

DEPARTMENT OF LAW  
FY 2021-22 JOINT BUDGET COMMITTEE HEARING AGENDA

**Tuesday, January 5, 2021**  
**1:30 pm – 2:45 pm**

**10:45-11:00    INTRODUCTIONS AND OPENING COMMENTS**

Presenter: Philip J. Weiser, Attorney General

**11:00-11:30    2020 BUDGET BALANCING ACTIONS**

Main Presenters:

1. Philip J. Weiser, Attorney General
2. Natalie Hanlon Leh, Chief Deputy Attorney General
3. Eric Meyer, Chief Operating Officer

Supporting Presenters:

4. Kurt Morrison, Deputy Attorney General for Intergovt. Affairs
5. Jeff Riester, Assistant Attorney General/Director of Legislative Affairs
6. Jon Reitan, Budget Director

Topics:

7. Appellate and Criminal Justice Backlog: Pages 2-4, Questions 1-4 in the packet.
8. Other Programs: Pages 4-10, Questions 5-11 in the packet.

**11:30-12:00    MAJOR LITIGATION PENDING AGAINST THE STATE**

*\* The Committee may go into Executive Session to discuss any ongoing litigation*

Main Presenters:

9. Philip J. Weiser, Attorney General
10. Natalie Hanlon Leh Chief Deputy Attorney General

Topics:

11. Tobacco or Nicotine Related Litigation: Pages 10-11, Questions 12-13 in the packet.
12. Opioids: Pages 11-12, Question 14 in the packet.
13. Class Actions: Page 12, Questions 15-16 in the packet.

DEPARTMENT OF LAW  
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Tuesday, January 5, 2021  
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2020 BUDGET BALANCING ACTIONS

*APPELLATE AND CRIMINAL JUSTICE BACKLOG*

Discuss the Department's work to address the backlog of cases pending before appellate courts.

1. Provide a summary of budget changes since FY 2018-19 to address the backlog, including, e.g., positions added and/or removed through budget actions.

**Response:** The Department of Law ("Department" or "DOL") requested and was appropriated 4 Fellow Attorney positions to help address the Criminal Appeals backlog beginning in FY 2019-20. The intent of the appropriation was to attract young attorneys so that the DOL could make annual, significant impacts to the backlog and provide meaningful experience for entry-level attorneys to better position them to compete for other positions within the Department or in the greater legal community. Additionally, this arrangement develops a cadre of attorneys with significant and valuable public service experience.

In order to balance the state General Fund ("GF") for FY 2020-21, the General Assembly reduced the Criminal Appeals Section by 2.5 full time employees ("FTE") (1.0 Assistant Attorney General position and 1.5 Fellow Attorney positions). This reduction had the effect of cancelling out additional productivity associated with the addition of the 4 Fellow positions filled by more entry-level attorneys, which do not provide the same level of output and briefs as traditional FTE due to necessary training and oversight.

2. Discuss operational changes the Department has made to increase the efficiency of Department staff to reduce the number of days an appellate case remains pending.

**Response:** With the onset of the COVID-19 pandemic, DOL personnel began working remotely. The unique needs of an entirely remote-work environment required the adoption of numerous electronic tools that the Criminal Appeals Section harnessed to promote efficiency. One such tool is the Microsoft Teams office communications function, which allows the Section's attorneys to present legal questions to all the Section's other attorneys simultaneously. Any attorney with insights into those questions can immediately offer expert advice and deliver more efficient and timely assistance. The Criminal Appeals Section also now relies heavily on video conferencing, which the Section's attorneys use to collaboratively discuss legal issues and prepare for oral arguments. This has also produced far greater time efficiencies for Section staff.

The Section has also worked with the Court of Appeals to receive appellate records electronically, which the Section's support staff uploads to the Department's ProLaw case management system. Attorneys working remotely can then easily access and review those appellate records while working on briefs. In addition, the Section collaborated with the Department's IT personnel to develop an automatically generated electronic spreadsheet of newly arrived cases that need to be assigned. The spreadsheet is made available to the Section's attorneys, who can remotely review the issues presented in the cases and identify cases in which they have special expertise. That, in turn, allows the Section's supervisors to assign cases to the attorneys who are best suited to efficiently write the briefs.

Earlier innovations, adopted prior to the pandemic, remain in use. Those include automatically generated "case aging" reports that show the age of all the cases assigned to each attorney. Supervisors review those reports and periodically redistribute caseloads to ensure that aging cases are briefed in a timely fashion. Another key innovation, adopted several years ago but still in use, is the Westlaw Knowledge Management database. That database contains all briefs filed by the Section's attorneys in recent years; attorneys can quickly retrieve electronic copies of those briefs and draw upon the earlier analysis and research. The Westlaw Knowledge Management tool integrates with the publicly available Westlaw databases of judicial opinions and treatises, which allows attorneys to quickly update the research contained in the earlier briefs.

Lastly, in 2019, the Department instituted a Fellowship program, through which newer attorneys, serving two-year terms, work on criminal appeals, as described in the Response to Question 1.

The COVID-19 pandemic introduces novel questions to criminal justice, including defendant's right to a speedy trial when courts are closed due to public health orders, that has the potential to increase the workload of the appellate courts.

3. What observations has the Attorney General made with respect to how the pandemic will affect backlogs;

**Response:** The Court of Appeals reported that, for the period from March 2020 to mid-October 2020, compared with the same period in 2019, there was a 21 percent decrease in newly filed criminal appeals overall, with a 34 percent drop in direct appeals. Direct appeals are appeals from trial convictions. Those decreased because, during the pandemic, few trials were being held. Other types of criminal appeals, including appeals from a district court's denial of a post-conviction motion, slightly increased. This increase may have occurred because, with no trials occurring, the district courts may have had more time to review cases and issue written rulings on post-conviction motions.

During informal discussions, the Office of the State Public Defender ("OSPD") indicated that the decrease in newly filed appeals allowed them to make some progress in decreasing their backlog. But it is uncertain whether the DOL will see a similar decrease.

This is because, even with a modest decrease in the OSPD backlog, their backlog remains sufficiently large that their office is expected to continue to file a steady stream of briefs to which the DOL will need to respond. For a pandemic-caused decrease in new appeals to affect the DOL's backlog, the pandemic would have to continue long enough for the OSPD to work through its backlog and, at that point, decrease their monthly output of briefs that require a DOL response.

The DOL will continue to monitor backlogs and case filing trends with the goal of staying abreast of the pandemic's unpredictable effects.

4. How are attorneys general in other states managing caseload given how courts have had to operate in 2020?

**Response:** Anecdotal information indicates that the experience of attorneys general in other states and our experience in Colorado is similar. As in Colorado, other states are conducting oral arguments through video conferencing, and are working and filing briefs remotely. Other states also report that, as in Colorado, there has been a decrease in the number of direct appeals of trial convictions, but no decrease in post-conviction and habeas appeals.

#### *EFFECTS ON OTHER PROGRAMS*

5. Please describe the Department's actions to implement the Health, Life, and Dental decrease in lieu of a 5.0 percent General Fund salary base reduction. Please include dollar and percentage share data on planned "allocations" of the decrease to all divisions and programs within the Department. Please describe the use of vacancy savings, delayed hiring, and the implementation of one-time or ongoing operating savings. Please describe the urgency of the Department's need to engage in a furlough in FY 2020-21 due to the inability to achieve savings in other ways.

**Response:** When the pandemic emerged, the DOL positioned itself to address an economic reduction and deploy remote work systems. The DOL paused hiring, at that time, in the event the DOL workload and resources would be compromised. This pause, at the beginning of the calendar year, allowed the DOL to systematically review and plan for the potential repurposing of staff from GF positions to other positions that still accommodated for their professional expertise and interests, while addressing critical state issues. These staffing reductions and refinancing, coupled with GF reductions, allowed the DOL to maintain core and critical functions.

The 5 percent GF reduction applied to the DOL Health, Life, and Dental (HLD) line item, instead of personal services or program lines, provided the DOL the greatest flexibility to ensure appropriate resources can be placed in each budget line to meet anticipated spending for FY 2020-21. The DOL provided estimates of HLD, Amortization Equalization Disbursement (AED), Supplemental Amortization Equalization Disbursement (SAED), and Short-Term Disability (STD) POT moves in the DOL budget request for FY 2020-21.

Additionally, the DOL provides the actual POT moves for FY 2018-19 and FY 2019-20. All of these actuals and estimates can be viewed on pages 3-18 through 3-23 and pages 3-35 through 3-50 of the FY 2021-22 DOL Budget Request.

Additional decisions were made across the DOL to ensure expenses stay within budget allocations. Two critical positions in the DOL Information Technology Office remained vacant for the first part of the current fiscal year. This was a deliberate decision to meet budget limitations. These two positions are currently being filled and the DOL anticipates these positions will be staffed in December. Additionally, the DOL held vacant two positions in the Office of Community Engagement ("OCE") Line Item. These vacancies are anticipated to be filled in the second half of this fiscal year.

Lastly, the DOL does not anticipate the need for furloughs during FY 2020-21. Although certain workloads and capacities are strained, fiscal steps taken up to this point positioned the DOL to ensure estimated expenditures stay within available budgets and revenue estimates in each budget line item.

6. Please describe how the changes implemented in response to the COVID-19 pandemic have changed the nature of the Department's work. Please address programmatic, budgetary, and office space impacts.

**Response:** The effects of the COVID-19 pandemic resulted in a substantial surge in enforcement activity related to public health orders and executive orders. At the beginning of the pandemic, the DOL established a team from all divisions/sections to handle the COVID-19 hotline. At its peak, the DOL had over 50 employees addressing COVID-related issues, responses, and communications. Additionally, litigation activity increased associated with the implementation of public health order restrictions and executive order accommodations that addressed the impacts of the pandemic. The DOL also provided significantly more legal advice and representation for a variety of state regulatory programs that received COVID-related complaints against licensees, as well as enforcement of various public health orders.

The DOL did not experience a notable decrease in total staffing due to the budget reductions, to date. This is due to the number of FTE reduced by GF reductions being offset by FTE and funding received from special bills enacted during the 2020 legislative session. While the DOL did lose positions, most GF reductions in the DOL were refinanced with other fund sources.

As articulated in the Response to Question 5, the DOL paused hiring at the beginning of the calendar year, thereby allowing the DOL the bandwidth to make thoughtful suggestions to JBC Staff that addressed GF budget reductions and that would maintain the necessary resources to address State and Attorney General priorities. Additionally, the DOL made a deliberate decision to utilize unused operating budgets and any available dollars in the Information Technology Asset Maintenance line to maximize laptop

purchases and network upgrades, thereby ensuring DOL staff could continue their work and representation of client agencies remotely.

Some of the FTE adjustments include: refinancing of all of the Consumer Protection attorneys supported by the General Fund to being supported by the Consumer Protection Custodial Fund; refinancing a criminal investigator and an attorney position from the Special Prosecution line item to the Medicaid Fraud Control Unit; moving a prosecution attorney to a position representing the Department of Corrections; transferring a Safe2Tell employee to a training position in the Peace Officers Standards and Training ("POST") program; and other similar budget adjustments.

Prior to the pandemic, the DOL was at maximum space capacity in the Ralph L. Carr Judicial Building. This has not changed. The DOL is currently assessing potential flex place work arrangements, for post-COVID office space assignments. This assessment will analyze the type of work each employee performs and what the most appropriate office space would be for that position based on the nature of work, any sensitive data, and amount of time that position would need office space. The DOL anticipates one possible outcome may be the reconfiguration of current individual office space into shared space arrangements. If successful, this option could significantly alleviate the continued challenge of space constraints. The DOL anticipates this analysis to be finalized by the end of the current fiscal year. The DOL does not anticipate any reduction in its footprint in the Ralph L. Carr Judicial Building.

Discuss the effect budget reductions and the COVID-19 pandemic, including, e.g., actions taken by the Department, lost opportunities, response to changes by those served, and other notable information, have had on?"

7. Safe2Tell, including call volume; and

**Response:**

Safe2Tell ("S2T") 2020 tip volume decreased by over 55 percent compared with the same period during the previous school year. Additionally, the DOL witnessed shifts in the most frequently reported tip categories that reflect the current pandemic (i.e. increase in welfare checks, cyber-bullying, requesting information). Safe2Tell received 398 tips containing COVID keywords to date.

The 2020 budget balancing reductions reduced S2T staff by 1.0 FTE. However, due to one-time CARES Act funding provided by the General Assembly through House Bill 20-1411, there is the ability to provide limited S2T public service announcements and distribution materials targeted to students, but solely for students in middle and high schools.

Because of COVID-19, S2T was unable to conduct face-to-face interactions with stakeholders. Twenty-one in-person trainings were cancelled. Furthermore, conference

attendances were canceled, which have traditionally been a strong tool to distribute promotional materials and awareness information.

The effect of COVID-19 on S2T program customers are particularly acute because schools engaged in remote or hybrid learning have challenges responding to tips because they do not have face-to-face interaction with students on a regular basis. School multidisciplinary teams that use remote learning models have limited interaction with their students and a reduced awareness of potential concerning behaviors. Students in remote learning environments have more limited interactions with their peers and a lessened awareness of potential concerning behaviors, resulting in the program's lessened impact due to its reliance on tips.

8. Training provided by the Peace Officers Standards Training (POST) Board

**Response:**

The Peace Officer Standards and Training ("POST") Board absorbed a roughly \$1M reduction in funding, due to the elimination of Marijuana Tax Cash Fund support of POST Board programs. \$800,000 of the \$1M was traditionally dedicated to training grant efforts throughout the State.

Additionally, the pandemic compromised the POST Board's abilities to facilitate needed, annual training for peace officers. In-person trainings have been cancelled. This issue forced a reprioritization from trainings to the purchase of much needed training equipment by POST grant recipients.

At this time during the previous fiscal year, a total of 31 classes had been held throughout the State, paid for by the POST Training Grant, resulting in a total of 571 peace officers trained. This fiscal year, over the same duration, 8 classes have been held throughout the State, resulting in a total of 166 peace officers trained.

Over recent years, the POST Board made conscious decisions to build the State's ability to offer POST approved on-line trainings. Those efforts are now producing results. Below are the number of participants that completed on-line training by class over the past two calendar years that were redeveloped by the POST Training Program and offered through the POST Training Portal.

<b><u>Course Title</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>
Effective Courtroom Testimony published 8/04/2020	0	1,014
SB 20-217 published 8/05/2020	0	4,922
Extreme Risk Protection Order published 12/10/2019	0	531
Support for Peace Officers published 11/04/2020	0	14

Preparing for Traumatic Experiences published 11/04/2020	0	10
DUI SFST bi-annual cert. published 4/19/2020	0	534
Combat Tourniquet published 6/26/2019	75	684
Anti-bias training published 12/23/2016	272	794
DNA published 1/06/2017	127	113
Response to Domestic Violence published 11/14/2019	6	422
Narcan published 2/01/2019	390	339
Consular Notification published 9/23/2019	5	86
VIN Inspector certification published 1/31/2020	0	349

The Department’s budget request maintains the funding level, after budget balancing reductions, as the FY 2020-21 budget. The Department’s only budget request for FY 2021-22 is a revenue reduction for amounts collected from state agencies related to the provision of legal services.

- Describe any risks associated with adopting the Department request, which spends funds that serve as a reserve to the Legal Services to State Agencies Cash Fund.

**Response:** The DOL does not anticipate any risk associated with collecting \$5M less in the FY 2021-22 for the Legal Services to State Agencies (“LSSA”) Cash Fund, compared to the estimated expenses for the LSSA cash fund in FY 2021-22. A reduction of revenue and cash will allow the fund to maintain appropriate, statutory allowable fund balances while ensuring the Fund is positioned to meet all obligations.

- The current methodology for calculating individual agency appropriations for legal services takes the average legal services use over the previous three years, how will adopting the Department’s request affect the average in future budget years?

**Response:** The DOL requests a one-time \$5M revenue reduction for the FY 2021-22 fiscal year. This request will set the revenue collection at \$5M below the appropriated budget for the LSSA Cash Fund for FY 21-22. This will reduce the legal appropriations to each State agency for one year, by allowing the DOL to use one-time fund balance in the Fund to cover part of the annual expenditures. This request will not affect the data used to establish future legal service allocations for each State agency.

The current methodology for calculating agency legal services appropriations averages the legal hours worked on behalf of each client agency for the three most recent fiscal years and averages the actual litigation costs incurred on behalf of each client agency over the same period. The average for each client agency is then converted into a percentage calculated as the client average as a percentage of the total legal hours across the State enterprise. That percentage is multiplied against the revenue need for the budget year to determine the amount collected from each client agency. As an example, if a client agency's three-year average of hours used is 10 percent of the total hours and the total revenue need to support DOL's provision of legal services is \$1M, the legal allocation would be \$100,000 to be collected from the client agency (10 percent multiplied by \$1M).

This request temporarily adjusts the revenue needed to support DOL's provision of legal services but does not adjust the calculated client agencies' average use of legal services.

11. Discuss what impacts the Department anticipates if General Fund appropriations made to it need to be reduced further to balance the budget.

**Response:** The DOL programmatic efforts funded in whole or part by the GF are limited. Programs funded by the GF include: Special Prosecution; Criminal Appeals; Medicaid Fraud Control Unit; and Federal and Interstate Water Unit.

- The Special Prosecution Unit investigates and prosecutes cases that are: (1) referred to the Department of Law because of DOL specialized knowledge and experience; or (2) multi-jurisdictional cases investigated through the use of the Statewide Grand Jury.
- The Criminal Appeals Section represents the prosecution when defendants challenge their felony convictions before state and federal appellate courts.
- The Medicaid Fraud Control Unit ("MFCU") defends the financial integrity of the State's Medicaid program and the safety of patients in Medicaid-funded facilities. The MFCU investigates and prosecutes fraud by providers against the Medicaid program and patient abuse in Medicaid-funded facilities throughout the State. The MFCU also pursues civil recoveries and damages against providers under the Colorado Medicaid False Claims Act
- The Federal and Interstate Water Unit protects the State's interests in interstate rivers with respect to both interstate water allocation and federal environmental requirements, including the National Environmental Policy Act, Endangered Species Act, and Wild and Scenic Rivers Act. The Unit also works with State water users to protect the State's interests in the timely and reasonable resolution of federal claims for water rights, including reserved water rights and claims for instream flows.

If further GF reductions are required of the DOL from any of these programs, the DOL will most likely absorb such reductions through staff layoffs. As such, the DOL's effectiveness to carry out these responsibilities will be compromised and reduced.

In addition to these efforts, the DOL is appropriated roughly \$2.8M GF to support the salaries and benefits of the 22 elected district attorneys and \$350,000 GF to support trainings conducted by the Colorado District Attorney's Council. Each of these appropriations are established statutorily. These two appropriations, which are "pass-through" funds, make up roughly 22 percent of the requested GF in the DOL's FY 2021-22 budget request.

## MAJOR LITIGATION PENDING AGAINST THE STATE

### *TOBACCO OR NICOTINE RELATED LITIGATION*

12. Because of the decreased litigation needs for the department as part of the 2018 Nonparticipating Manufacturers (NPM) Adjustment Settlement Agreement, please discuss the Master Settlement Agreement appropriation needs for the Department, including any anticipated needs to enforce the enhanced enforcement activities outlined in the settlement. Please also discuss how some of the provisions of Proposition EE may or may not align with the Department's plan for enhanced NPM enforcement activities.

**Response:** Under the Nonparticipating Manufacturers ("NPM") Adjustment Settlement Agreement, Colorado is responsible for tracking and ensuring escrow compliance on Non-Participating Manufacturer brands that are sold in the state as contraband, internet sales, and sales on tribal lands. This represents a universe of cigarettes we have not and do not currently track or trace in any way. Enforcing on these products will require enforcement efforts between the DOL and the Department of Revenue ("DOR") to find and identify these cigarettes, if any, that are sold or smuggled. No additional appropriation needs are anticipated for FY 2020-21 because Colorado settled its diligent enforcement obligations through calendar year 2022. In the near term, the DOL will work with DOR on methods that achieve diligent enforcement and avoid any penalty in future arbitrations. Identifying those methods will likely result in increased needs for appropriations in years beyond FY 2020-21 and FY 2021-22. Any additional need of resources will be coordinated with the DOR and will be addressed through formal budget requests.

Proposition EE does not directly impact Master Settlement Agreement payments or escrow compliance, as neither are impacted by the rate of the Cigarette Tax or Other Tobacco Products ("OTP") Tax. However, Proposition EE may result in increased contraband sales, Cigarette and OTP Tax evasion, and the introduction of Internet sales into Colorado off brands not legal for sale, as listed on the Colorado Certified Brands Directory. The efforts for NPM enforcement will continue to run counter and cross over with the DOR Excise Tax Division and Liquor Enforcement Division to identify these impacts from Proposition EE.

13. Understanding that the General Assembly is a party to the litigation involving passage of Proposition EE and that may limit the scope for the discussion, what information can the

Department provide surrounding litigation initiated by product manufacturers subject to taxes imposed on their products by passage of Proposition EE?

**Response:** *Smith et al v. Colorado, et al*, Civil Action No. 1:20-cv-03107 United States District Court for the District of Colorado.

This action was filed in the United States District Court in Denver, Colorado on October 15, 2020. The primary plaintiff is Liggett Group LLC and its affiliates, large discount cigarette manufacturers. The case originally named the Governor, the Attorney General and the Legislative Council as defendants. The plaintiffs filed an amended complaint on November 19, 2020. The amended complaint dismissed the Legislative Council, added the DOR, and added an individual plaintiff. As a result, the General Assembly is no longer a party to the case. The plaintiffs also filed a motion for a preliminary injunction to prevent the DOR from enforcing the minimum price provision. The case is in its early stages and the DOL is currently reviewing these recently filed documents.

#### *OPIOID LITIGATION*

14. Please provide an update on all opioid litigation efforts, including status of settlement discussions. Please address expected revenue from potential settlements, including expectations as to how those funds will be distributed.

**Response:** No settlement has been finalized as of yet. Terms continue to be negotiated, including allocation of State and local government shares from a finalized settlement, and settlement negotiations are confidential.

Bankruptcy proceedings against Purdue Pharma continue. In August 2019, prior to the bankruptcy being filed, Colorado rejected a settlement framework proposed by Purdue and the Sackler family, owners of Purdue. Colorado continues to help lead the effort to investigate through discovery in the bankruptcy action the value of Purdue, the value of Purdue's international affiliates, the Sacklers' role in the opioid epidemic, and funds transferred from Purdue to the Sackler family over the past decade. The DOL expects that a reorganization plan will be confirmed in the Purdue bankruptcy action sometime in 2021. It may be several years before distributions are made to creditors in the bankruptcy, including Colorado.

Mallinckrodt Pharmaceuticals filed Chapter 11 bankruptcy in October. Just prior to the bankruptcy, 50 states and territories agreed to a settlement in principle of opioid claims against Mallinckrodt for \$1.6 billion to be paid over time. The settlement still needs to be finalized and will need to be approved by the bankruptcy court.

No decisions have been made on expenditure of settlement dollars while negotiations are pending. In anticipation of the receipt of settlement funds, the DOL hired a director of opioid strategies to work with State and local stakeholders to identify and develop abatement programs to be funded with opioid settlement or litigation funds. Furthermore, once settlement funds are received, the Attorney General will convene the

House Bill 20-1009 advisory group established by the General Assembly to evaluate options and programs to best use such funds to mitigate the impacts of the opioid epidemic.

*CLASS ACTIONS INITIATED AGAINST STATE ENTITIES*

15. Please discuss any advice provided to the Department of Corrections (DOC) to address alleged violations of discrimination against transgender women in DOC custody.

**Response:** The DOL is not authorized to disclose attorney-client privileged advice given to client agencies. The DOL recommends that this topic of litigation, rather than specific legal advice given, is most properly addressed in executive session.

16. Litigation on behalf of students has been initiated against a large volume of institutions of higher education across the country. Discuss the national landscape of claims similarly situated to those made against Colorado institutions related to student tuition and fees paid for classes and activities during the spring semester of 2020. Include information on:

- How actions outside of Colorado may affect litigation involving the state;
- Whether the federal Department of Education has a position or has provided states with any guidance; and
- And other information the Attorney General finds would help the Committee in making future budget decisions.

**Response:** Students have brought putative class action suits against three Colorado universities: University of Colorado; Colorado State University; and Metropolitan State University of Denver. These suits seek partial refunds for the Spring 2020 semester and assert claims for breach of contract and unjust enrichment. More than 150 putative class action suits have been filed against both public and private universities across the country. While similar claims have been asserted, in the vast majority of these cases, the cases are fairly fact specific because each lawsuit is based on the particular contract that the university entered into with its students. Even within Colorado, contract language significantly differs among the universities. Rulings in cases outside Colorado will not bind Colorado courts in deciding the local cases, but local courts may find rulings in other states to be persuasive. The U.S. Department of Education has not taken any position on these suits or provided states with guidance. The impacted universities expect that litigation will continue into mid-2021 and likely longer, and that if the universities do not prevail on their legal defenses, the impact on university budgets will be significant.

17. Provide an update on the recent filing by the American Civil Liberties Union to require the Department of Corrections to reduce Colorado's inmate population due to COVID-19 (Case Number: 20CV31823).

**Response:** The DOL recommends that this topic of litigation is most properly addressed in executive session.

DEPARTMENT OF LAW  
FY 2021-22 JOINT BUDGET COMMITTEE HEARING  
**WRITTEN RESPONSES ONLY**

**COMMON QUESTIONS: PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.**

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

**Response:** As of the date of this communication, there is no legislation with a fiscal impact that the Department of Law has failed to implement, or has partially implemented, within statutory deadlines.

- 2 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations with a fiscal impact identified in the Office of the State Auditor's "Annual Report: Status of Outstanding Audit Recommendations"? What is the Department doing to resolve these HIGH PRIORITY OUTSTANDING recommendations? Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.

**Response:** The DOL is not aware of any High Priority Outstanding recommendations in the State Auditor's annual report.

The 2020 report will be published on December 7, 2020 and can be found at this link: <http://leg.colorado.gov/content/audits>. JBC staff will send out an updated link once the report is published.

- 3 For the FY 2020-21 hearing process, the Department was asked to respond to the following questions related to public awareness campaigns.

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?

Please provide an update to your response from last year, including any changes to existing campaigns and/or the addition or discontinuation of campaigns.

**Response:** The DOL engages in a number of public awareness campaign, primarily to support our Safe2Tell and Consumer Protection efforts.

***Safe2Tell Public Awareness.*** Safe2Tell engages in public awareness campaigns with the overarching goal of creating awareness of the program as a resource to youth in Colorado. Each campaign has a specific goal that addresses the availability of S2T as an anonymous reporting tool when navigating challenges facing youth. During the 2019-2020 school year, S2T conducted a teen wellness and suicide prevention public awareness campaign with the goal of reducing/ending stigma surrounding mental health and to highlight the importance for teens to talk about their struggles while stressing that they are not alone. S2T worked with Colorado Department of Human Services Office of Behavioral Health to produce a series of public service announcements (“PSA”s). These PSAs were promoted through three S2T social media accounts. In addition, S2T published two annual newsletters that featured the PSAs. The campaign launch also resulted in earned media in the form of multiple published print and television articles and stories statewide. The DOL spent \$39,038 on this campaign, which included production and distribution of the PSAs. Paid media included dissemination of the PSAs via social media advertising. Tip volume increased during the campaign as compared to the same period from the previous year.

Safe2Tell conducted one public awareness campaign during the 2020-21 school year using Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) funding to address impact of the COVID-19 pandemic on youth. The campaign involved the creation and distribution of three PSAs, each with a unique message. PSA #1 addresses student and parent stress and challenges surrounding online schooling, with the goal of showing support to students who cannot learn in person and to the students and parents who are struggling with the online learning process. PSA #2 addresses student stress caused by a lack of social interaction with the goal of supporting students with a message that while our world has changed, we have the power to seek help for friends. The goal of PSA #3 is to remind the public that Safe2tell is a resource available 24/7/365, even when schools are closed and during holidays, prolonged breaks, and shutdowns. The total cost for this campaign was \$111,000, which included PSA production and PSA dissemination through a state-approved digital firm and on broadcast television and radio via the Colorado Broadcasters Association. This campaign coincided with increased traffic to the S2T website and impressions on S2T social media accounts.

***Consumer Protection Public Awareness.***

- Stop Fraud and No Más Fraude (“NMF”) ordered promotional marketing materials for consumer education purposes, spending approximately \$4,126.40 for promotional items.
- The Department of Regulatory Agencies (“DORA”)-funded campaign through the Rocky Mountain Public Broadcasting Service (RMPBS)—DORA invited Stop Fraud

Colorado/NMF to collaborate on a COVID-19 advertising campaign through RMPBS. This ad directed viewers to Stop Fraud/NMF social media (which includes regular posting of fraud alerts) and to file complaints with our office. Ads were displayed via TV, Radio, and through a digital newsletter.

- Consumer alerts – The <https://coag.gov/coronavirus/> webpage and included consumer alerts serve as a resource for consumers, providing timely alerts, and the most up-to-date information about Coronavirus scams from DOL. The No Más Fraude team translated much of the content, replicating the content in Spanish. There are twelve consumer alerts drafted this year, ranging from COVID-19 scam information to price gouging.

- 4 Please identify how many rules you have promulgated in the past year (FY 2019-20). 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.

**Response:** C.R.S. § 24-4-103(2.5)(a), specifies the process whereby any person may request the DORA to require any agency proposing a rule to conduct a cost-benefit analysis. Additionally, C.R.S. § 24-4-103(4.5)(a), allows any person to request that a State agency conduct a regulatory analysis of proposed rule changes. Each of these analyses have specified statutory requirements. The DOL has neither been requested to conduct a cost benefit nor a regulatory analysis by DORA nor by any member of the public.

During CY20, POST modified, or recommended modification to, 28 rules and created two new rules. During CY 2019, this Board modified twelve rules.

In 2020, the Consumer Credit Unit commenced rulemaking under the Colorado Fair Debt Collection Practices Act by holding a stakeholder meeting and soliciting comment. In 2019, the Consumer Credit Unit promulgated three rules for the Colorado Student Loan Servicer Act, created by Senate Bill 19-002. These rules address annual licensing and investigation fees and establishing procedures for federal student loan servicing contractors to obtain an exemption from the license application procedures. This Unit did not promulgate or modify any rules during CY 2018.

- 5 What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

**Response:** The DOL is not a major goods buyer; as such, changes due to inflation and the CPI are not major factors contributing to any cost increases for the Department.

The primary cost drivers for the DOL are salaries and associated state paid benefits and the costs associated with expert witnesses hired to support specific litigation efforts. The DOL is in constant competition for talent with the private sector and other public sector attorney organizations. The lack of salary increases for FY 2020-21 and in the current DOL budget request compromises the DOL's efforts in this area.

The DOL pays for all litigation costs on behalf of the client agencies. These costs are one of the factors associated with the legal allocations to each State agency. In some instances, the DOL must hire expert witnesses such as medical professionals, scientists, or other specialized disciplines to help best support the State's legal positions. The hourly rates charged by these disciplines are factored into the monthly spending projections to help ensure the DOL is most effectively meeting its obligations within spending authorities provided by the General Assembly.

Furthermore, the DOL is assessing various technology solutions to support the provision of legal services to State, client agencies and consumer protection and criminal justice efforts. Depending on the business direction of the organization, the DOL may submit future budget requests to address these potentially emerging needs.

- 6 How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes, demographic changes, or service needs (e.g. aging population) that are different from general population growth?

**Response:** Based on the three-year average allocation for the client agencies, the DOL estimated the FY 2019-20 hours at 400,870. The actual FY 20 hours worked on behalf of the client agencies was 418,783, demonstrating increased demand for legal services by other state agencies. The DOL opened 5,462 new legal matters in FY20 and 5,088 new legal matters in FY19.

Two notable areas of growth in DOL workload include:

**Department of Corrections** – This agency experienced a notable surge in new cases.

- New matters in FY19: 569
- New matters in FY20: 769
- New matters opened in FY21, YTD: 305
- New matters opened in calendar year 2020, YTD: 715

Time computation cases increased significantly over the past two calendar years following two Colorado Supreme Court decisions with broad impact that necessitate the recalculation of parole eligibility dates. The DOL anticipated a reduced caseload after the Office of Information Technology's implementation of new software, but that has not been the case. We continue to see an extremely high volume of new cases with significant impact across the entire DOL Corrections Unit.

Additionally, the DOL Corrections Unit is experiencing increased work due to the pandemic, including multiple cases challenging pandemic protocols, and a class action brought by the ACLU. With increased COVID cases and outbreaks in certain facilities, the DOL anticipates more litigation.

***Department of Human Services*** – This agency experienced a notable surge in new cases and need for legal advice.

- New matters in FY19: 501
- New matters in FY20: 765
- New matters opened in FY21, YTD: 346
- New matters opened in calendar year 2020, YTD: 834

7 In some cases, the roles and duties of existing FTE may have changed over time. Please list any positions that have been created in the Department since FY 2018-19 that were not the result of legislation or a decision item.

**Response:** To best address changing needs and workload increases, the DOL modified the responsibilities of six existing positions to best address client needs and the work of the DOL. Each of these positions were funded within existing resources authorized by the General Assembly and based on workload demand. These six positions include:

- Corrections Litigation Manager
- Purchasing Agent
- Human Resources Specialist
- First Assistant Attorney General Human Services Section
- First Assistant Attorney General Corrections Unit
- First Assistant Attorney General Cross Unit Matters

Additionally, due to significant needs posed to the Department to fulfill its statutory obligations—particularly due to the opioid epidemic and related litigation, as well as COVID-related consumer complaints, the Department also shifted mostly non-state monies to support the following personnel positions.

- First Assistant Attorney General
- Assistant Attorney General
- Director of Opioid Response
- Grants Specialist
- Liaison IV
- Administrator II
- IT Professional
- Technician III
- Program Asst I
- 3.0 Assistant Attorney General positions to support Corrections workload
- Legal Assistant
- Assistant Attorney General Conflicts Counsel

- Legal Assistant

8. For all FY 2021-22 budget requests that include an increase in FTE:
- a. Specify whether existing staff will be trained to assume these roles or these duties, and if not, why;
  - b. Specify why additional FTE are necessary; and
  - c. Describe the evaluation process you used to determine the number of FTE requested.

**Response:** The DOL did not submit any budget requests that include FTE increases.

9. Please describe any programmatic impacts resulting from cash fund transfers impacting the department as part of the FY 2019-20 and FY 2020-21 balancing process.

**Response:** The POST Board is responsible for ensuring statewide consistency in the qualifications and training for peace officers. The Board thus certifies peace officers appointed by state and local law enforcement agencies, regulates peace officer training academies, and facilitates on-going training for all state peace officers by disbursing grants and providing training sessions specifically developed by the POST Board and staff.

Pursuant to Senate Bill 14-215, the Marijuana Tax Cash Fund, supported by taxes on marijuana, supports law enforcement training programs related to marijuana, including advanced roadside impaired driving enforcement training and drug recognition expert training. The POST Board was appropriated \$1,036,766 during FY 2019-20 from the Marijuana Tax Cash Fund for these efforts. This funding was eliminated for FY 2020-21. The POST Board is currently operating exclusively within the POST Cash Fund. The DOL anticipates spending roughly \$5.3M in the POST line item, from the POST Cash Fund, to support staffing, grants for training, and associated operating costs.

Additionally, the DOL refinanced all attorneys in the Consumer Protection Unit—that were traditionally paid by GF appropriations—to the Consumer Protection Custodial Fund starting in FY 2020-21. This budgetary move is currently saving roughly \$1.9M of GF in salaries, state paid benefits, and associated operating costs.