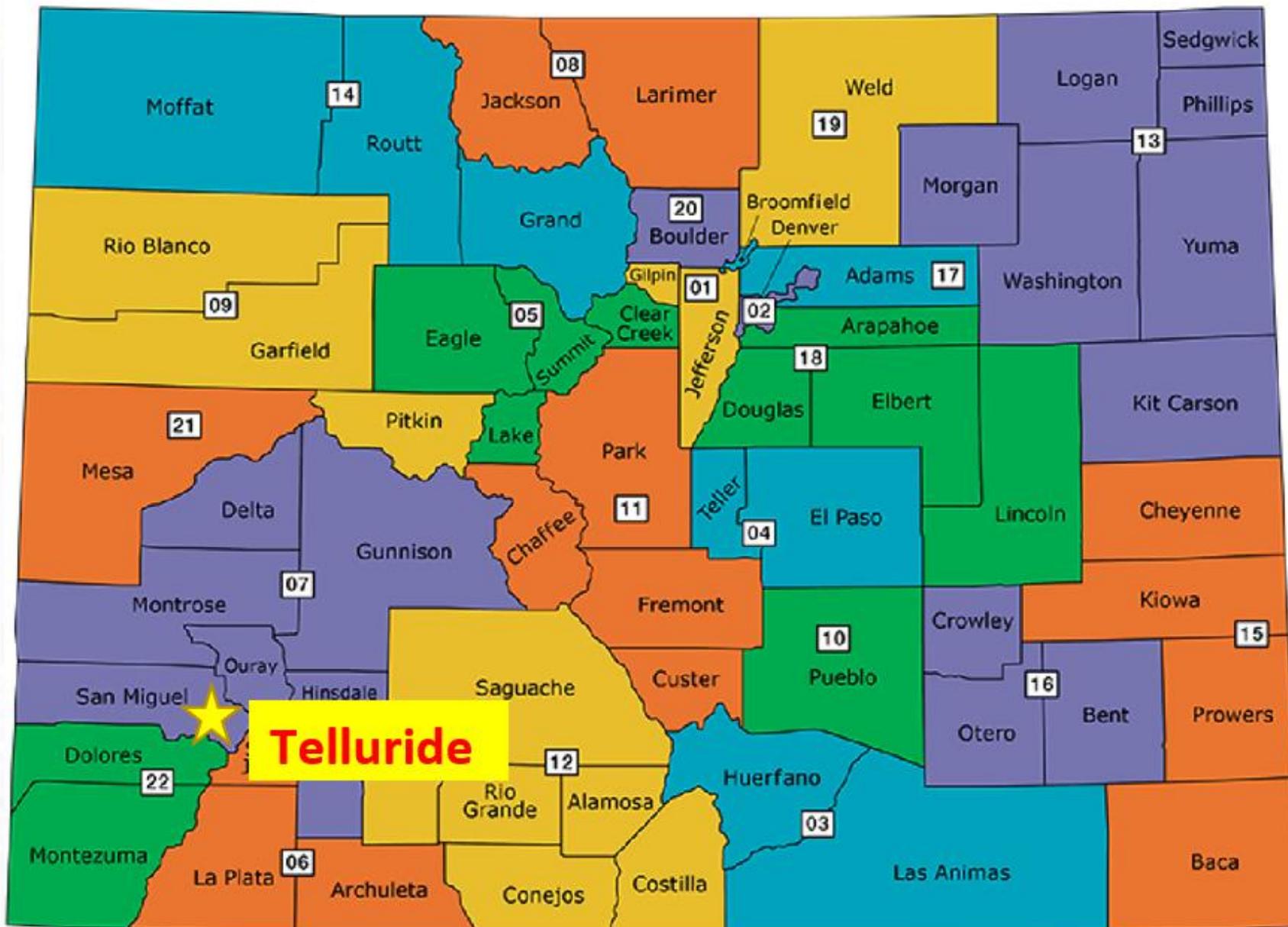
# 74 indictments in 'Operation Toker Poker,' AG says it's largest pot bust since legalization

KUSA - The illegal marijuana ring that has been indicted in the biggest pot bust since the drug became legal in Colorado began as a group of people who played poker together in high school.

Dubbed "Operation Toker Poker," the multi-year effort to break up this group has netted 74 indictments, 2,600 illegal pot plants and 4,000 pounds of marijuana – barely scratching the surface of what has been produced by this drug trafficking organization, state Attorney General Cynthia Coffman said during a news conference Wednesday morning.

The suspects are believed to have presented themselves as legitimate medical marijuana caregivers, consultants and small business owners – even as they defrauded wealthy investors and trafficked drugs across the country.

Two of the victims of the alleged money-laundering scheme were former Denver Broncos players who believed they were investing in legitimate, state-licensed marijuana businesses...



Telluride, CO ( Population 2,444 )  
 District 07 – 443 cases in FY17

# THE DENVER POST

## COLORADO NEWS

### “Spiritual leader” punished kids found dead on farm outside Telluride, records show

Police have said the girls were 8 and 10 years old

A woman acting as a “spiritual leader” to a small group of people living on a Colorado farm ordered two girls kept in a car without food or water weeks before their bodies were found, according to one member of the group.

Madani Ceus faces murder charges along with Nashika Bramble, the girls’ mother, for the death of 10-year-old Makayla Roberts and 8-year-old Hannah Marshall. Three other adults also face charges of fatal child abuse.

Officials investigating the case have been tight-lipped about how the girls died and how they came to the farm. Court records unsealed by a judge at the request of KOTO Community Radio and the Telluride Daily Planet revealed the group members’ belief that Ceus was a spiritual leader and allegations that she ordered the girls punished while the group was living on the property outside Norwood, about 30 miles (48.2 kilometers) west of the ski resort town of Telluride.





Cortez, CO ( Population 9,007 )  
 District 22 – 288 cases in FY17

## News

Local Four Corners Business & Agriculture Education Nation & World

# Update: Nine adults, child face charges in Cortez T-ball fight

## Grand slam! Shocking video shows unruly parents on opposing teams viciously fighting during their children's tee-ball game

- Footage from the game in Cortez, Colorado, on June 19 shows a brawl erupting
- Two women are seen trading hits as several adults try to pull them apart
- The fight is eventually broken up as the parents warn each other to 'get back'

By DAILYMAIL.COM REPORTER

PUBLISHED: 10:25 EST, 5 July 2017 | UPDATED: 10:37 EST, 5 July 2017

[http://video.dailymail.co.uk/video/mol/2017/07/05/3911751080882226723/640x360\\_MP4\\_3911751080882226723.mp4](http://video.dailymail.co.uk/video/mol/2017/07/05/3911751080882226723/640x360_MP4_3911751080882226723.mp4)

**Sent:** Thursday, October 12, 2017 10:37 AM  
**To:** Darren Cantor <[darren@coloroadc.com](mailto:darren@coloroadc.com)>  
**Subject:** ADC Needed Montezuma County

Hi Darren,

I believe you are aware that we have several co-defendants here in Montezuma County that need ADC. I have reached out to the ones on our list, and obtained the ones available with no conflicts. Here is a list of the others I still need ADC for:

Quincey Brito 17M361

Kristella Yapelli 17M368

Tisha Crooks 17M363

Sandra Smith 17M367

Kathy Gomez 17M365 (is still in process of applying)

These are codefendants who already have representation:

Ricky Espinoza 17M364

I.G. 17JDXXX

George Brito 17M362

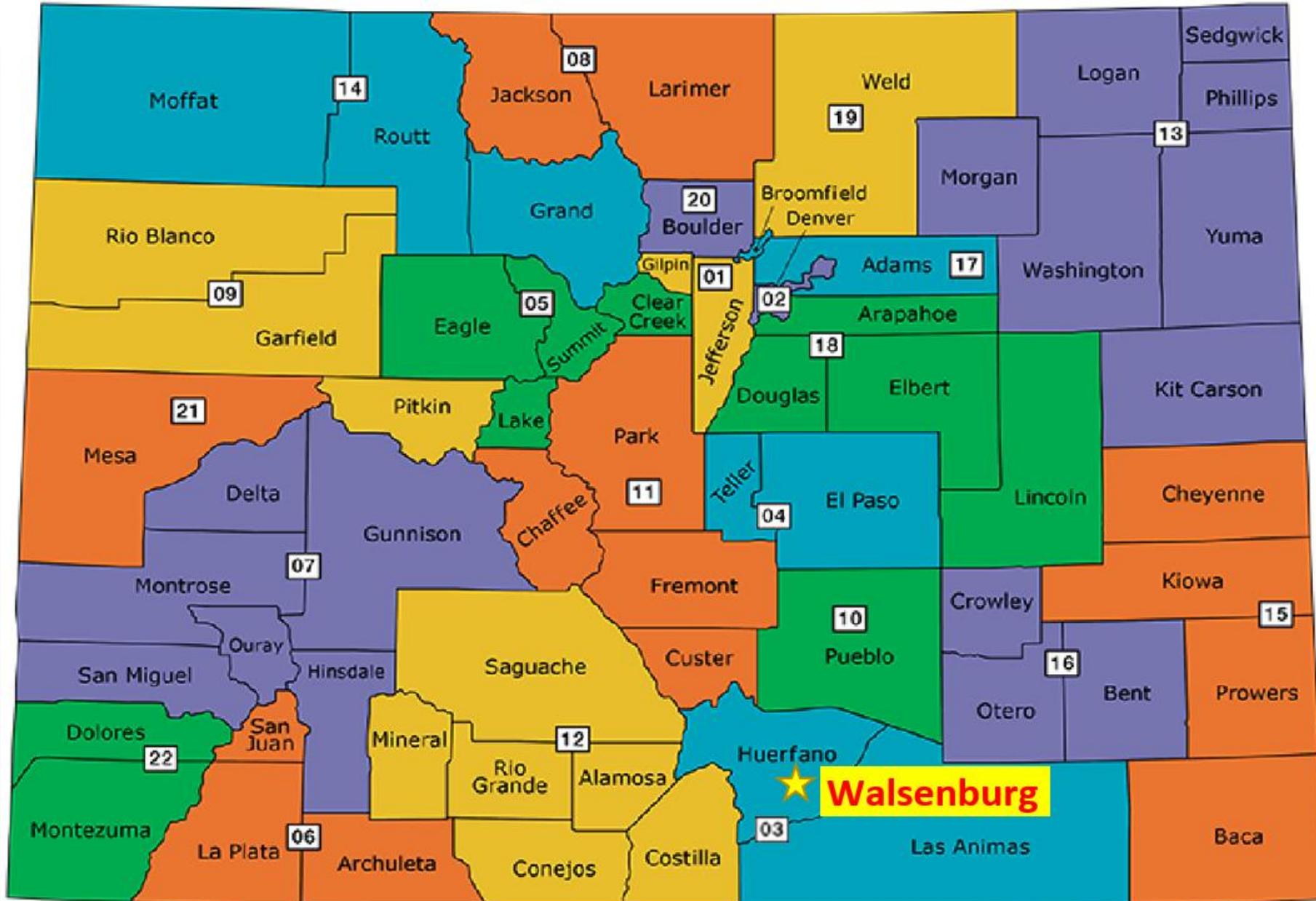
Christina Schulte 17M366

And victim is K.M.

**Erin McGinn**

Court Judicial Assistant

Montezuma County Court



Walsenburg, CO ( Population 3,068 )  
 District 03 – 246 cases in FY17

**To:** Darren Cantor <[darren@coloradoadc.com](mailto:darren@coloradoadc.com)>; Lindy <[lindy@coloradoadc.com](mailto:lindy@coloradoadc.com)>

**Cc:** cisneros, lorraine <[lorraine.cisneros@judicial.state.co.us](mailto:lorraine.cisneros@judicial.state.co.us)>; garcia, debbie <[debbie.garcia@judicial.state.co.us](mailto:debbie.garcia@judicial.state.co.us)>

**Subject:** A great big THANKYOU!

I wanted to thank you so much for helping with this situation. We now have ADC counsel for all 11 cases. I really appreciate the professionalism and hard work given to us during this situation. Here is the final list of clients and attorneys. Thanks again. ☺

Celedonio Abarca – 2017CR126, - ADC 1

Araesley Amaro – 2017CR128 – ADC 2

Ullis Delossantos-Garibay 2017CR130 – ADC 3

Leon Fernandez 17CR123 – ADC 4

Amber Gallegos – 2017CR125 – ADC 5

Mayra Gallegos – 2017CR132 – ADC 6

Lazaro Garibay-Onofre – 2017CR122 – ADC 7

Gaudencio Gutierrez-Nieto – 2017CR131 – ADC 8

Damian Olaguez-Villalba – 2017CR129 – ADC 9

Isreal Jimenez – 2017CR124 – ADC 10

Jose Luis Jimenez – 2017CR127 – ADC 11

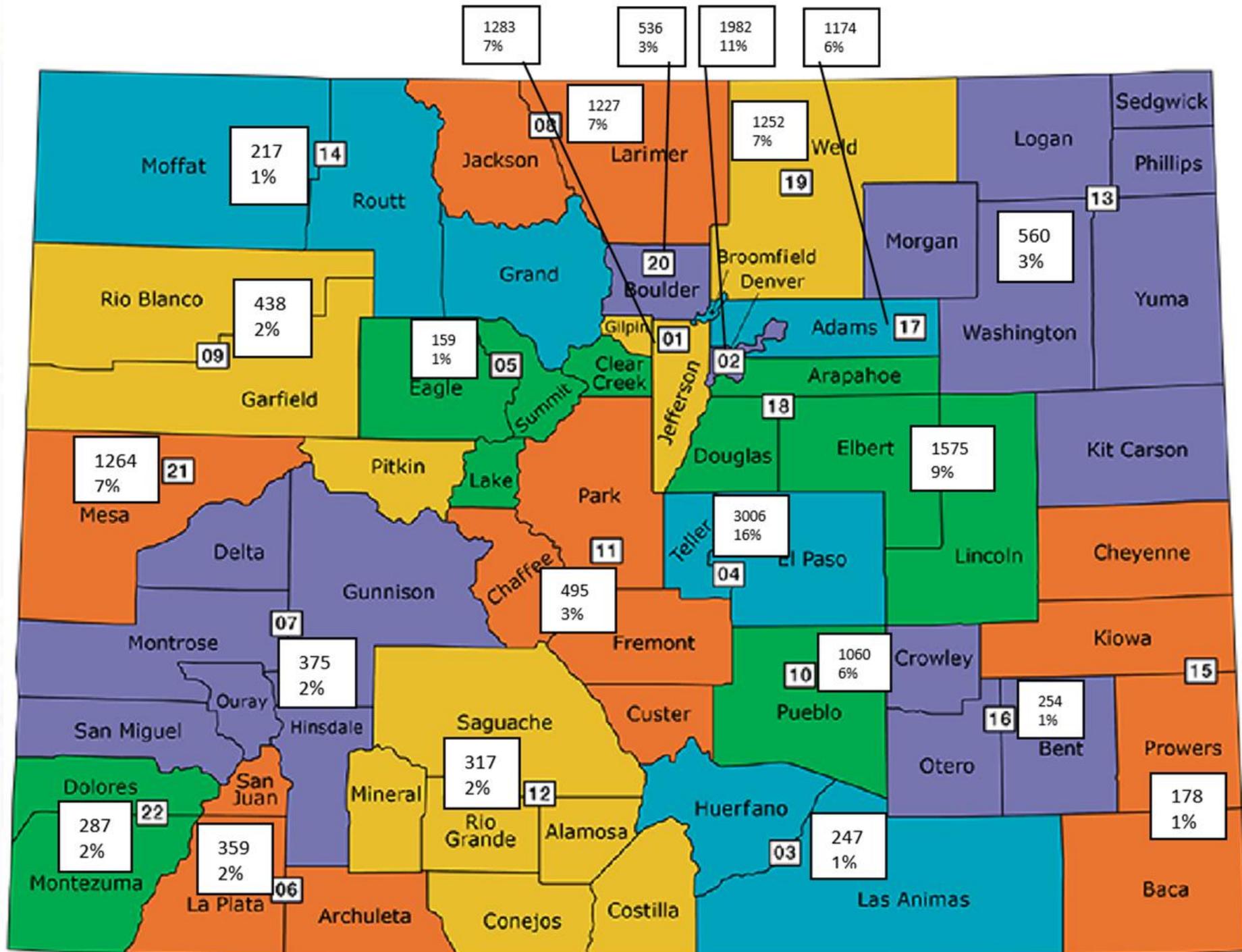
**Esther Hibpshman**

**Jury Commissioner/Judicial Specialist**

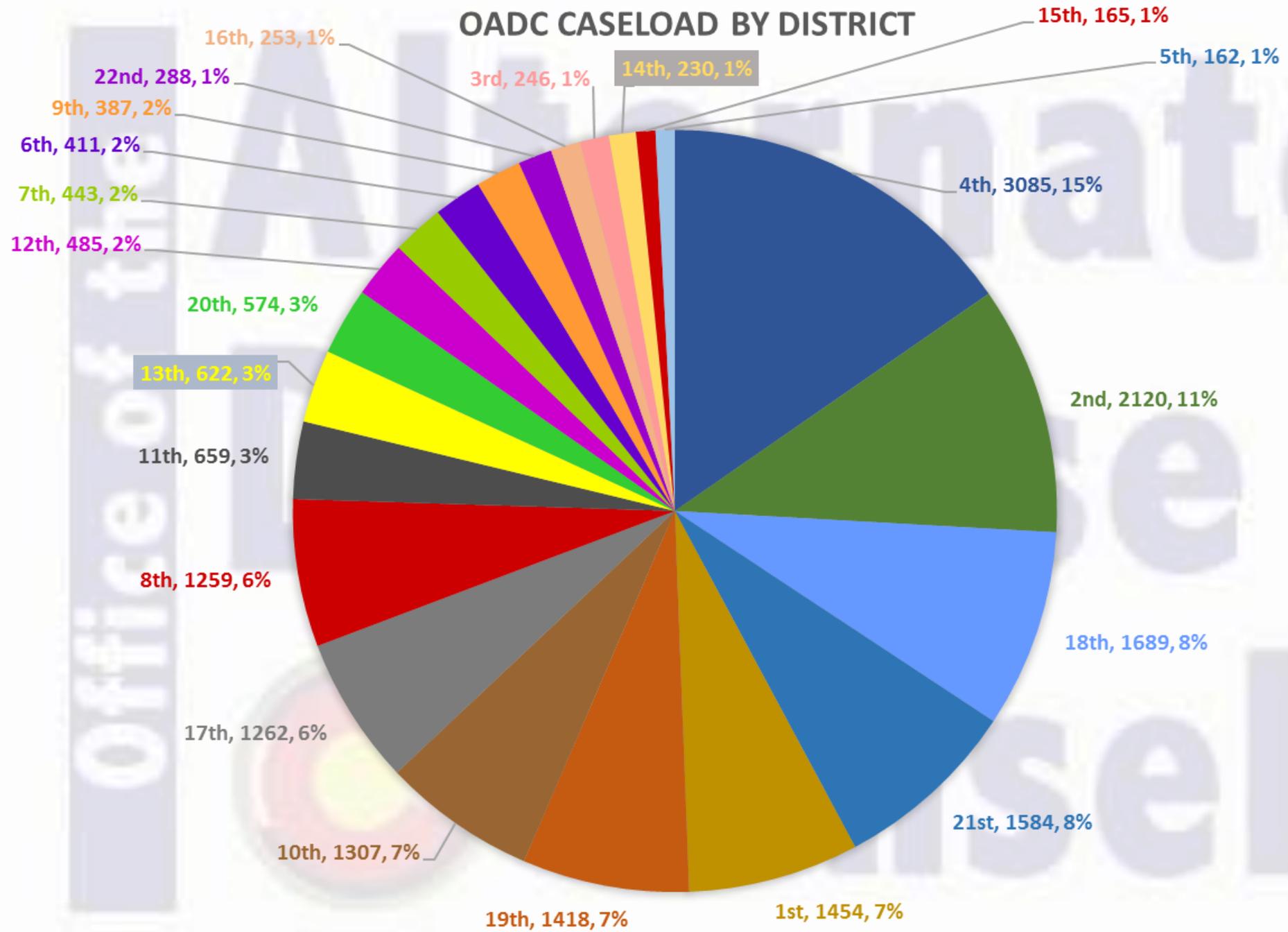
**401 Main Street, Suite 304**

**Walsenburg, CO 81089**

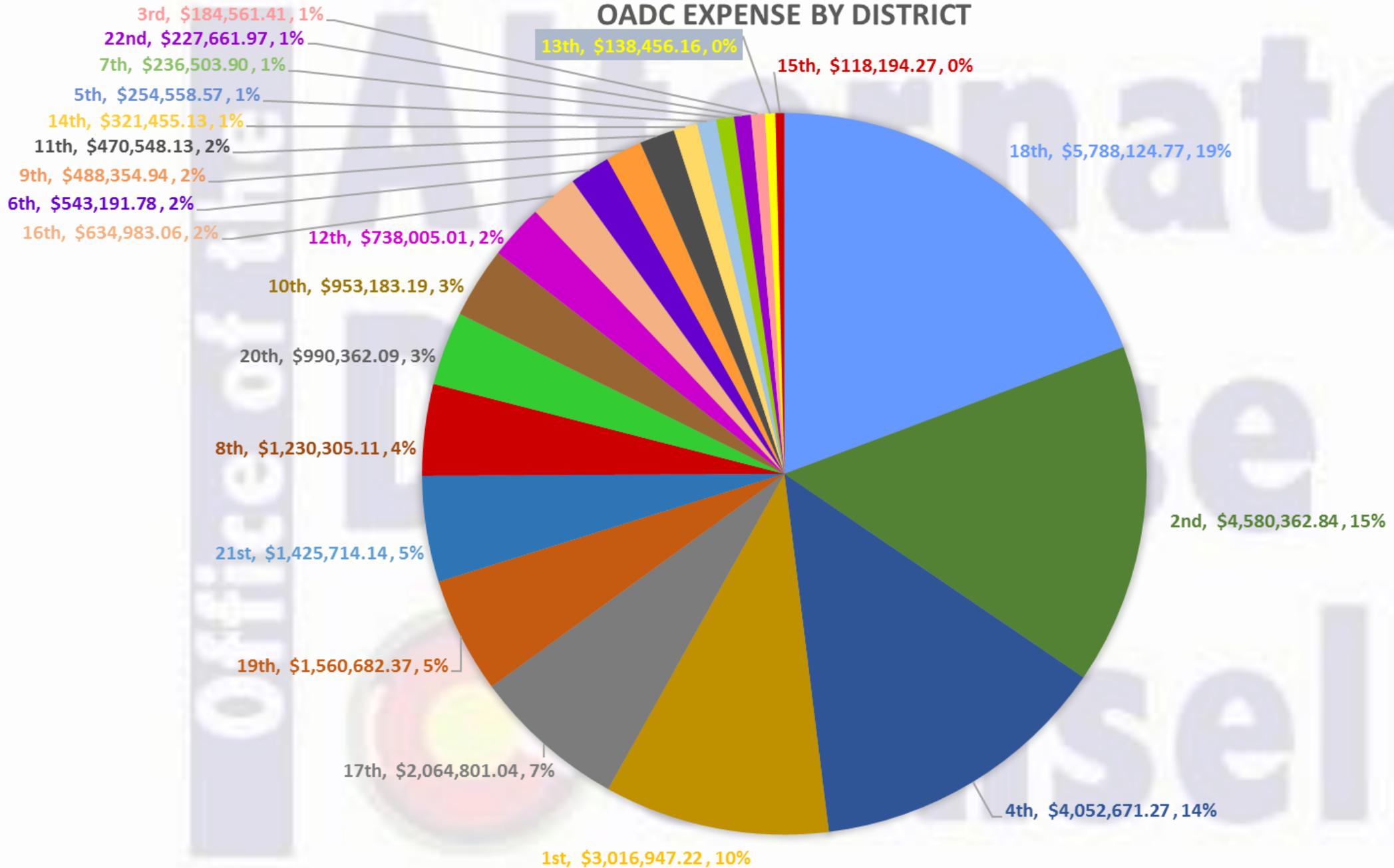
**719-695-6506**



# OADC CASELOAD BY DISTRICT



# OADC EXPENSE BY DISTRICT





- FY2017-2018 Annual Budget of \$31,738,129
- 12 FTE

<b>Contain Case Costs</b>		<b>FY10 Actual</b>	<b>FY11 Actual</b>	<b>FY12 Actual</b>	<b>FY13 Actual</b>	<b>FY14 Actual</b>	<b>FY15* Actual</b>	<b>FY16 Actual</b>	<b>FY17 Actual</b>	<b>FY18 Budget</b>	<b>FY19 Request</b>	<b>FY10 to FY17 % change</b>
Average Cost per Case	Target	n/a	n/a	n/a	n/a	n/a	n/a	n/a	\$ 1,581	\$ 1,581	\$ 1,581	-13.89%
	Actual	\$ 1,769	\$ 1,620	\$ 1,641	\$ 1,593	\$ 1,596	\$ 1,722	\$ 1,581	\$ 1,523			
	% Change	n/a	-8.4%	1.3%	-2.9%	0.2%	7.9%	-8.2%	-3.7%			

$$(1,769-1,523) = 246 \times 20,103 = \$4,945,338$$

<b>FY17</b>	<b>Average Cost per Case</b>
Adult Felony	\$ 2,152
Juvenile	\$ 866
Misdemeanors	\$ 448



# OADC FY2018-2019 Budget Request

- DI # R-1 – OADC Caseload Increase (FY18) : \$3,119,104
- DI # R-1 – OADC Caseload Increase (FY19) : \$3,438,934

	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15* Actual	FY16 Actual	FY17 Actual	FY11 to FY17 % change
Caseload	11,878	12,585	13,290	15,085	16,680	18,244	20,103	69.25%
Change from previous FY	-5.70%	6.00%	5.60%	13.50%	10.60%	9.40%	10.00%	
Expenditures	\$ 20,496,774	\$ 22,187,179	\$ 22,660,445	\$ 25,453,717	\$ 29,694,094	\$ 31,551,612	\$ 32,935,253	60.69%
Change from previous FY	-11.58%	8.25%	2.13%	12.33%	16.66%	6.26%	4.39%	

*\*In FY15 there was an 8% rate increase for attorney contractors, a 14% increase for Investigators, and a 20% increase for Paralegals, resulting in a disproportionate increase in expenditures for that year.*

<b>Total Cases by Type</b>	<b>FY16 Actual</b>	<b>FY16 % of Total</b>	<b>FY17 Actual</b>	<b>FY17 % of Total</b>	<b>% increase from FY16-FY17</b>
Adult Felony	10,580	58.0%	12,063	60.0%	14.0%
Juvenile	2,433	13.3%	2,511	12.5%	3.2%
Misdemeanor	5,231	28.7%	5,529	27.5%	5.7%
<b>Grand Total</b>	<b>18,244</b>	<b>100.0%</b>	<b>20,103</b>	<b>100.0%</b>	<b>100.0%</b>

# OADC FY2018-2019 Budget Request

- DI # R-2 – Administrative Support : \$79,981 (1.0 FTE)

	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Budget	FY18 Estimate	FY19 Request	FY11 to FY17 % change
<b>Caseload</b>	11,878	12,585	13,290	15,085	16,680	18,244	20,103	18,244	22,151	24,410	69.25%
Caseload % change	<i>na</i>	5.95%	5.60%	13.51%	10.57%	9.38%	10.19%				
<b>Transactions</b>	39,794	43,327	46,144	52,900	58,911	64,997	72,753	64,997	81,432	91,147	82.82%
Transactions % change	<i>na</i>	8.88%	6.50%	14.64%	11.36%	10.33%	11.93%				

# OADC FY2018-2019 Budget Request

- DI # R-3 – COLA Based Contractor Hourly Rate Increase :  
\$2,306,291

<b>FY</b>	<b>COLA Increase State Employees</b>
FY15	1.00%
FY16	1.00%
FY17	0.00%
FY18	1.75%
FY19	3.00%
	<b>6.75%</b>

Office of the

Alternate

Defense



Counsel

# Questions ?

- Contact Information

- Lindy Frolich – Director - (303) 515-6925  
[lindy@coloroadc.com](mailto:lindy@coloroadc.com)
- Darren Cantor – Deputy Director - (303) 515-6935  
[darren@coloroadc.com](mailto:darren@coloroadc.com)
- Daniel Nuñez – Controller/Budget Manager – (303) 515-6924  
[daniel@coloroadc.com](mailto:daniel@coloroadc.com)

JUDICIAL DEPARTMENT AND INDEPENDENT AGENCIES  
FY 2018-19 JOINT BUDGET COMMITTEE HEARING AGENDA

Monday, December 18, 2017

1:30 pm – 5:00 pm

4:00-4:15

OFFICE OF THE CHILD'S REPRESENTATIVE (OCR)

**INTRODUCTIONS AND OPENING COMMENTS**

Linda Weinerman, Executive Director

**QUESTIONS**

80. A DHS review of who requested or recommended congregate care placement for children who are in congregate care showed that it was a Guardian ad litem (GAL) who requested or recommended this level of care in 24.2% of cases in FY 2015 Quarter 1 and 18.2% in FY 15 Q2. This makes GALs the second largest source of requests or recommendations after County Departments. Please comment on this large number of GAL requests or recommendations.

While this data is limited to two quarters of FY 2014-15, the OCR views it as completely consistent with the GAL role. As the legal advocate for the best interest of the child, GALs are charged with conducting a thorough and independent investigation into the child's circumstances and needs. That investigation must include contact with the child in the child's placement as well as contact with caregivers, relatives, kin, schools, and treatment providers. Colorado's GAL appointment statutes and the practice standards embodied in CJD 04-06 expressly contemplate a fully independent legal advocacy role for GALs in all aspects of litigation, including placement determinations. *See, e.g.,* § 19-3-203(3).

The positions a GAL takes regarding the child's placement and treatment needs must be made on an individualized basis and governed by the GAL's fiduciary responsibilities to the best interests of the child. CDHS policy or department funding decisions must not dictate the positions a GAL takes on behalf of the best interests of a child. Children who have significant issues as a result of trauma, multiple losses and placements, and mental health needs at times need intensive services. GALs routinely advocate for services to maintain children in their homes or foster homes, but face two realities. First, many jurisdictions lack the full array of services necessary to placement in family settings. Not only do GALs face this at the time the placement occurs; they also face challenges in finding appropriate services and foster homes

to support transition of children to a lower level of care when therapeutically warranted. Second, the acute needs of some children will require residential treatment—not as placement but as a service. As independent parties to the proceeding, GALs serve as safeguard to advocate for such children to receive “the right service at the right time,” a phrase CDHS once used to describe its congregate care reduction efforts.

81. a. What is your opinion regarding the CDHS Proposal to Reduce “Congregate Placements” by changing state law to increase the State cost share for counties who utilize foster care to a 90% state share/10% county share and to reduce the amount of the State cost share for counties utilizing congregate care to 80% state share/20% county share?

CDHS’s proposal to decrease the counties’ share of foster care placements from 20% to 10% and increase the counties’ share of congregate care is an attempt to incentivize local county departments to recommend foster care or in-home placements over residential treatment. The proposal is an acknowledgement by CDHS that county placement recommendations include a consideration of the costs the county will incur. While such incentivization may increase county efforts to recruit foster placements, the OCR does not know how successful these efforts would be.

The OCR is concerned that cost considerations will outweigh or overshadow an individualized assessment of whether a certain level of care is necessary and appropriate for a child. The OCR is also concerned that smaller or poorer counties will be unable to meet the increased burden for the cost of residential treatment. If these concerns materialize, GALs will need to engage in increased investigation and advocacy to ensure that the children whose interests they represent receive appropriate services and placement individually tailored to meet their needs. Ultimately, it is the court, with input from all parties to the case, that determines the placement that best meets the child’s mental, physical, and emotional needs.

- b. What role do courts and legal advocates play in the use of congregate care for children in child welfare? What role do county department’s play in the use of congregate care? In your opinion, are these roles appropriate?

As indicated above, decisions regarding placement of children in child welfare cases rest with the court. Courts base these decisions on applicable legal standards and the evidence and arguments made by all parties, including the county department, respondent parents, and the GAL. The positions the GAL takes as the child’s legal advocate must be based solely upon the best interest of the child and informed by a comprehensive independent investigation. County departments, while also charged with considering the best interests of the child, must often consider other factors such as cost and department policy. Those other

considerations may at times conflict with an individualized determination of what is best for a particular child.

Decisions regarding placement are often difficult. Reasonable, well-intentioned parties may disagree. It is appropriate that the court receives information from all involved parties and serves as the ultimate decision maker in the child welfare case. This judicial oversight role is consistent with state and federal law. The GAL serves as a critical check and balance in that the GAL ensures that the court has the opportunity to consider all information relevant to the child's best interests.

c. Comment on the general adequacy of the child welfare system and the availability of appropriate services. What are the gaps that need to be filled?

Appropriate services to fully address parents and children's needs are not consistently available throughout Colorado. The issues that bring families to the attention of child welfare almost always involve poverty. Families in child welfare proceedings often experience substance abuse, mental health, trauma, and domestic violence. The OCR routinely hears from GALs and judicial officers about difficulties accessing effective treatment services to address such issues. In some communities, GALs report that services are simply unavailable. Even for available services, significant quality concerns exist, and Colorado has a long way to go in providing uniform access to evidence-based services through programming demonstrating fidelity to the model.

In addition, Colorado lacks a full continuum of placement and treatment options for children. On the one end of the spectrum, GALs struggle to identify and obtain services to maintain children in their homes. On the opposite end, the paucity of the provider rate for foster placements and residential treatment for children has significantly reduced placement options. Some of the residential treatment facilities historically regarded by GALs as among the best, such as Excelsior and Families First, have closed their doors. Without treatment level foster homes or foster homes willing and equipped to take on the high needs children formerly served by these placements, GALs are at a loss in making placement recommendations. Children whose needs remain unaddressed are at risk of running from placement, experiencing further trauma, suffering from untreated and escalating mental health needs, inflicting harm on other children, incurring charges, and cycling further into the systems against which effective child welfare programming should mitigate. While GALs proactively investigate and advocate for individualized placement and services, the lack of services and placements present significant challenges.

Other gaps that need to be addressed include the development of therapeutic foster care and services to older youth at risk of emancipating from the child welfare system without any support.

### OCR R1 Caseload/Workload adjustment

82. Why are we decreasing this as compared to increasing R2?

The OCR's FY 2017-18 budget for its Court-Appointed Counsel (CAC) appropriation included the continued funding of an FY 2016-17 supplemental appropriation of \$1,726,331 (requested and approved through an FY 2017-18 budget amendment). At the time the FY 2017-18 budget amendment was submitted, projections indicated that the approved FY 2016-17 supplemental appropriation of \$1.7 million would be ongoing. However, the actual increase in appointments (primarily D&N) in FY 2016-17 was less than the projection. Therefore, when preparing its FY 2018-19 budget request, the OCR's updated caseload and workload projections indicated that a portion of the \$1.7 million from the FY 2017-18 budget amendment was not necessary for ongoing CAC expenditures. While the OCR is projecting an increase in caseload in both FY 2017-18 and FY 2018-19, that increase is less than the \$1.7 million, thus allowing the OCR to reduce its CAC appropriation.

The increase in R2 is solely the impact of increasing the hourly rate for its contracted service providers (primarily attorneys, but also paralegals and social service professionals). The requested increase in R2 is calculated by applying the requested rate increases to the FY 2018-19 CAC budget request (from R1) which includes a lower caseload projection.

### OADC R3 Contractor rate increase

83. Can Department of Personnel in the Executive Branch or anyone else provide assistance on HR matters like job classification decisions?

Included in the Briefing for the 2017-18 budget request, JBC staff raised the issue of the Judicial personnel systems and the independent agencies (November 28, 2016, page 34). The JBC staff recommended "that the Committee ask the Judicial Department and the various independent agencies for input about how to improve the processes that are used to evaluate and approve salary adjustments for Judicial Branch employees so that they are more consistent with the practices that are used by the State Personnel Director."

Based on this recommendation, staff from the Office of Alternate Defense Counsel (OADC), Office of the Child's Representative (OCR) and Office of Respondent Parents' Counsel began work on benchmarking their positions to other similar positions within the Judicial and Executive Branches. These three independent agencies provided JBC staff an "alignment" plan for certain positions, including a request for funding for the alignment (February 16, 2017 JBC staff FY 2017-18 Figure Setting document, page 27). It was understood that staff

from these three agencies would continue this alignment project in subsequent years to tie most, if not all, positions to existing positions within the other two branches.

The OCR's reclassification requests in R3 and R7 are consistent with maintaining alignment with existing positions within the Judicial Branch. Based on an analysis of the job duties of the Information System Manager (R3) and Staff Accountant (R7), the OCR has determined that those duties more appropriately align with a higher classification within the State Court Administrator's Office (SCAO). As such, those two positions will continue to be aligned with their new corresponding positions within the SCAO.

During the spring of 2017, the Office of the State Public Defender (OSPD) generously offered its assistance to review existing OADC, OCR and ORPC job descriptions and help identify existing job classifications that would provide a good alignment. Ultimately, the OSPD was unable to complete this analysis. Staff from OADC, OCR and ORPC have resumed their analysis of job descriptions and plan to bring forward more alignments in their FY 2019-20 and future budget requests until all possible positions are aligned with established Judicial and/or Executive Branch classifications.

Similarly, the OCR's request for any salary survey, merit and/or across-the-board salary increases have aligned with the Judicial and Executive Branches. The FY 2018-19 budget request continues this alignment by including funding for a three percent across-the-board increase. The OCR requests that its staff be given any increases that the JBC may approve for other state workers.

84. Describe your progress in switching from fixed payment contracts to hourly rates. What percentage of your contracts are still fixed payment?

The OCR fully transitioned to an hourly rate for attorney services several years ago. Currently none of OCR's contracts to provide attorney services are fixed payment.

#### Consolidated Appropriations for Health, Life, and Dental Expenditures

85. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

While the Department is sympathetic to staff's desire to simplify HLD calculations at figure setting, each agency feels strongly that each of the entities in the Judicial Department are independent and their budgets should reflect, as much as possible, the costs of their respective organizations. Consolidating HLD will impose an administrative burden on the Judicial Department and the independent agencies, as it will require the generation of accounting documents to transfer HLD allocations to each agency. This is not necessary with the current structure of separate HLD appropriations for each agency.

Judicial struggles with the idea of having to use its over-expenditure authority on HLD when there may be competing higher priority needs. Last year the OADC used over \$900K of the transfer authority for their purposes and the year before, the entire million was used by a combination of various agencies. Based on historic usage of the over-expenditure authority there is not a great deal of room to accommodate potential HLD transfers. Another question that may arise is whether the State Controller would view this HLD consolidation and necessary transfers as counting against the Department's \$1 million transfer authority granted in C.R.S §24-75-110 (which could well exceed that amount in aggregate). This \$1 million-dollar transfer authority is critical to the balancing of the budget and the Department is reluctant to use it for HLD transfers.

The OCR supports the proposal whereby DPA provides the Budget Office at Judicial access to the July payroll for all Judicial agencies. The Judicial Budget Office at figure setting would calculate the HLD on behalf of each agency in the Judicial Branch thus providing JBC staff with a single contact point for verification of the HLD calculation. This would allow each agency to continue to have its own HLD appropriation as they do now.

#### Questions from the Child Welfare briefing

86. What information does the judge take under consideration when making the determination that an out of home placement is in the best interest of a child? Does the judge consider input from county child welfare case workers? Do judicial districts employ their own case workers and how do these positions interact and collaborate with county case workers in developing recommendations in child abuse and neglect cases? Does the judicial branch or district have funding to pay for some of the costs of out of home placements when those placements are contrary to the original recommendation made by the county child welfare agency?

Federal and state law provides several substantive considerations to ensure that out-of-home placement decisions are made only when necessary to protect the safety and welfare of a child and that children are placed in the least restrictive, most appropriate setting to meet their needs. The court must consider the best interests of the child in determining whether the child should be placed out of the home and may not order removal unless the child's welfare and

safety or the protection of the public would be endangered. To order out-of-home placement, the court also must find that continuation of the child in the home would be contrary to the child's best interests and that the department has provided reasonable efforts to maintain the child in the home and applied procedural safeguards with respect to parental rights. The court must engage in ongoing review of any out-of-home placement. The court's placement decisions must be grounded in the child's needs and include considerations of the availability of relatives and kin as well as sibling contact.

For children identified as Indian children under the Indian Child Welfare Act (ICWA), even higher thresholds apply to the court's placement determinations. To order foster care placement, the court must make a finding based on clear and convincing evidence that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and this finding must be supported by testimony from a qualified expert witness. Additionally, the court must specifically find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts have proven unsuccessful. ICWA also sets forth foster care placement preferences prioritizing family and tribal placements.

The court considers information from all parties, including the county. Case workers prepare and submit reports to the court, provide verbal recommendations, and may be called as witnesses.

Judicial districts do not employ their own case workers to investigate placements. As such, judicial officers rely on the information provided by the parties, including the GAL, when making placement decisions. The judicial branch does not have funding to pay for out-of-home placements. Funding for such placements comes from federal, state, and county funding sources, administered by local county departments of human services.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

87. Please provide written input on HCPF's request to move the Children's Habilitation Residential Program waiver from the Division of Child Welfare in DHS to the Office of Community Living in HCPF; and on the request that statute be changed to allow access to waiver services without a dependency and neglect finding and out of home placement of the child. Please see Section 25.5-5-306, C.R.S.

While the concept of delinking access to Children's Habilitation Residential Program services from the out-of-home placement and dependency and neglect finding eligibility criteria will address the issue of parents having to relinquish custody of their children to access these

services, it does appear to be a significant departure from the original intent of the program. The OCR believes the following questions require careful consideration:

- As children who have been found dependent and neglected and in need of out-of-home placement are the most vulnerable of children with intellectual and developmental disabilities, will the elimination of these eligibility criteria impact their ability to access appropriate services in a timely manner?
- Will the Community Centered Boards provide the same level of case management currently provided by the county departments?

As this change would provide services to a class of children not served through the child welfare system and overseen by the D&N court process, what types of checks and balances would ensure the placement and services provided are consistent with the child's best interests?

88. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

Not applicable to the Office of the Child's Representative.

89. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

As an independent agency within the Judicial Department, the OCR does not work with or receive IT services from the Governor's Office of Information Technology. The OCR works with an information technology services contractor that provides general IT support, network/server management, consulting and end-user support services. The OCR's contractor uses software tools to monitor network activity and notifies an engineer to investigate any unusual network activity.

OCR staff members have attended cybersecurity training sessions hosted by its IT contractor. The OCR has not been audited for cybersecurity capabilities and does not have dedicated

cybersecurity personnel. The OCR handles sensitive information related to children involved in the court system. OCR practices industry standard “defense in depth” or layered security. All infrastructure resources are physically protected within a secure datacenter. All OCR data is logically protected by password controls, and access to data is limited by necessity. OCR data available to its employees and contractors via the web is SSL encrypted during transit and access controlled. Any personally identifiable information (PII) recorded by the platform is not accessible without the proper access levels. All of OCR data is backed up both locally and offsite to provide multiple options for recovery in the event of hardware failure, prevention of physical access to the primary site, malware/ransomware or other cybersecurity impact, or other unforeseen disaster recovery events.

90. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

The SMART Act is an effective performance management and improvement tool for the OCR. All OCR staff are aware of how their responsibilities contribute to the OCR’s fulfillment of its mission, and the OCR continuously works on optimizing its operations and programming in light of the goals, strategies, and measures set forth in the tool. Additionally, the OCR periodically analyzes and refines the goals, strategies and measures set forth in its performance management system to continue to advance its mission. The SMART Act also informs the decision items prioritized by OCR in each year’s budget request. The OCR ensures that each decision item can be tied back to the goals it has articulated in its performance plan.

91. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of “evidence-based,” indicate which programs are “evidence-based,” and describe the evidence used to support these programs.

While the OCR strives to be data-driven in its budgeting, programming, and oversight, and a growing body of national research demonstrates the benefits of well-trained and supported attorneys in D&N proceedings, the OCR is not aware of fully evidence-based practice (as defined by the Pew MacArthur Results First Initiative) directly applicable to attorney best interests representation for children. Best interests representation for children is unique in that there is not an accepted “best outcome” for all children. Rather, GALs must make an individualized assessment of the optimum outcome for each child, given that child’s needs and circumstances. Additionally, creating a control group to evaluate attorney services presents ethical challenges, as all children in D&N proceedings are entitled to effective legal

representation and in other case types, GALs are typically appointed to the most difficult cases.

OCR's training and litigation supports serve to ensure that GALs remain up to date on evidenced-based and promising practices in child welfare and juvenile justice, as this knowledge informs attorneys' advocacy on behalf of individual children. Additionally, the OCR analyzes available research and its own data whenever implementing any new program, such as its Social Services Professional accessibility project.

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# **Office of the Child's Representative**

**Executive Director, Linda Weirnerman**

**JBC Presentation FY 18-19 Request**



# OCR attorneys represent the best interests of children in complex legal proceedings in 8 distinct case types

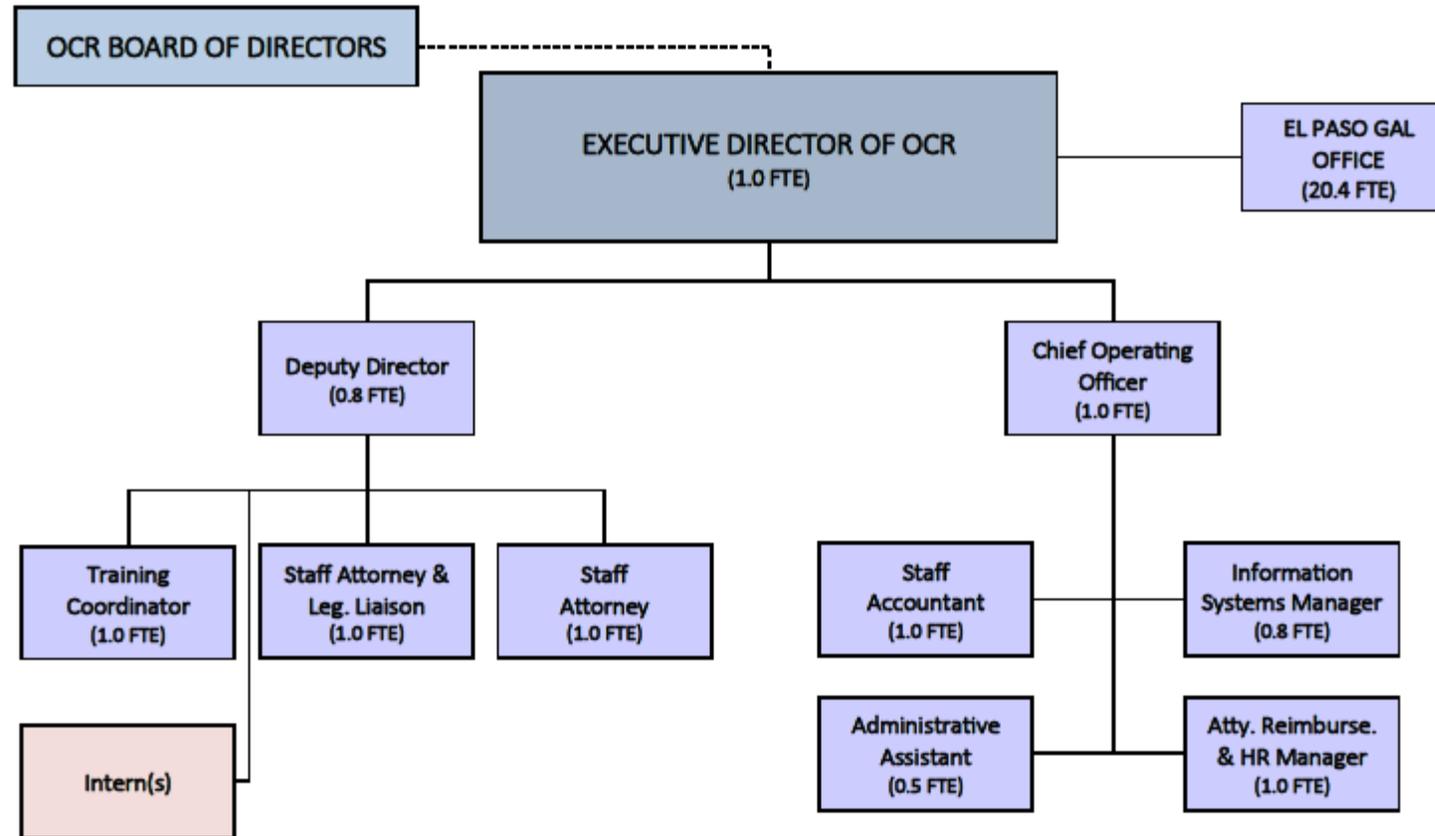
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- Abuse and neglect
  - Delinquency
  - Truancy
  - Domestic Relations
  - Paternity
  - Probate
  - Mental Health
  - Relinquishment
- } 93.6%

# OCR Organizational Chart

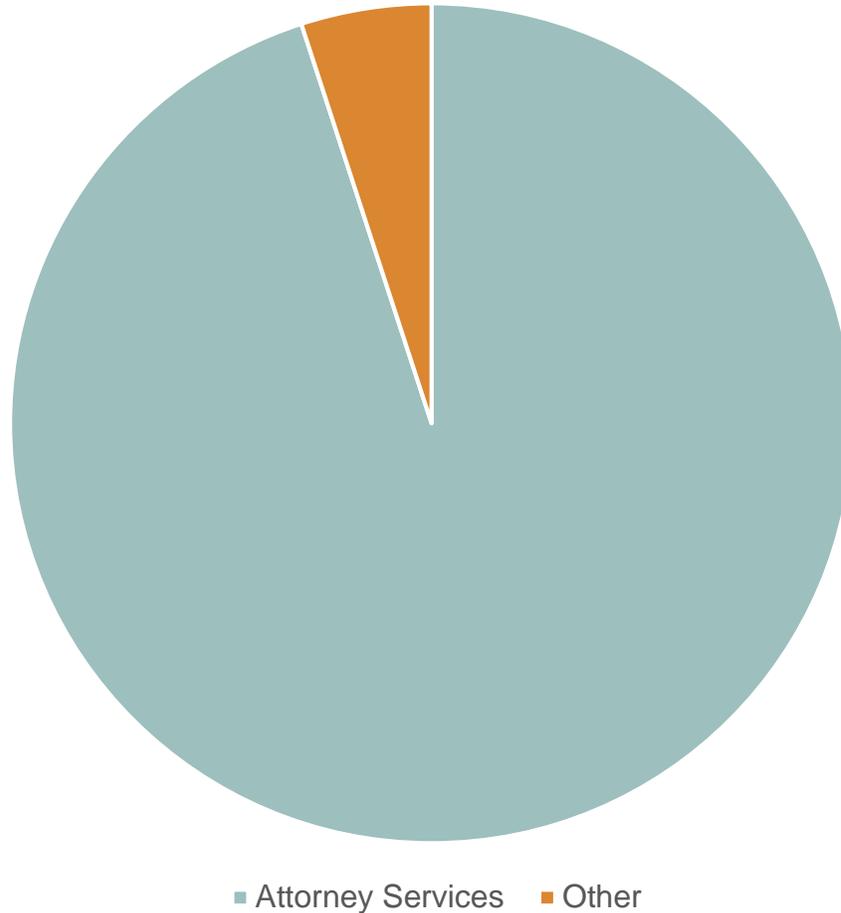
## Colorado Office of the Child's Representative (OCR) Organizational Chart

November 1, 2017



29.5 FTEs as of November 1, 2017

## OCR Expenses



## **OCR Expenses**

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95% of our appropriation is spent directly on attorney services.

# OCR's Realignment Requests

**R7**

Adjust two positions to align with comparable positions within SCAO

\$5,350

**R5**

Move three positions within the current classification based upon years of service:

Two attorneys from mid-level to senior  
One caseworker from entry-level to mid

\$41,859

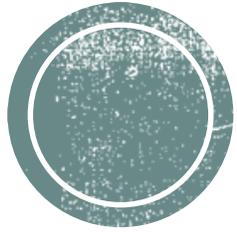
**R3**

Reclassify Information System Manager from Judicial IT Analyst II to Judicial IT Analyst III

\$18,889

# FTE Requests (R4)

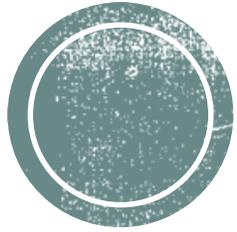
\$107,963



Allows expansion of the use of social workers who can perform a number of the investigative functions of the GAL at a lower hourly rate.

**Fund a new position for a  
Social Service Professional**

# FTE Requests (R6)



\$20,896

Supports ten staff who oversee approximately 250 attorneys across Colorado.

**Increase position for our  
Administrative Assistant**

# **C.R.S. §13-91-102**

## **Legislative Declaration**

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“...the General Assembly finds that the representation of children necessitates significant expertise as well as a substantial investment in time and fiscal resources. The General Assembly find that, to date, the state has been sporadic, at best, in the provision of qualified services and financial resources to this disadvantaged and voiceless population.”

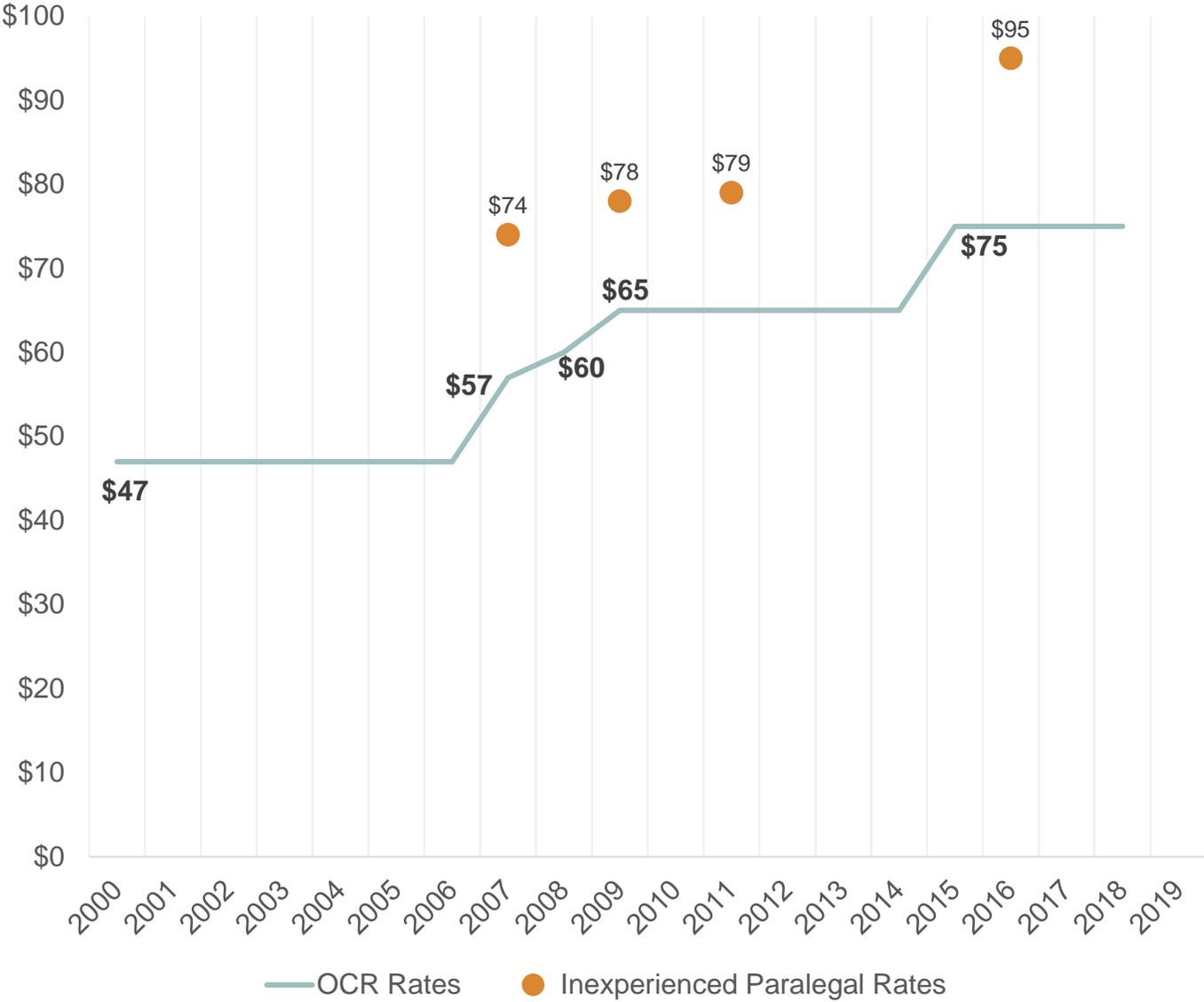
# **C.R.S. §13-91-105**

## **Duties of the O.C.R.**

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(VI) Establishing fair and realistic state rates by which to compensate state-appointed guardians ad litem... and which will be sufficient to attract and retrain high-quality, experienced attorneys to serve as guardians ad litem

# History of OCR Attorney rates



<b>2000 to 2006:</b>	<b>\$47</b>
<b>2007*:</b>	<b>\$57</b>
<b>2008:</b>	<b>\$60</b>
<b>2009 to 2014:</b>	<b>\$65</b>
<b>2015 to present:</b>	<b>\$75</b>

*\*submitted a 5 year plan to increase the rate to \$75 by 2009*

# Consumer Price Index

Denver-Boulder-Greeley

## Colorado

Year	CPI Increase
2014	2.77 %
2015	1.176%
2016	2.772%
	6.71 %

**Over 80% of OCR expenditures occur in the Front Range**

# Impact of the hourly rate

## RURAL DISTRICTS

- Difficult to recruit attorneys to work at our hourly rate when they can earn significantly more in private practice
- Forced to pay attorneys to travel long distances to meet the demand.
- Recent example: 15<sup>th</sup> and 16<sup>th</sup> JD; 10<sup>th</sup> and 3<sup>rd</sup> JDs

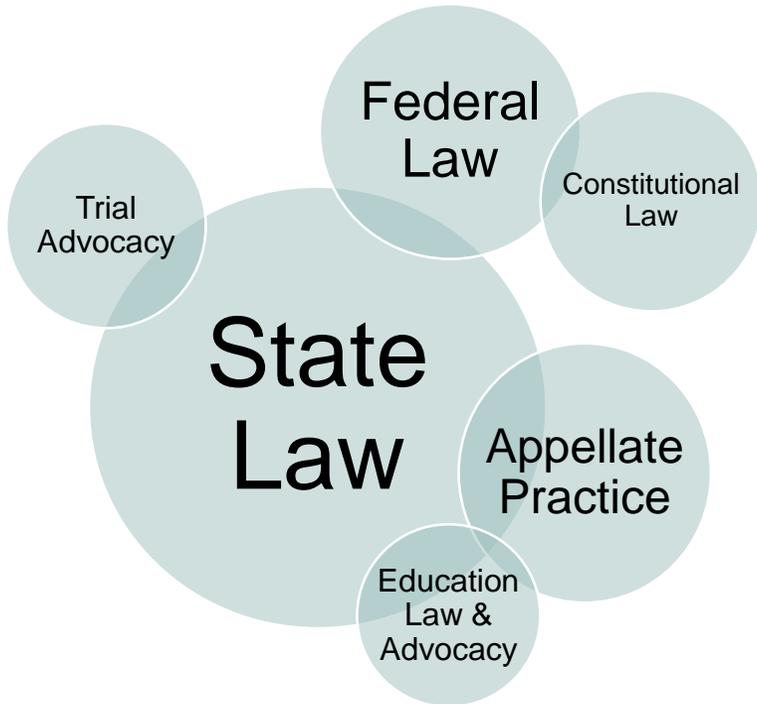
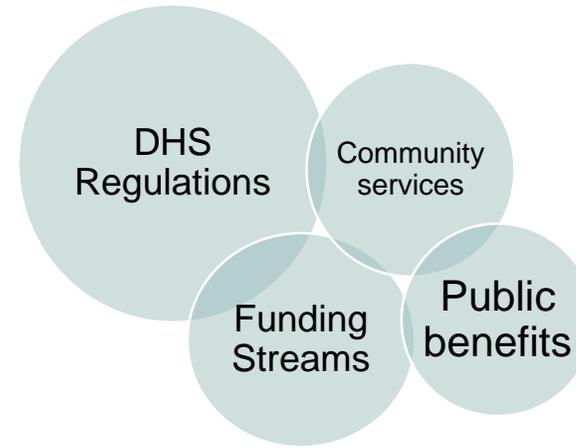
## METRO DISTRICTS

- Difficult to attract experienced or diverse attorneys at this rate.
- Losing attorneys to salaried positions in the front range.
- Recent examples: 2<sup>nd</sup> JD, 4<sup>th</sup> JD, 19<sup>th</sup> JD

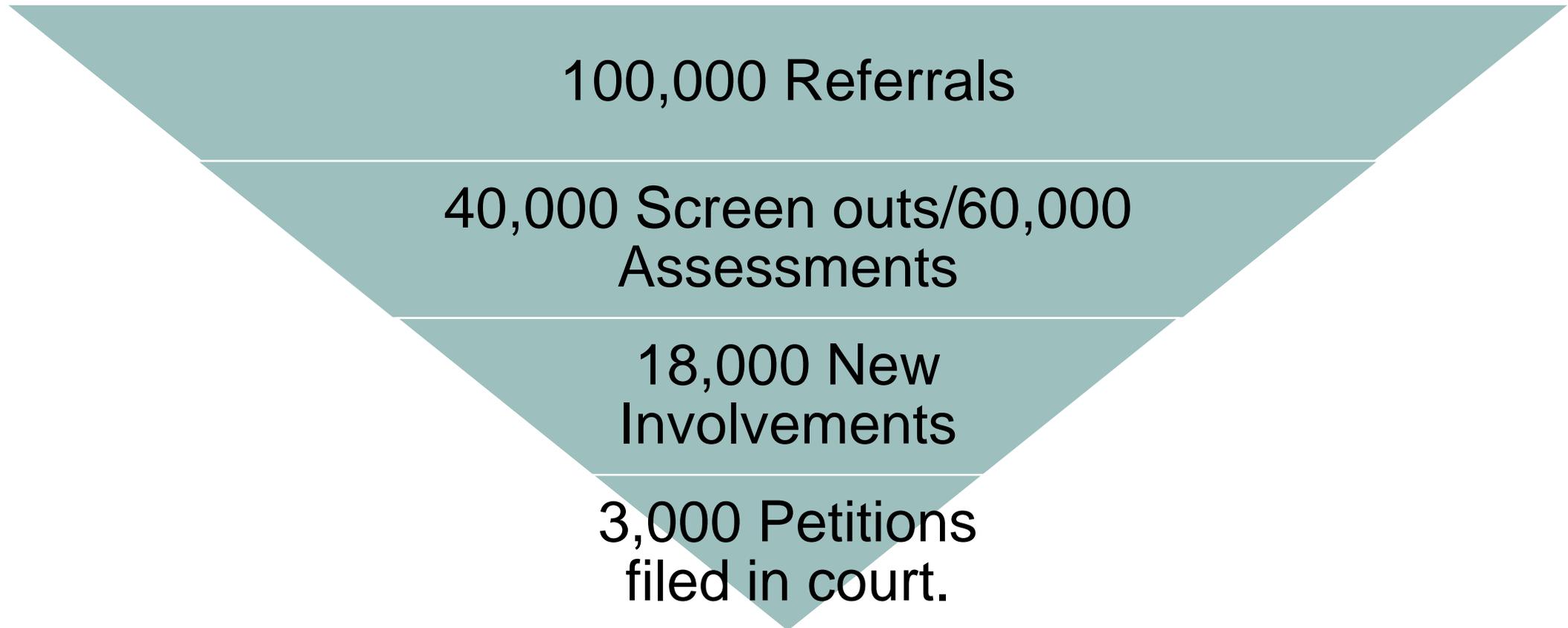
## ALL GALs

Practicing in a difficult, emotionally charged and dynamic area of the law with no benefits, no paid time off, no loan forgiveness programs and less money than an inexperienced paralegal at a law firm.

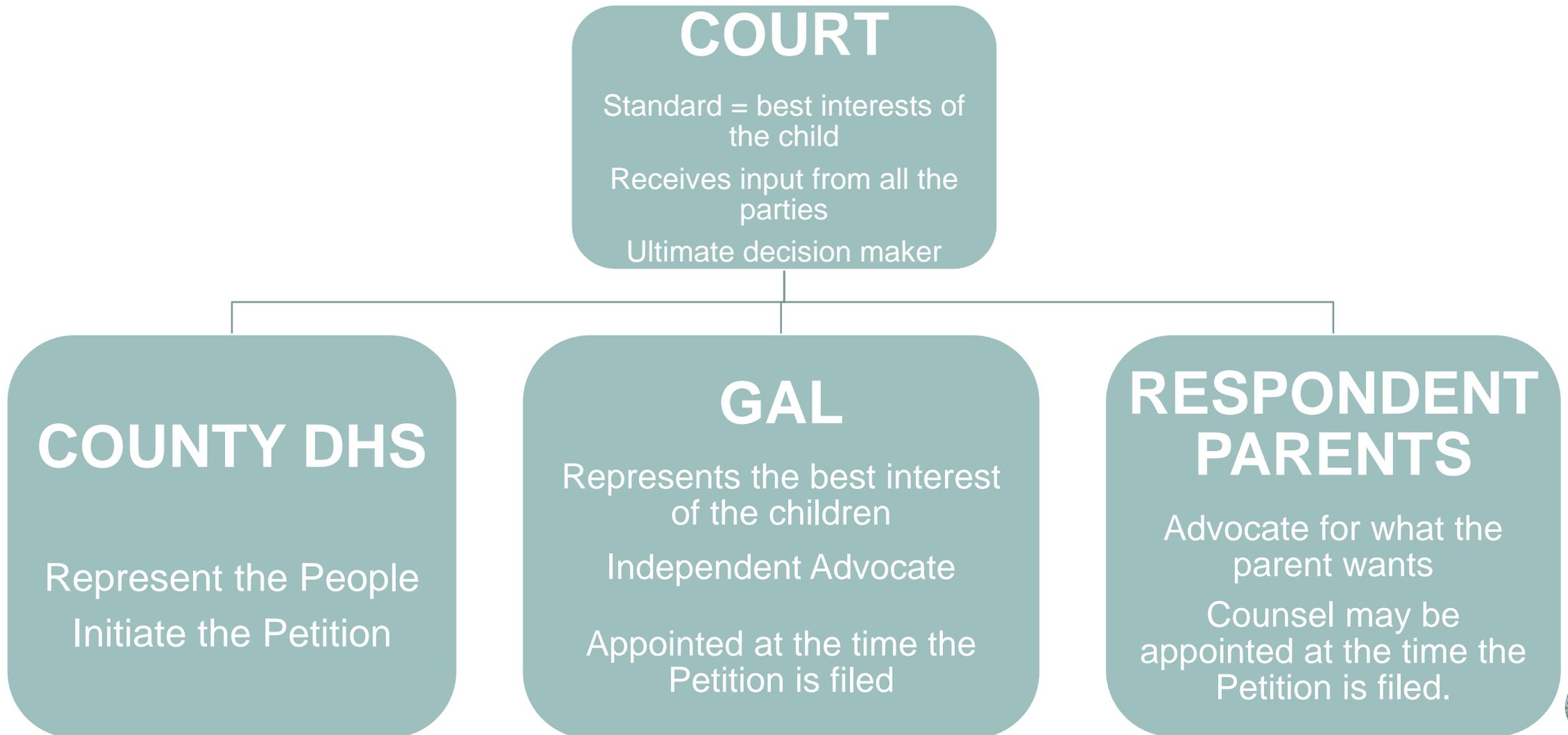
# It's difficult work:



# Referrals to County Human Services in FY 16



# Child Welfare Proceedings



**4:15-4:30 OFFICE OF THE RESPONDENT PARENT'S COUNSEL (ORPC)**

Testifying on behalf of the Office of Respondent Parents' Counsel:



Melissa Michaelis Thompson, Esq.  
ORPC Executive Director



Linda Edwards  
ORPC Chief Financial Officer

**INTRODUCTIONS AND OPENING COMMENTS**

**QUESTIONS**

92. Has the method that the ORPC uses to pay the contractors who provide representation for parents changed recently? Describe progress in switching from fixed payment contracts to hourly rates. What percentage of your contracts are still fixed payment? Has the change affected the number of appeals that are filed and paid for by ORPC or other aspects of your operations?

Yes, the method the ORPC uses to pay RPC contractors who provide representation for parents has changed recently. As of July 1, 2017, all new dependency cases under the ORPC are paid on an hourly basis rather than a flat-fee basis. Prior to this change, most of the metro area jurisdiction

Judicial-hearing (ORPC)

cases were paid on a flat-fee basis. The transition from flat-fee or "fixed" payment contracts to hourly has been smooth. In June 2017, the office set out several parameters for existing flat-fee cases to be converted to hourly billing in the respondent parent billing system.

Between July 1, 2017 to December 14, 2017, the ORPC has approved a total of 1,245 requests to convert individual RPC appointments from flat-fee to hourly billing. There are currently 2,793 open appointments that are still on a flat-fee or "fixed" payment and have not yet converted to hourly billing. The ORPC was not able to work with its billing system programmer to determine the total percentage of contracts that are still on a fixed or flat-fee payment prior to the deadline to submit these question responses. The ORPC will work to collect this data prior to the JBC presentation.

This change to hourly billing has not affected the number of appeals that are filed because all appellate appointments were paid on an hourly basis prior to the creation of the ORPC. Overall, the conversion to hourly has been an improvement for the agency because it has allowed the office to track more data points related to parent representation so that the ORPC can, eventually, begin to get a deeper understanding of how to improve parent representation throughout the state. Additionally, RPC attorneys are now being paid for the actual work performed on a case rather than a flat-fee basis.

93. A DHS review of who requested or recommended congregate care placement for children who are in congregate care showed that it was a Guardian ad litem (GAL) who requested or recommended this level of care in 24.2% of cases in FY 2015 Quarter 1 and 18.2% in FY 15 Q2. This makes GALs the second largest source of requests or recommendations after County Departments. Please comment on the number of GAL requests or recommendations.

The ORPC believes that this data is in line with the role and responsibilities of the GAL. It is logical that the GAL would be the second largest entity, after the county departments, to make recommendations for congregate care because the GAL is tasked with conducting an independent investigation and with making recommendations on behalf of the best interests of the child. If the GAL is recommending the use of this level of care, it is because they have determined that it is necessary and in the child's best interest.

In cases where a child's behavior places the parent, the family, siblings, or other children in the home at risk, then it is possible that the GAL and/or an RPC attorney may advocate for such a placement to seek stabilization and services for the child while permitting other children to remain safely in the home. The use of congregate care becomes a larger concern for the ORPC when the department cannot locate appropriate placements for children or when counties lack the resources needed to keep children safely in the home with appropriate services.

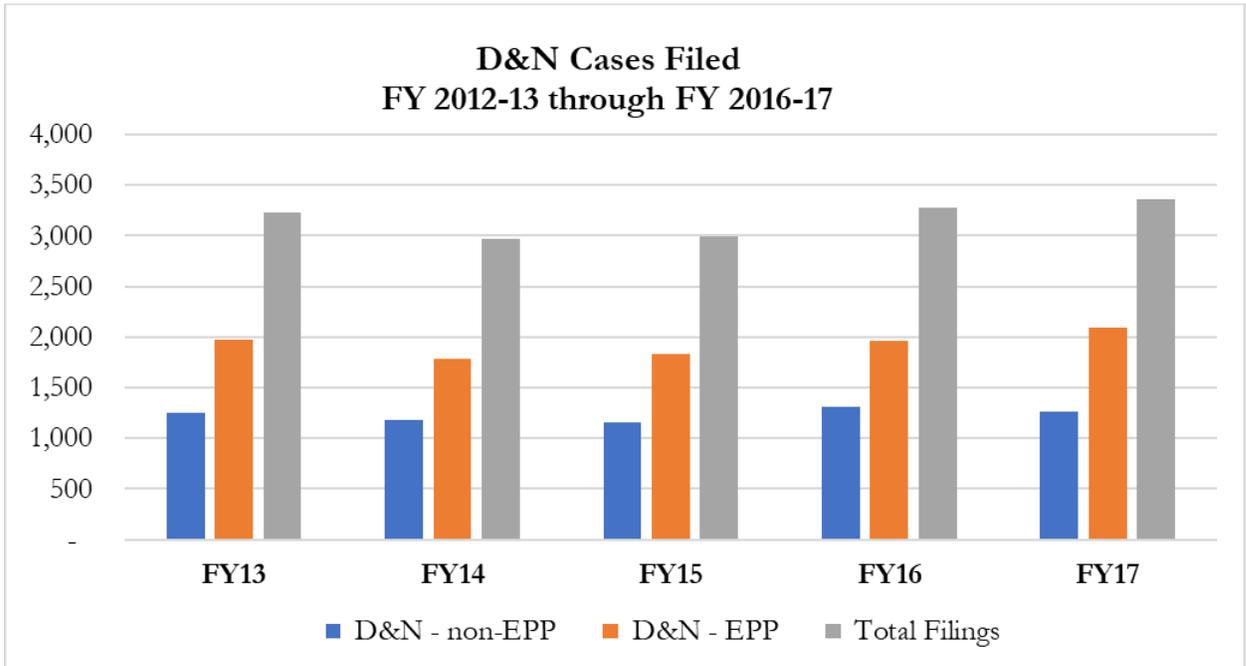
94. Please provide a sense of caseload trends in the Office of RPC.

The ORPC assumed responsibility for the payment of attorneys representing parents in Dependency and Neglect cases on July 1, 2016 and therefore has limited data on caseload trends since the inception of the ORPC. The information below is from annual statistical reports prepared by the State Court Administrator's Office of the Colorado Judicial Department. The annual reports provide information on all cases filed, including Dependency and Neglect cases.

The full report can be found at:

<https://www.courts.state.co.us/Administration/Unit.cfm?Unit=annrep>.

When children in a Dependency and Neglect case are under the age of six, the Dependency & Neglect case is filed as an Expedited Permanency Planning (EPP) case. As shown in the chart below, most Dependency and Neglect cases are EPP cases.



The table below shows the total filings in each Judicial District.

<b>Dependency and Neglect Cases Filed by Judicial District FY 2012-13 through FY 2016-17</b>					
<b>Judicial District</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>
1	413	330	316	400	293
2	337	305	377	443	427
3	22	25	34	27	26
4	642	548	509	595	645
5	35	27	17	17	17
6	29	27	21	24	28
7	69	63	57	76	93
8	174	144	152	124	141
9	21	32	24	17	30
10	155	184	165	139	142
11	86	72	71	96	97
12	60	86	75	72	73
13	110	100	99	68	94
14	9	11	13	17	14
15	17	16	21	20	26
16	32	36	39	41	50
17	299	334	351	323	373
18	353	293	320	367	367
19	123	136	114	147	171
20	70	73	84	101	103
21	155	119	122	149	136
22	12	10	8	12	9
<b>Totals</b>	<b>3,223</b>	<b>2,971</b>	<b>2,989</b>	<b>3,275</b>	<b>3,355</b>
Source: Annual Statistical Reports of the Colorado Judicial Dept.					

95. a. What is your opinion regarding the CDHS Proposal to Reduce “Congregate Placements” by changing state law to increase the State cost share for counties who utilize foster care to a 90% state share/10% county share and to reduce the amount of the State cost share for counties utilizing congregate care to 80% state share/20% county share?

The ORPC believes that reducing the use of congregate care placements is good for children and families in Colorado. A very small number of children cannot be maintained safely in their own

homes due to their own behavior, and these children may need congregate care options. However, most children can, and should, be maintained at home or in less restrictive placements. Maintaining children in their own homes with appropriate in-home services and supports ensures safety is achieved in the most effective and beneficial place.

The ORPC often sees cases where children are removed from their parents. The trauma a child experiences as a result of removal from their home makes it difficult for children to function, act appropriately, and maintain placement in foster homes. When foster care is no longer an option and kinship placements are not available, children are moved to congregate care. The additional trauma associated with multiple moves and an increasing level of care could be prevented if the entire family received intensive in-home services to allow children to remain safely at home with supportive services provided to parents.

b. What role do courts and legal advocates play in the use of congregate care for children in child welfare? What role do county department's play in the use of congregate care? In your opinion, are these roles appropriate?

In a small minority of cases, the ORPC sees family members advocate for congregate care placements due to a child's severe mental health, criminal issues of a child, and/or behavioral disturbances with a child. Desperate parents and extended family members make these requests because no other option allows a child or adolescent to develop skills to allow them to be at home safely while supporting the parent to assist a child. The ORPC frequently sees children moved to congregate care settings because the county lacks appropriate foster homes, or because a child cannot access appropriate community mental health services in a timely manner. Waitlists prevent timely access to community supports necessary to prevent congregate care, or cause a child to remain in congregate care longer. Congregate care can be used as a stop-gap measure because community based after care services are unavailable.

c. Comment on the general adequacy of the child welfare system and the availability of appropriate services. What are the gaps that need to be filled?

Colorado's child welfare system could benefit from increased access to appropriate, tailored, and meaningful services for parents and families across Colorado that are aimed at keeping children safely in their homes. The following is a list of resources and areas for improvement in the child welfare system:

- Culturally competent services
- Intensive in-home services
- Uniform services throughout the state including more access to services for rural areas
- Individualized and tailored services for parents and families that come about from a more comprehensive assessment at the onset of the case
- More frequent, meaningful, and quality visitation in a family-friendly setting
- More inclusion for parents in a child's medical, educational, religious, and extra-curricular activities and the decisions that accompany those areas as well as the cultural competency in the out-of-home placements

- A general cultural shift to focusing on family preservation and frontloading services at the onset of a case to avoid removal

96. What information does the judge take under consideration when making the determination that an out of home placement is in the best interest of a child? Does the judge consider input from county child welfare case workers? Do judicial districts employ their own case workers and how do these positions interact and collaborate with county case workers in developing recommendations in child abuse and neglect cases? Does the judicial branch or district have funding to pay for some of the costs of out of home placements when those placements are contrary to the original recommendation made by the county child welfare agency?

Most out of home placement decisions are initially made before a case is filed – before parents are appointed counsel or have an opportunity to appear in court and be advised regarding their rights in dependency cases.

Judges make a decision about removal of children, or out of home placement, during a hearing that only involves the county (usually based on a phone call to the judge by the county department of human services). Once children are removed, the parents are given formal notice and a full court hearing (called a temporary custody hearing) which is held within 3 business days of the removal. At the temporary custody hearing three days later, Judges primarily consider the allegations made by the county and caseworker. Parents are typically appointed counsel only minutes before the hearing is held, so the attorneys have little time to prepare or put on evidence to support a return of the children to the family home at that point. In some counties in Colorado, parents are not appointed counsel at the temporary custody hearing, but are told they can complete a written application to request counsel if they wish for a later hearing date.

At the temporary custody hearing, Guardians *ad litem* provide input based upon information they receive from the caseworkers and county attorneys. Judges primarily rely on testimony or written documents provided by the caseworker and county attorney. It is important to note that a county caseworker is not usually a social worker—to be a licensed social worker in Colorado, a person must pass a state-administered licensing exam in addition to a variety of other educational requirements.

Judicial districts do not employ their own caseworkers. The judicial branch does not pay any of the costs of out of home placement. If the county does not want an out of home placement, but the judge orders out of home placement, that is typically due to the request of the guardian *ad litem*, based on their independent investigation. If the judge orders out of home placement above the objections of the parties on the case, the out of home placement is still paid for by the county.

97. Please discuss how the Office of Respondent Parents' Counsel is implementing the requirements defined by statute and rule concerning child welfare abuse and neglect cases. How are members of the office working with county child welfare case workers to ensure timely and appropriate decisions for children and parents? What challenges are members of your office facing when representing parents and when working with representatives of the county's child welfare agency? Does your office work with the Office of the Child's Representative to ensure that the best interests of all parties involved are achieved?

The ORPC continues to work to implement its four original legislative mandates, outlined in CRS 13-92-104.

1. The ORPC is working to ensure the provision and availability of high-quality legal representation for parents involved in dependency and neglect proceedings. As noted by the Respondent Parent Counsel Task Force in 2007, one of the barriers to effective RPC performance that existed in Colorado was the lack of support services—including the ability to procure expert witness services.<sup>[1]</sup> The ORPC has been working to ensure that respondent parent counsel have access to experts during all stages of a case, which has been driving the amount spent by the agency on mandated costs. This increase in spending on expert witnesses is documented in Change Request R-2.
2. The ORPC is working to establish fair and realistic state rates by which to compensate respondent parent counsel. To ensure that RPC are paid in parity with other state contractors, last year the ORPC requested funding to pay all RPC at hourly rates. This year, in accordance with this legislative mandate, the ORPC is requesting an increase to contractor hourly rates as documented in Change Request R-3.
3. The ORPC has spent the last year implementing its first pilot project by providing social workers as part of the legal defense team in three separate judicial districts. In order to continue this pilot project, the ORPC has requested funding for the second year of the project in Change Request R-1.
4. ORPC conducts an annual review and evaluation of the office's performance to determine whether it is effectively and efficiently meeting the goals of improving child and family well-being. The ORPC conducts this review on a consistent basis to the best of its current abilities, but has requested funding for a statistician in order to conduct a more in-depth analysis of the office's impact and to evaluate the effectiveness of the ORPC as a whole. This request is documented in Change Request R-4.

The ORPC provides access to social workers through the Social Worker Pilot Program in three judicial districts and through the expert request process in the remaining judicial districts across Colorado. These social workers work directly with county caseworkers and families to support timely and appropriate decisions for children and parents. The ORPC is also developing practice standards that require attorneys or a member of the defense team to attend staffings and other meetings to support the exchange of information and support timely and appropriate decisions.

One challenge the office faces is that, in some counties, the county department and county attorneys refuse to allow ORPC social workers to attend staffings, or prevent caseworkers from communicating with the ORPC social worker. Some counties do not allow RPC parent attorneys or defense team social workers or office staff to participate at staffings with caseworkers. Some counties refuse to allow their caseworkers to talk with parent attorneys without a county attorney present, which drives up costs, and delays permanency for children.

The ORPC works with the Office of the Child Representative in many ways, including coordinating positions at the appellate level and on proposed legislation. The ORPC is working

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<sup>[1]</sup> *The National Center for State Courts, National Council for Juvenile and Family Court Judges, and National Association of Counsel for Children, State of Colorado Judicial Department Colorado Needs Assessment*, available here:

[https://www.courts.state.co.us/userfiles/File/Court\\_Probation/Supreme\\_Court/Committees/Court\\_Improvement/CO\\_RPCFinalNeedAsstReptApp.pdf](https://www.courts.state.co.us/userfiles/File/Court_Probation/Supreme_Court/Committees/Court_Improvement/CO_RPCFinalNeedAsstReptApp.pdf)

closely with OCR to update the Guided Reference in Dependency (GRID): a guide to improve the practice of both respondent parent attorneys and guardians *ad litem*. At the ORPC annual conference in 2017, the office also coordinated with OCR to share conference space and had one full day offering joint sessions to both GAL and RPC attorneys.

#### ORPC R1 Continuation of Social Worker Pilot Program

98. Are there preliminary results from year one of the social worker pilot that justify continuing into year 2?

Yes, the ORPC was able to compile preliminary data over the first 10 weeks of the Social Worker Pilot Program. The ORPC found that, in non-pilot program cases that are handled traditionally without access to a parent defense team social worker, a total of 21 children out of 242 children returned home from out-of-home placement. This represents an 9% rate of reunification over the first 10 weeks of a case.

This data is compared to cases in the same jurisdictions where the pilot program social workers were appointed. In the pilot program cases over the same 10-week period, 45 children out of 136 children total returned home from out-of-home placement. This represents a 33% rate of reunification over the first 10 weeks of a case, meaning children were returned home to their families after an initial out-of-home placement in 33% of the cases where the pilot program social workers were appointed.

The above data applies to new Expedited Permanency Planning (EPP) cases filed July 1, 2017 and forward in the 3 pilot program jurisdictions. EPP cases have a least once child that is under the age of 6 involved in the case. In EPP cases, children must be in a permanent home within 12 months of the date of removal. Due to this rapid timeframe, much of an RPC's work must be done within the first few weeks of receiving a case, which makes EPP cases higher risk for families in the dependency system.

During the first 10-week period that the ORPC was able to compile data, the agency also looked at the total number of unique cases where children were reunified. This is an important distinction because there can be multiple children and respondent parents on a single case.

The first 10-week period of the pilot program shows that there were 77 EPP cases where the pilot program social workers were appointed. Of those, 19 cases resulted in reunification during the 10-week period. This represents a 24% rate where the outcome for the families involved was reunification of the children to their parents.

This data is compared to the EPP cases in the same jurisdictions where the pilot program social workers were *not* appointed. Over the same 10-week period, there were a total of 116 EPP cases in the pilot program jurisdictions that operated traditionally, without the benefit of a parent defense team social worker. Of those, 13 cases ended in reunification, which represents an 11% rate where the outcome for the families involved was reunification.

### ORPC R3 Increase in Contractor Hourly Rates

99. Please provide the reasons for the requested increase.

It is critical that the ORPC be able to attract and retain skilled and experienced attorneys to represent indigent parents who might lose a critical and fundamental constitutional right. The ORPC has faced difficulty recruiting experienced contract attorneys that are interested in representing parents in dependency cases. The ORPC has faced these challenges with recruitment across the state of Colorado, in both metro and rural communities.

Due to their status as independent contractors, these attorneys do not receive benefits such as health care, retirement, or paid time off. Independent contract attorneys are also small business owners who have to account for business costs such as attorney registration fees, office space, telephone, internet, support staff, office supplies, postage, health insurance, self-employment taxes and transportation and malpractice insurance.

As independent contractors, they are only able to bill for "billable time" according to the ORPC billing policies. Billable time includes substantive work such as drafting legal motions, attending client meetings, hearing preparation, and in-court time. RPC attorneys must work many additional hours and complete administrative tasks that are not considered billable time, such as office filling, entering time, copying documents, or calling clients and leaving messages. One experienced RPC attorney said that in order to bill 28 hours a week, she had to work more than 40 hours a week.

The ORPC has also faced issues with RPC retention. RPC contract attorneys have left family defense work when they experience a change in life circumstances and must retain employment that covers health insurance for their families or that can provide paid leave. Increasing the hourly rate that these attorneys are paid will help prevent the loss of the public-spirited attorneys who provide a vital service to their clients and to the state of Colorado.

Finally, the Colorado Bar Association conducted a 2017 economic survey and published results regarding the average rate of pay for attorneys. As of 2017, the hourly billing rate for attorneys with less than one year of experience is \$162 while attorneys practicing between 5 and 9 years charge an hourly rate of \$225. While the level of compensation provided by the State cannot compete with private-pay rates, an \$5 increase to the hourly rate from \$75/hr to \$80/hr will mean that the public interest attorneys who represent indigent clients in Colorado will receive some acknowledgment of the increased costs they incur in operating their practices and the benefit to society that they provide by representing indigent clients.

100. Please provide a status update on the percentage of contracts that are still fixed versus hourly rates and your transition between the two billing systems.

As of July 1, 2017, all new dependency cases under the ORPC are paid on an hourly basis rather than a flat-fee basis. Prior to this change, most of the metro area jurisdiction cases were paid on a flat-fee basis. The transition from flat-fee or "fixed" payment contracts to hourly has been smooth. In June 2017, the office set out several parameters for existing flat-fee cases to be converted to hourly billing in the respondent parent billing system.

Between July 1, 2017 to December 14, 2017, the ORPC has approved a total of 1,245 requests to convert individual RPC appointments from flat-fee to hourly billing. There are currently 2,793

open appointments that are still on a flat-fee or “fixed” payment and have not yet converted to hourly billing. The ORPC was not able to work with its billing system programmer to determine the total percentage of contracts that are still on a fixed or flat-fee payment prior to the deadline to submit these question responses. The ORPC will work to collect this data prior to the JBC presentations.

#### ORPC R4 Contract Statistician

101. If the pilot study is extended for another year, is it premature to engage a contract statistician for analysis? Shouldn't this wait for another year?

ORPC R-4, Contract Statistician, requests \$20,000 for a contract statistician to evaluate the Social Worker Pilot Program and \$200,000 for a contract statistician to evaluate the ORPC as a whole. If the Social Worker Pilot Program is extended for another year, it may be premature to engage a contract statistician to evaluate that program and we would ask that ORPC R-4 be reduced by \$20,000 to \$200,000. The ORPC nonetheless believes that engaging a contract statistician now would help with the agency's ability to begin evaluating the Social Worker Pilot Program after the first year of data is collected.

#### Consolidated Appropriations for Health, Life, and Dental Expenditures

102. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

The ORPC opposes the transfer of the ORPC's appropriations for Health, Life, and Dental (HLD) to the Judicial Department. Such a consolidation would create a new set of problems for the Judicial Branch agencies, including the diminishment of fiscal independence, the decrease in the transfer authority base and therefore in the total transfer authority, and a permanent increase in administrative tasks. In addition, the ORPC is concerned that the ORPC's expenses would no longer reflect the actual costs of the agency.

However, the ORPC understands and is sympathetic to JBC staff's desire to simplify HLD calculations and therefore joins the other independent agencies in their support of the Judicial Department's alternative proposal that a staff person at the Judicial Department would calculate the HLD on behalf of each agency in the Judicial Branch, thus providing JBC staff with a single contact point for verification of the HLD calculation. This would allow each agency to have its individual HLD appropriation as they do now.

#### **ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

103. Please provide written input on HCPF's request to move the Children's Habilitation Residential Program waiver from the Division of Child Welfare in DHS to the Office of Community Living in HCPF; and on the request that statute be changed to allow access to waiver services without a

dependency and neglect finding and out of home placement of the child. Please see Section 25.5-5-306, C.R.S.

The ORPC believes the proposed changes will be helpful overall to Colorado's parents. All other home and community based services waivers are administered by HCPF's Office of Community Living. Allowing families to access the CHRP level of service without a dependency and neglect finding will be helpful to families that simply cannot amass resources to assist children with very high needs on their own. These families will be able to access needed resources without the necessity and expense of a dependency and neglect case. This change allows families to access another resource for care of very medically and developmentally needy children.

Currently some families are forced to open voluntary cases with DHS to access these services. While the state has made efforts to eliminate this need for many children with the Children's HCBS waiver and the Medicaid buy-in for children with disabilities, waitlists for other waivers prevent families from accessing the help they need.

Nevertheless, the financial effect of this change on the ORPC is likely to be very small –resulting in savings of only a few thousand dollars.

104. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

The ORPC does not have any outstanding legislation to be implemented.

105. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

The ORPC has no plan for increasing levels of cybersecurity, including existing programs and resources. The ORPC is a Judicial Branch Agency that works with an independent IT contractor for all cybersecurity measures. The agency does not work with or receive IT services from CISO or OIT.

The independent IT contractor is responsible for the ORPC's cybersecurity. IT infrastructure and policies are reviewed on an ongoing basis by the independent IT contractor as part of recurring maintenance tasks. The ORPC practices industry standard "defense in depth" or layered security. All infrastructure resources are physically protected within a secure datacenter. All ORPC data is logically protected by password controls, and access to data is limited by necessity. ORPC data available to its employees and contractors via the web is SSL encrypted during transit and access

controlled. Any PII data recorded by the platform is not accessible without the proper access levels. All ORPC data is backed in a secure datacenter.

106. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

The ORPC is not subject to the SMART Act or Lean processes. Rather, the ORPC is required to annually review and evaluate its performance and submit by January 1 each year a report to members of the General Assembly and the State Court Administrator's Office per Section 13-92-104(1)(e), C.R.S. The ORPC considers the agency's enabling legislation and the SMART Act performance analysis and cost savings measures during the preparation of the budget request and in day-to-day operations. The ORPC incorporates the requirements of the SMART Act into its annual performance report. The ORPC will submit its second annual report by January 1, 2018.

107. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of "evidence-based," indicate which programs are "evidence-based," and describe the evidence used to support these programs.

The ORPC uses evidence-based analysis as a foundation for its budget request.

The ORPC defines evidence-based budgeting as analyzing historical and current data to project costs and justifying requests with the best research evidence available, especially research supported by peer-reviewed journals and scholarly articles. The ORPC is a new agency with limited historical data available to project trends. As a result, the ORPC uses current data to establish performance goals, strategies, and measures that are outlined in its annual performance report submitted to the General Assembly. The ORPC is working to collect and analyze baseline data to establish evidence-based performance measures that relate to the ORPC's legislative mandates.

For new programs and processes, the ORPC conducts research prior to making requests or developing programs. For instance, prior to requesting funding for the Social Worker Pilot Program, the ORPC comprehensively reviewed the available research to ensure that the program model adopted was based on the most current evidence-based research.

Research demonstrates that children have better long-term outcomes when they are raised in their families of origin.<sup>1</sup> Reunification, or the return of children to their families of origin from out-of-home placement, is one of the most common outcomes for children in the child welfare system, and is often the goal of successful parent advocacy.<sup>2</sup> Research also shows that high-quality legal representation for parents in child welfare cases results not only in improved outcomes for

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<sup>1</sup> Mimi Laver, *Improving Representation for Parents in the Child-Welfare System*, October 7, 2013, available at: [apps.americanbar.org/litigation/committees/childrights/content/articles](https://apps.americanbar.org/litigation/committees/childrights/content/articles)

<sup>2</sup> Child Welfare Information Gateway, *Family Reunification: What the Evidence Shows*, p. 2, available at: [www.childwelfare.gov/pubs/issue\\_briefs/family\\_reunification](http://www.childwelfare.gov/pubs/issue_briefs/family_reunification)

families, but a potential cost savings for taxpayers because children spend less time in foster care and are reunified with their families more quickly.<sup>3</sup>

Social worker program evaluations have demonstrated that clinical social workers contracted by the respondent parent attorney achieve reunification more quickly.<sup>4</sup> Contract social workers also produced an increase in system and legal engagement by the respondent parents by making referrals for additional services and by attending and advocating for parents at meetings. Even a moderate increase in parental engagement is associated with a 47% increase in the rate of reunification.<sup>5</sup>

This research is detailed in ORPC Request 1, Continuation of Social Worker Pilot Program.

To further implement evidence-based analysis, the ORPC has requested funding for a contract statistician to evaluate the effectiveness of the ORPC in general and the Social Worker Pilot Program in particular.

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<sup>3</sup> Elizabeth Thornton & Betsy Gwin, *High Quality Legal Representation for Parents in Child-Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, Family Law Quarterly, Vol. 46 No. 1 (Spring 2012)

<sup>4</sup> Pilnik, *Parents' social workers help parents succeed*, ABA Child Law Practice Vol. 27 No 9.

<sup>5</sup> Marcenko, Newby, Mienko, and Courtney, *Family reunification in Washington State: which children go home and how long does it take?*, Partners for our children (August 2011).



# OFFICE OF RESPONDENT PARENTS' COUNSEL

Protecting the Fundamental Right to Parent



## PRESENTATION TO THE JOINT BUDGET COMMITTEE

December 18, 2017

[COLORADOORPC.ORG](http://COLORADOORPC.ORG)



"Every child deserves to have their parent represented by the best attorney in town."

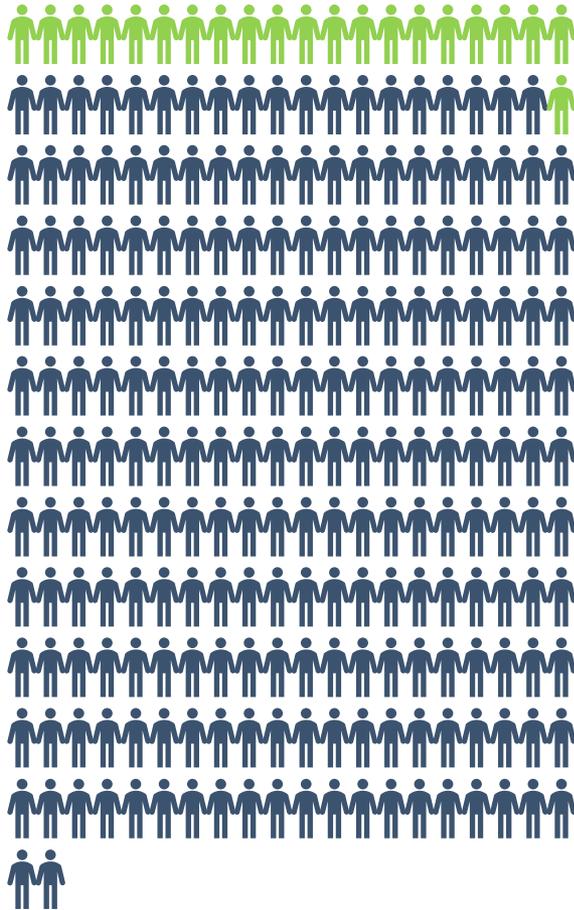
-Marty Guggenheim

# A Lawyer for Each Parent



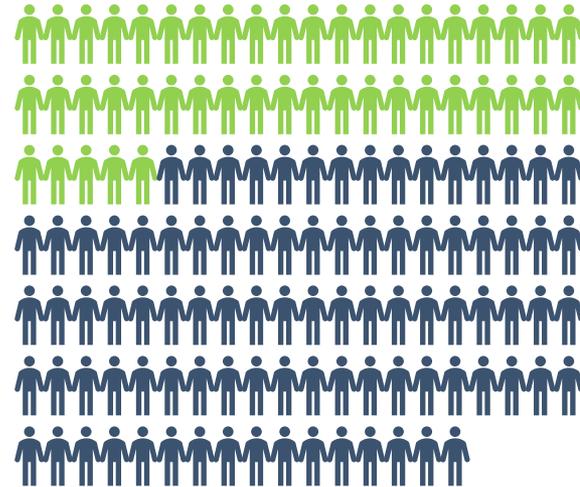


### Kids in non-SW Cases



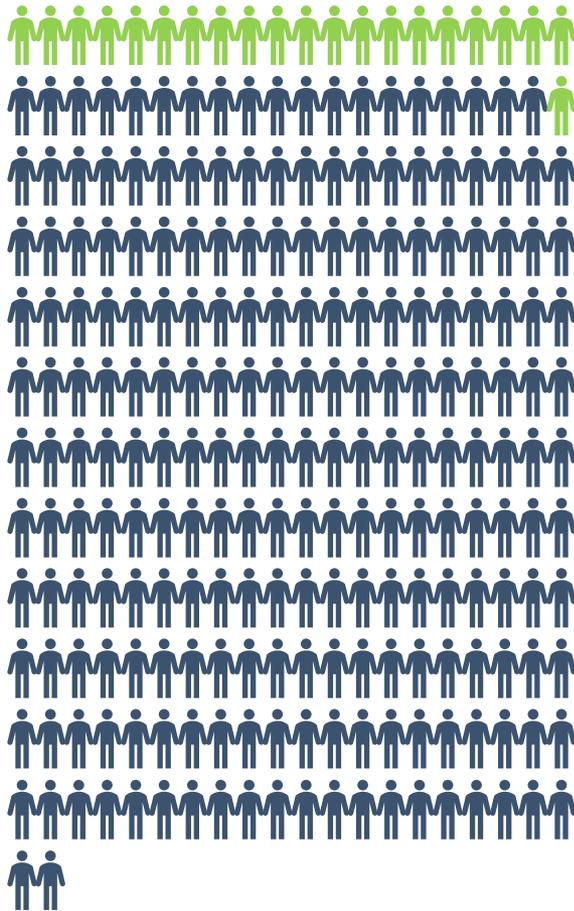
21 kids  
returned home

### Kids in SW Cases



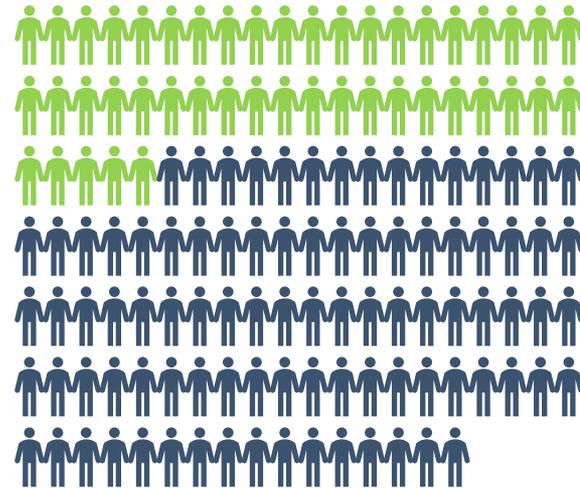
45 kids  
returned home

### Kids in non-SW Cases



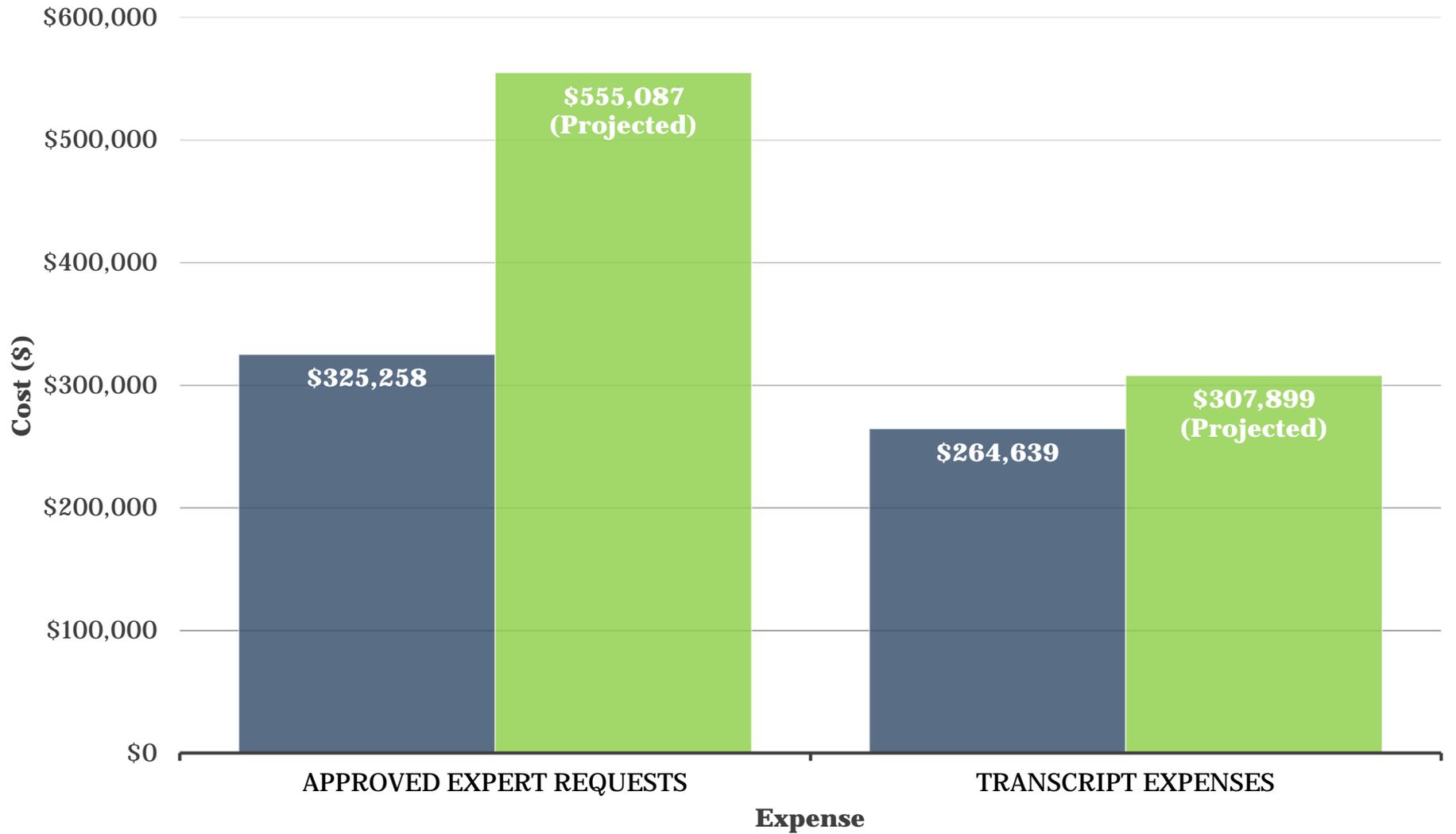
10%  
returned home

### Kids in SW Cases



33%  
returned home

# Expert Requests and Transcript Expenses Comparison Between 2016 and 2017



■ 2016 ■ 2017



742

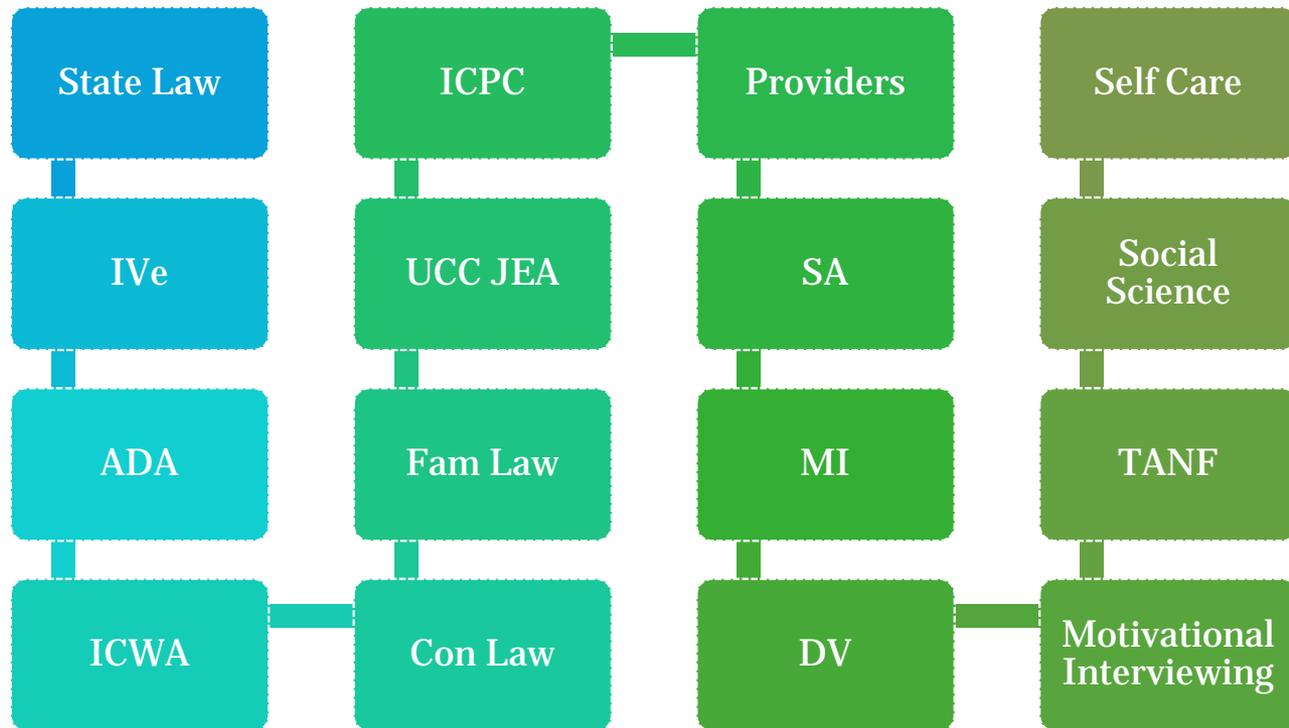
Data Values

400K

Data Points

24

Categorical  
Measurements



- Self-Employment tax
- Advertising
- Website
- Internet access
- Car expenses
- Commissions and Fees
- Contract Labor (e.g. social worker, paralegal, clinical consultant, assistant)
- Payroll taxes if operating as an S Corp
- Employee benefit programs if operating as an S Corp
- Malpractice Insurance
- Business Insurance
- Liability Insurance (if a tenant in a building)
- Professional services (e.g. bookkeeper, billpayer)
- Office supplies (e.g. paper, pens, file folders, writing paper)
- Wages (less employment credits which independent contractors don't usually qualify for)
- Finance fees of business lines of credit or credit cards
- Postage and Shipping
- Credit Card Processing Fees
- Gifts
- Professional Books and Subscriptions
- Westlaw or other legal research
- Bank Fees
- CLE expenses
- CLE travel and lodging expenses (e.g. fall conference)
- Copier expenses (e.g. maintenance agreements, paper, toner, lease)
- Fax line or online fax service
- Pension and profit sharing plan expenses
- Rent, lease or mortgage for office space (includes rental for virtual office space)
- Business property expenses (e.g. computers)
- Repairs and Maintenance of space
- Taxes
- Licenses (e.g. bar)
- Utilities
- Meals and Entertainment



## 4:30 – 4:45 OFFICE OF THE CHILD PROTECTION OMBUDSMAN (OCPO)

### INTRODUCTIONS AND OPENING COMMENTS

Stephanie Villafuerte, Ombudsman

Sabrina Burbidge, Deputy Ombudsman

Jordan Steffen, Communications and Policy Director

### QUESTIONS

108. Does statute permit the Office of the Child Protection Ombudsman to investigate complaints related to the Division of Youth Services?

State statute provides the necessary authority for the Office of Colorado’s Child Protection Ombudsman (CPO) to investigate complaints related to the Division of Youth Services. Specifically, C.R.S. 19-3.3-103(1)(a)(I)(A) states: *“The ombudsman has the following duties, at a minimum: To receive complaints concerning child protection services made by or on behalf of a child relating to any action, inaction, or decision of any **public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of the child.** [emphasis added]”*

The Division of Youth Services (DYS), is a division within the Colorado Department of Human Services (CDHS) that receives public moneys and whose actions may adversely affect the safety, permanency, or well-being of a child. Given the size of the DYS system the CPO would require additional staff to address the problems and/or concerns within the DYS system.

109. a. What is your opinion regarding the CDHS Proposal to Reduce “Congregate Placements” by changing state law to increase the State cost share for counties who utilize foster care to a 90% state share/10% county share and to reduce the amount of the State cost share for counties utilizing congregate care to 80% state share/20% county share?

The CDHS proposal to Reduce Congregate Care Placements is one which requires additional research and study. The CDHS plan proposes the following:

- Change the cost share of certified foster care to 90% state and 10% county share.
- Change the cost share of congregate care to 70% state and 30% county share (phased in over a three-year period of time).
- All other services remain at an 80% state and 20% county share.

*Source: CDHS JBC Presentation (11-28-17), CDHS Memorandum (11-17-17)*

The CPO believes the goal of reducing the number of children in congregate care is a laudable one. However, there may be unintended consequences that must be explored before moving forward. Some of these include:

- **Impact of funding structure on adoptive children** — The proposed funding mechanism incentivizes placements in foster homes by providing a higher state

share of 90% and lower county share of 10%. In turn, funding for services for adoptive children would remain at a 20% county share. In theory, this structure could create a disincentive to adoption for two reasons. First, county human services departments would receive greater reimbursement for placing children in foster care as opposed to placing children in adoptive homes. Second, foster families may decline to adopt if they receive higher reimbursements as foster parents as opposed to adoptive parents. On December 13, 2017, the CPO released an investigative report on the Colorado adoption assistance program. In this report, a brief history of the program describes how the federal adoption assistance program was developed, in part, because the previous funding structures across the country incentivized the use of foster care over adoption. (See *CPO Investigative Report 2016-2074, page 7.*) Without additional analysis of this issue, the CPO is concerned that this proposal could have a similar negative impact.

- **Impact on Children in Need of Treatment** – The term “congregate care” is a phrase that describes an array of placements and services that are provided to children in the child welfare system. Congregate care includes children who live in group homes, crisis centers and residential treatment facilities. These distinctions are important as there are children, many with severe behavioral health needs, that require intensive and sometimes long-term treatment. These placements will always be required and cannot be completely eliminated from our child protection system. Our goal as a child protection system should be finding mechanisms that ensure we have the right children in the right placements at the right time. It is especially critical that we do not reduce the number of placements in these facilities without first developing a robust structure to support these children. Specifically, the state needs a strong, therapeutic foster care program in place before we require foster families to take care of children with extraordinary, complex needs. We need these placements throughout the state so that children in rural communities are not moved long distances from their families as they obtain appropriate care. In order to reduce the number of children in congregate care, we must examine our assessment process, in addition to Performance Aligned Funding mechanisms, to ensure we are providing the appropriate level of care for all children.

b. What role do courts and legal advocates play in the use of congregate care for children in child welfare? What role do county department’s play in the use of congregate care? In your opinion, are these roles appropriate?

The Colorado child protection system is comprised of numerous stakeholders including members from the Colorado Department of Human Services, county human services departments, nonprofit agencies and the legal/judicial community. Each of these systems perform important and unique functions for a child engaged in the child welfare system and no one part can work alone in protecting abused and neglected children. As it relates

to the issue of reducing congregate care, it is important to understand these unique roles and respect them. Courts, county attorneys, guardians ad litem, respondent parent counsel and CASAs serve as an important check and balance on the human services and behavioral health delivery systems. The child, in particular, benefits from having multiple people advocating on behalf of their care even if these opinions are at times in conflict with one another. It is this creative tension that forces all professionals to be challenged and to contemplate multiple view points as they work to address issues that are critical to children and families.

c. Comment on the general adequacy of the child welfare system and the availability of appropriate services. What are the gaps that need to be filled?

The CPO receives nearly 600 calls annually from the public. Additionally, the CPO has traveled statewide to speak with both rural and urban child welfare directors and staff. The result of this work shows that services across the state are strained. This includes a lack of training, lack of guidance in rule and law for caseworkers and a lack of coordination between child protection entities such as law enforcement and human services. There are a number of issues that need to be addressed but the most emergent one is related to the lack of appropriate mental health services in our state.

- **Lack of Appropriate Behavioral Health Care for Foster Children**

The CPO has received dozens of citizen complaints about the lack of services and placements for children with co-occurring needs, including children with both an intellectual/developmental disability (IDD) and a behavioral health disorder. Colorado's behavioral health organizations indicate that contracts limit them to providing "behavioral health" services for children and that they are not equipped nor authorized to provide services for children with IDD. Advocates claim differently. Additionally, there is not currently a system for children with IDD to receive the care they need unless they are engaged in the child welfare system.

In addition to co-occurring disorders, children in child welfare require highly specialized behavioral health services — such as attachment therapy or adoption informed therapy which is often times not covered by Colorado's behavioral health system. The CPO produced a report on Colorado's adoption assistance program which addressed the lack of mental health services for adoptive children. (*See CPO Investigative Report 2016-2074, page 34-37.*)

The result is that children with the highest needs in our state are not getting the specialized care that they require. This makes it extraordinarily difficult for human service agencies to provide the services that children and families need. We need a strong, collaborative system where both the Colorado Department of Human Services and Colorado Department of Health Care Policy and Financing work together to provide a strong array of services for children in the child welfare system. Currently there are discussions between agencies on this issue but the

problem requires more immediate, visible and direct action. The CPO issued a recommendation that these agencies collaborate to work on these issues. (See *CPO Investigative Report 2016-2074, Recommendation #14.*)

### Consolidated Appropriations for Health, Life, and Dental Expenditures

110. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

The Judicial Department is very sympathetic to staff's desire to simplify HLD calculations at figure setting, however, the Judicial Department and each agency feels very strongly that each entity in the Judicial Department is independent and their budgets should be reflective of that fact. Consolidating HLD will impose an administrative burden on the Judicial Department and the independent agencies, as it will require the generation of accounting documents to transfer HLD allocations to each agency that is currently unnecessary with separate HLD appropriations.

Further, the Judicial Department struggles with the idea of potentially having to use its over expenditure authority on HLD when there may be competing higher priority needs. Last year the Office of Alternative Defense Counsel used over \$900,000 of the transfer authority for their purposes, and the year before the \$1 million was used by a combination of various agencies. Based on historic usage of the over expenditure authority, there is not a great deal of room to accommodate potential HLD transfers.

Another question that may arise is whether the State Controller would view this HLD consolidation and corresponding transfers as counting against the Judicial Department's \$1 million transfer authority granted in C.R.S §24-75-110 (which could well exceed that amount in aggregate). The \$1 million transfer authority is critical to the balancing of the Judicial budget and the Judicial Department is reluctant to use it for HLD transfers.

### **ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

111. Please provide written input on HCPF's request to move the Children's Habilitation Residential Program waiver from the Division of Child Welfare in DHS to the Office of Community Living in HCPF; and on the request that statute be changed to allow access to waiver services without a dependency and neglect finding and out of home placement of the child. Please see Section 25.5-5-306, C.R.S.

The CPO has received numerous citizen complaints on this issue. The CPO supports the HCPF's request to move the Children's Habilitation Residential Program waiver from the Division of Child Welfare in the CDHS to the Office of Community Living in HCPF. Additionally, the CPO supports the request to remove the requirement that a child meet the out of home placement criteria and that a child be adjudicated "neglected and dependent" before a child can access services under the CHRP waiver for the following reasons:

- The CHRP waiver is the only out of home option for children with intellectual/developmental disabilities (IDD) and children with a dual diagnosis of IDD and a behavioral health disorder. Removing the requirement that a child be adjudicated "neglected or dependent," would expand the waiver, thereby, allowing more children with these diagnoses to access services.
- Historically, families of these high needs children have had to relinquish custody of their child to a human services department to secure appropriate out of home services. It is not appropriate to separate families in order to receive critical mental health services. Additionally, families are extremely hesitant to approach human services departments because of the stigma associated with the child welfare system. Family members who hold professional licenses, such as therapists, doctors or day care providers, worry that their licenses may be negatively impacted by a court finding that their child has been abused or neglected. The result is that families do not seek the services they need for their child and children continue to suffer. Removal of the out of home placement requirement would allow more parents and children to access the services they need without the stigma of entering the child welfare system.

112. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not *implemented* or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

For the past seven years, the CPO has focused exclusively on providing one-on-one services to citizens who have concerns about an individual case within the child protection system.

Colorado state law requires that the Ombudsman: *"...recommend to the general assembly, the executive director, and any appropriate agency or entity statutory, budgetary, regulatory, and administrative changes, **including systemic changes [emphasis added], to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado.**" C.R.S. 19-3.3-103(2)(e).*

In December of this year, the CPO completed its first ever statewide investigation. This 123-page report explored the effectiveness of Colorado's adoption assistance program and the CPO issued 14 recommendations for systemic improvement. (*See CPO Investigative Report 2016-2074.*) This investigation, however, took 16 months to complete due to the CPO's lack

of staffing. Currently, the CPO has an open investigation regarding the actions leading to the closure of a licensed residential child care facility called El Pueblo. This investigation is exceedingly complex and involves the investigation of several different entities. The CPO has also been requested to investigate an additional four child protection issues, but currently does not have the resources to do so.

The CPO is unable to meet its statutory requirement to conduct statewide investigations or issue timely recommendations for systemic change in the child protection system without additional personnel.

113. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

As an independent state agency, the CPO is not associated with the Chief Information Security Office (CISO) in the Office of Technology. The CPO privately contracts IT services through a Colorado company called Computer Crews.

Because of the unique nature of the CPO's work which includes the handling of personal and private information (medical records, law enforcement records, human services records and treatment records), Computer Crews completed a full agency audit of the CPO's IT systems to assess cyber security needs and offer solutions in areas that required improvement. As a result of this audit, Computer Crews identified several opportunities to improve overall security. The CPO recently completed a plan of action for cyber security with our IT provider. In doing so, the CPO implemented several new technologies, including:

- Symantec Endpoint Protection – A centrally managed anti-virus software.
- CryptoPrevent – An anti-ransomware software.
- Symantec Cloud – An encrypted email service.

In July 2017, the CPO also transitioned to a paperless case management system through Salesforce. In doing so, the CPO subscribed to the Government Cloud and added the Salesforce Platform Encryption program. As a member of the Government Cloud, the CPO is ensured that all data in transit to the cloud is encrypted. With the addition of the Salesforce Platform Encryption, the CPO is ensured that all personal information stored within the case management system, including uploaded documents, are encrypted at rest (within the cloud) as well. These services offer the CPO the highest level of secure storage of all information collected and stored on the CPO case management system.

The CPO is in continuous discussions with Computer Crews on how we may be able to improve our cyber security. In doing so, future plans may include encrypting computer endpoints to prevent access to data on lost and/or stolen devices. Should a CPO device be lost or stolen, this software would render the hard drives useless; therefore, protecting all information that is stored within. For budgetary reasons, this has not yet been implemented.

114. What impact do the SMART Act and Lean processes have on your budget requests? Could they be used more effectively?

Completing the SMART Act process has proven extremely beneficial for the CPO. In particular, the process of creating strategic policy initiatives for the CPO's Performance Plan each fiscal year has helped the CPO focus its strategic planning and helped inform the CPO's annual budget. The ability to create key metrics for each fiscal year is a valuable tool to keep the CPO on track when working to complete both short and long-term goals. Unfortunately, the CPO has a limited staff of 6 FTEs and the number of reports required under the SMART Act does strain available staff and resources.

The CPO finds great value in completing four of the seven reports, including its Performance Plan, Performance Management System and two quarterly Performance Evaluation reports. Completing the other three reports, including the Annual Performance Report and up to two additional quarterly Performance Evaluations does place a strain on staff. The CPO is also statutorily required to submit an annual report on September 1 of each year. Consistently, this creates a heavy workload for staff each fall, as the Performance Management System is due on August 1 and the Quarter One Evaluation is due in early October. Below is a timeline of each deadline the CPO must meet during Fiscal Year 2017-18 to fulfill the requirements of the SMART Act and the submission of the CPO's annual report.

- June 21, 2017 – CPO Performance Plan FY 2017-18
- August 1, 2017 – CPO Performance Management System FY 2017-18
- September 1, 2017 – CPO Annual Report (See C.R.S. 19-3.3-108)
- October 12, 2017 – CPO Quarter One Performance Evaluation FY 2017-18
- October 27, 2017 – CPO Annual Performance Report FY 2017-18
- January 11, 2018 – CPO Quarter Two Performance Evaluation FY 2017-18
- April 13, 2018 – CPO Quarter Three Performance Evaluation FY 2017-18
- July 1, 2018 – CPO Performance Plan FY 2018-19
- July 11, 2018 – CPO Quarter Four Performance Evaluation FY 2017-18

115. Does your Department use evidence-based analysis as a foundation for your budget request? If so, please provide a definition for your use of "evidence-based," indicate which programs are "evidence-based," and describe the evidence used to support these programs.

Nationally, ombudsmen are exploring whether "evidence-based" practices fit within the ombudsman role. To date, there is no consensus on how such practice applies. Ombudsmen

draw upon their knowledge, skills and experience, as well as the values, needs and expectations of the citizens and stakeholders to complete their work. Ombudsman programs across the country reflect this diverse approach. For the CPO, this translates into ensuring that the agency has a balanced level of expertise across the child protection system, as well as the ability to meet the needs of citizens and stakeholders in a thorough and timely manner.

In terms of the CPO budget request, the CPO analyzes several bodies of information including:

- Current caseload size
- Time spent on individual complaints
- Time spent on systemic complaints
- Projected caseload growth
- Complexity of complaints

The CPO also continually examines its statutory language to ensure that the CPO is meeting the expectations as outlined in law.

This year specifically, the CPO has found, through examination of our data and statute, as well as conversations with stakeholders, a growing need to expand the scope of work being conducted. An example of this was the completion of a 16-month study of the adoption assistance program across Colorado, culminating in a robust report to the Colorado Department of Human Services. Completing this project allowed the CPO, for the first time, to understand the complexity of large systemic work and therefore the need to shift staffing responsibilities, expand the expertise of the CPO staff and ultimately request an increase in CPO staffing levels.

The data has shown that if the CPO is to continue to meet the needs of the citizens and stakeholders in Colorado in a timely fashion, as well as complete larger projects which will impact overall systemic reform as outlined in statute, an increase in staffing will be required.

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**CHILD PROTECTION**  
**OMBUDSMAN**  
of COLORADO

Joint Budget Committee  
FY 2018-19 Budget Hearing  
December 18, 2017

**Stephanie Villafuerte**  
**Child Protection Ombudsman**

# *Senate Bill 10-171*

*“The Office of the Child Protection Ombudsman has the power and duty to facilitate a process of independent, impartial review of family and community concerns; request independent, accurate information and to conduct case reviews to help resolve child protection issues and overall systemic issues.”*

# Our Primary Functions

➤ Navigate

➤ Investigate

➤ Illuminate

➤ Reform

# Our Vision

*“Ensuring safety for Colorado’s children today and envisioning a stronger **child protection system** for the future.”*

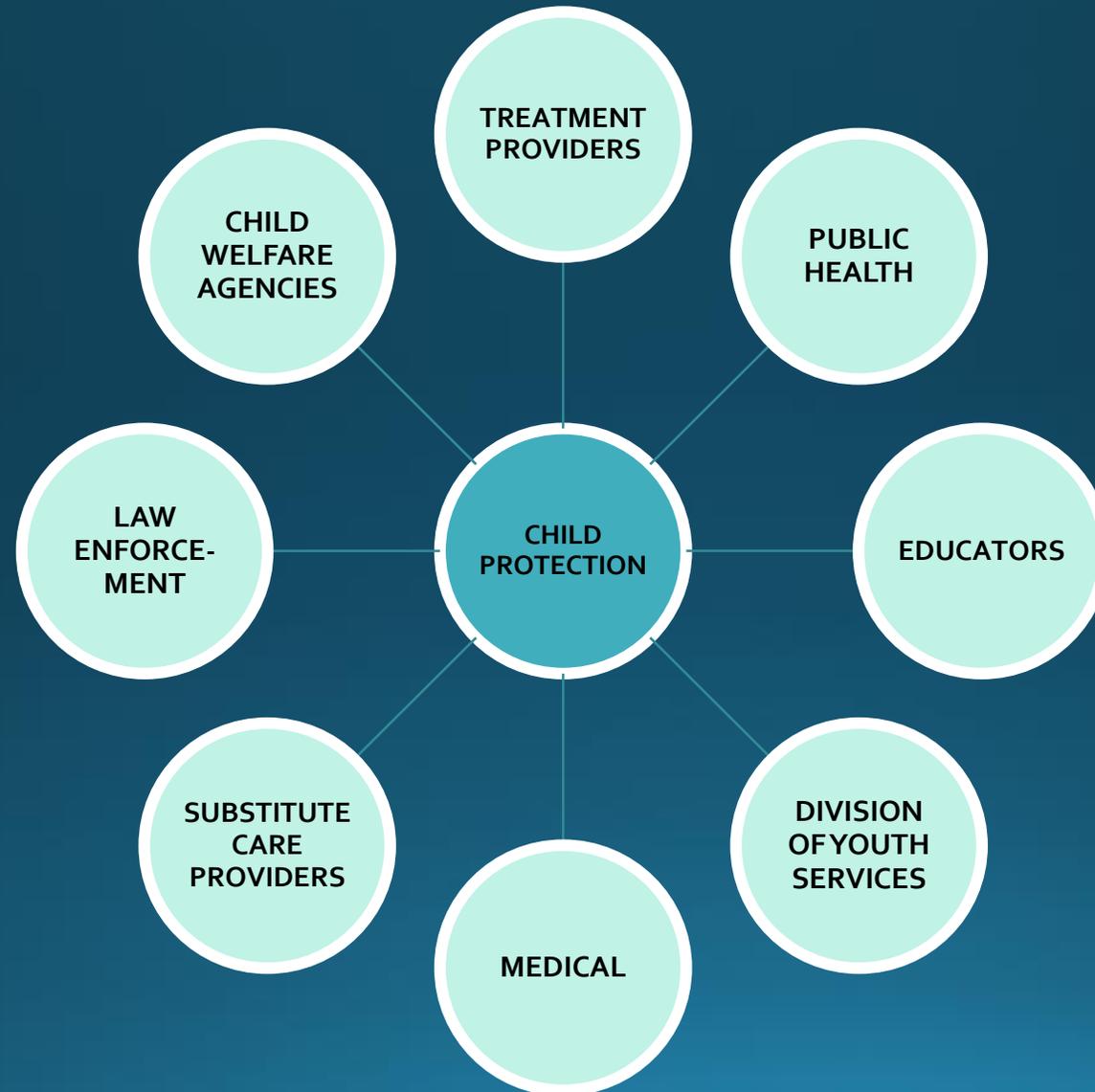
# Quick CPO Facts

- CPO handled 577 calls in FY 2016-17
- Since inception the CPO has made 425 recommendations
- Current staff = 6 FTEs
- Over 100 years of cumulative experience serving children and families
- Areas of expertise include
  - Human Services
  - Youth Services
  - Mental Health
  - Drug and alcohol abuse
  - Domestic Violence
  - Justice System

# Ombudsman Jurisdiction

- Provide oversight of Colorado's child protection system, *not solely* child welfare
- The Ombudsman is charged with:
  - Receiving the public's complaints concerning child protective services by or on behalf of a child regarding action, inaction, or decision of *any public agency or any provider* that receives *public moneys* that adversely affect the safety, permanency, or well-being of a child.
  - Remaining independent of Executive, Legislative and Judicial branches of government
- The Ombudsman is not authorized, nor can it be directed, to intervene in any criminal or civil judicial proceedings or to interfere in a criminal investigation.  
C.R.S. 19-3.3-103(4)

# The Child Protection System



# Our Statutory Charge

- Well-publicized, easily accessible, transparent grievance process
- Investigate public complaints
- Improve accountability and transparency in the child protection system by making system recommendations

# The Work

## ➤ Systemic Reform

- Statewide adoption assistance program
- Statewide oversight for licensed out-of-home facilities
- Institutional abuse and neglect
- Caseworker certification process

## ➤ Individual Case Investigations

- Lack of responses to abuse/neglect allegations
- Assessment of needed services
- Service delivery

# Budget Requests 2018-19

➤ **Current FY 2017-18 Budget: \$782,421**

➤ **Requests for FY 2018-19**

➤ 1.5 FTE for Child Protection System's Analysts

➤ .5 FTE for Administrative Coordinator

➤ Information and Technology Improvements

➤ One-time buildout expenses to accommodate new FTEs

➤ **Total Request: \$234,940**

# Justification for Budget Request

- Address increased complexity of individual case concerns
- Address individual case concerns timely
- Address large scale systemic concerns in a timely and efficient way
- Expand the scope of the CPO jurisdiction to align with statutory mandates
- Ability to follow CPO recommendations made to agencies/providers
- Increase statewide outreach

# Thank You

Stephanie Villafuerte, Ombudsman

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**INTRODUCTIONS AND OPENING COMMENTS**

Matt Smith, IEC Chair  
April Jones, IEC Vice-Chair  
Dino Ioannides, IEC Executive Director

**QUESTIONS**

There are no questions for which the Independent Ethics Commission has been requested to provide verbal answers.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

1. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

The Independent Ethics Commission believes it has implemented all applicable legislation.

2. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Chief Information Security Office (CISO) in the Office of Information Technology (OIT)? Have your information technology infrastructure and policies been audited for cybersecurity capabilities? If so, was the audit completed by the legislative auditor or an outside entity? Do you have dedicated cybersecurity personnel? How do your cybersecurity staff interact with the CISO in OIT? What unique security issues does your Department have? Do you handle private or sensitive data? What unique cybersecurity processes or tools do you use to protect this data?

According to the memorandum of understanding executed between the Judicial Department and the Independent Ethics Commission (IEC), the Judicial Department provides support for computing devices, including software, hardware, and network support. The IEC's computing devices must comply with Judicial Department I.T. policies. With only one assigned FTE, the IEC has no in-house, dedicated cybersecurity personnel. As such, the IEC relies on the Judicial Department to implement cybersecurity measures, and to coordinate with CISO and OIT if necessary.

The IEC does handle confidential data, pursuant to the requirements of Colo. Const. Art. XXIX. This data is maintained on one computing device used on the Judicial network, and is backed up to an encrypted drive. Additional devices used for IEC meetings also contain confidential data and, for security purposes, this data is routinely and permanently deleted. The IEC does not employ any unique

cybersecurity measures beyond the protections afforded by the Judicial Department and as otherwise described above.

3. Judicial Branch agencies have opposed the consolidation of the Branch's appropriations for Health, Life, and Dental (HLD) in the Long Bill. The JBC staff briefing issue on this topic suggests that HLD consolidation problems can be substantially diminished through HLD supplementals and through the overexpenditure authority granted to the Chief Justice. Does this eliminate your objection to HLD consolidation? If not, please explain in detail the problems that you believe will arise from consolidation. If you believe independence would be compromised, please give examples of how it would be compromised.

The Independent Ethics Commission (IEC) is uniquely situated among the various independent agencies in the Judicial Department. It is the smallest agency, with only one staff member. As such, the IEC relies on the Judicial Department to assist with budgetary matters. The IEC will continue to work closely with the Judicial Department in whatever way is necessary, regardless of the HLD budgetary process outcome.

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## 4:50 – 5:00 COLORADO DISTRICT ATTORNEYS ASSOCIATION (CDAC)

### INTRODUCTIONS AND OPENING COMMENTS

Thomas Raynes, Colorado District Attorneys Council Executive Director

Craig Evans, Colorado District Attorneys Council Chief Information Officer

### QUESTIONS

*119. What is driving the increase in prosecutions? Is it more crimes or is it more filings that DAs are bringing to court? Is there any way to contain the costs associated with it? How does this compare with what is happening in other states?*

**What is driving the increase in prosecutions?** DAs are handling the cases that are brought to them and filing when appropriate. Trying to pinpoint a single cause is unlikely. CDAC has been working all fall in collaboration with the Governor’s office to try to answer this significant issue in Colorado. If compared to the late 1990’s and early 2000’s, our crime rates are still lower than in those years. However, the rate of violent crimes reported in the last three years is up significantly and at a level that should raise serious concern when compared to rates from 2011-2014. So the trend showing an increase in violent crime of nearly 20% in the last three years under that analysis is alarming and one that we need to address as best we can by examining all data available from all sources in the system. Potential causes could possibly include population increases, the addition some new felony offenses ( although other felonies were reduced a few years ago), increased staffing of some law enforcement agencies, and possibly an over-reach on criminal justice reforms that have resulted in lower sentences or reduced time served via parole reductions. The bottom line is we don’t know but we need to work together to research these issues and trends objectively.

**Is it more crimes or is it more filings that DAs are bringing to court?** DAs don’t create crime. Crimes are committed, they are reported and then DAs make filing decisions. Our ethical standard is to file on a felony in which there is a reasonable likelihood of conviction. While some general data from DCJ indicates arrests have remained flat but felony filings have gone up, CDAC research indicates that reports and arrests for violent crime have gone up in a similar rate to the number of felony filings. This would make sense as the more serious the offense the more likely the case is filed. Still we need more data. Expanding the eDiscovery system into an information sharing system with law enforcement might offer a pathway toward the data we are all looking for in this matter.

**Is there any way to contain the costs associated with it?** DAs offices are already severely understaffed. As a general principal only 2-4% of cases go to trial. The remaining cases are resolved by plea agreements. Another tremendous cost relates to the exponential increase in post-conviction actions and the length of time those proceedings take. These proceedings are really “mini” appeals cases that are consuming the resources and time of local DA’s offices and attorneys trying to handle pending matters on a daily basis. In Colorado, the Attorney General is responsible for handling criminal appeals. One idea might be to make the AG available to handle

these post-conviction cases or at least those involving high level felonies by creating a post-conviction unit. This would let the courtroom DAs focus more on the day to day crime coming through their doors and allow the offices to address what the funding sources, county commissioners, think they are funding – the current crimes being committed in their communities.

**How does this compare with what is happening in other states?** Nationally, according to the FBI, the number of violent crime rose for the second straight year, increasing 4.1% in 2016 alone. Murder and non-negligent manslaughter increased 8.6% since 2015, aggravated assault went up 5.1% and Rapes increased 4.9% in the same time period. In an informal polling of some colleagues nationally, not every state is seeing the same thing.

120. Please update the Committee on e-Discovery.

**Colorado District Attorneys Council E-Discovery Project Update Report to  
The Colorado General Assembly Joint Budget Committee  
December 14, 2017**

The eDiscovery system is completed and fully implemented in 20 out of 22 judicial districts. The 2<sup>nd</sup> judicial district (Denver) and the 20<sup>st</sup> judicial district (Boulder County) continue to operate their own eDiscovery system that is locally funded by their respective funding entities. While not integrated with the CDAC eDiscovery system, both of these systems are in compliance with the requirements of SB 14-190 and modifications to Rule 16 of the Colorado Rules of Criminal Procedure as each system provides electronic discovery at no charge to defendants or their attorneys. Final implementation in the 14<sup>th</sup> JD (Grand, Routt, Moffat) is in progress but has been delayed by technological impediments. This district fully intends to complete implementation as soon as local resources allow. Pursuant to the newly revised Rule 16 C.R.Crim.P. Rule 16 (effective 9/28/17), no District Attorney's office can charge for discovery any longer.

While implementation was challenging, the overall assessment of eDiscovery is that it is an overwhelming success. CDAC was blessed to have extraordinary support both in terms of resources and staff assistance from District Attorney George Brauchler's office in the 18<sup>th</sup> JD (Arapahoe, Douglas, Elbert, Lincoln). The 18<sup>th</sup> judicial district collaborated with CDAC and Conduent (formerly Xerox) and served as the sole pilot location for nearly a year and deserves a lion's share of any accolades and recognition related to the success of the project. The project is fluid and extremely nimble in nature as it is continually being modified and enhanced to better serve the law enforcement community, prosecutors and the defense bar. While there were many naysayers and complaints from both law enforcement and prosecutors at the outset, the criticisms now are rare and usually only due to either simple misunderstandings or training issues. In fact, many of the systems original critics are now many of its strongest supporters, to include one of the newest members on the eDiscovery Steering Committee, Sterling Police Chief Tyson Kerr.

The CDAC eDiscovery model has generated national interest as it is the only system of its kind in the United States. The Province of Ontario has requested a overview presentation in early January. Further, just two weeks ago, CDAC and Conduent were invited to present to the National Association of Prosecutor Coordinators (NAPC) semi-annual conference in Utah. As a result of this presentation, the states of Michigan, Mississippi, North Carolina, New York, Louisiana, and Illinois are interested in learning more about what we have achieved here in Colorado.

Some raw number data related to what the system does includes the following:

**Law Enforcement to DAs:**

Cases received: 95,185                      Files received: 1,080,403              Total size: 27 TB (Terabytes)

**From DAs to Defense:**

Zip files: 280,746      Total files contained in the ZIP files: 3,553,362      Total size: 43 TB

**Defense Attorney's registered: 2,192**

**Defense administrative personnel registered: 542**

## **eDiscovery – Potential Next Steps and Amazing Possibilities**

### **A JBC Decision Point**

As a result of this collaborative effort and the ongoing participation of the 18<sup>th</sup> JD along with several other offices like the 17<sup>th</sup> JD, the 4<sup>th</sup> JD, the 8<sup>th</sup> JD and others the system continues to evolve and is now poised to move toward with even more incredible possibilities. We are currently close to the inclusion of a video analytics capability that will greatly assist law enforcement agencies through frame by frame video detection and identifying processes.

CDAC, in conjunction with Conduent, is now in a position to use this technology to gather more data from the law enforcement side, and then combine that with data from the DAs and the Courts (charge/dispo/sentence etc.) to begin applying analytics to all this data in order to answer questions that legislators often ask and questions that we in prosecution and law enforcement seek to answer in terms of criminal justice policy, to include:

- Are the sentences having the desired outcome
- Can we reduce a type of sentence and achieve the same desired outcome
- Recidivism data
- Track crime/charge/disposition/sentence to compare against recidivism data
- Officer cases time to sentencing
- Relationship of prison time to non-charged offenses
- PROVIDED A COMPLETE LIFE CYCLE OF SPECIFIC CRIMES AND MAP THE OUTCOMES

We can also use this technology to add even more data (crash data, driving history, etc..) and make that available to other agencies/departments for their analytical concerns such as:

- Where are the majority of DUI's happening so we can focus prevention resources (ads, billboards, etc.) in that area
- What were the arrest charges (as opposed to the DA charges or pleas) so we can track the true offenses and prevent them
- Assist DMV by providing electronic citation data to them.

These enhancements are easily within immediate reach as the platform of eDiscovery is the foundation and is already built. Adding this additional functionality could be completed with 12 months of funding. These new opportunities will require additional funding but the potential return is invaluable. A current estimate of cost includes a onetime implementation cost of approximately \$710,000 and then an annual maintenance cost of \$554,000. Once completed, all of these information sources and analytical capabilities could be shared between law enforcement agencies statewide at NO COST to local agencies.