

# JOINT BUDGET COMMITTEE



## INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2017-18

### JUDICIAL BRANCH

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

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## INTERIM SUPPLEMENTAL REQUESTS

### EXONERATED PERSONS PAYOUT

	REQUEST	RECOMMENDATION
<b>TOTAL</b>	<b>\$684,510</b>	<b>\$0</b>
FTE	0.0	0.0
General Fund	684,510	0

**I. Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.?** **NO**

[The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.]

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

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

**Explanation:** JBC staff does not believe the Branch's request satisfies interim supplemental criteria I (2). Section 24-75-111 (1)(b), C.R.S., requires that "the overexpenditure is necessary due to unforeseen circumstances arising while the general assembly is not meeting in regular or special session during which such overexpenditure can be legislatively addressed." Staff interprets "the overexpenditure is necessary" to mean that it is an outlay that *must be made during the interim*. Thus this Judicial Branch request is not "necessary" because the expenditure does not need to be made at this time. Section 13-3-114 (8)(a), C.R.S., allows the expenditure to be made any time before June 8, 2018. If the Judicial Branch resubmits this supplemental in January as a regular supplemental request and the request is approved, payment will occur before the June 8, 2018 deadline.

**DEPARTMENT REQUEST:** The Judicial Branch requests that its FY 2017-18 appropriation for *Compensation for Exonerated Persons* be increased by \$684,510 General Fund to make a one-time payment to the only person who is currently receiving payments from this line item. This exonerated person has been receiving annual payments of \$100,000 since September 2013, with annual increases for inflation. This individual has requested, pursuant to provisions in S.B. 17-125, that the state pay him the entire remaining amount to which he is entitled as a single lump sum. The sum of payments to this individual thus far, including attorney's fees and inflation adjustments, equals \$533,466.15. In 2013, the court ordered payments equal to \$1,192,310.00. Section 13-3-114 (3), C.R.S., states that "The amount of any payment made to, or on behalf of, an exonerated person pursuant to this section shall be deducted from the state's duty of monetary compensation to the exonerated person." Applying this rule yields a remaining "duty of monetary compensation" to the exonerated person that equals  $\$1,192,310.00 - \$533,466.15 = \$658,843.85$ . This differs from the amount requested by the Judicial Department because the Judicial Department did not subtract out the inflation adjustments that have been paid to this individual.

No other exonerated persons are currently receiving payouts and the Attorney General's office, which reviews applications for payments, does not know of anyone who appears likely to qualify for payouts in the future. As a consequence, the FY 2018-19 appropriation for *Compensation for Exonerated Persons* would decline from its current level of \$110,124 General Fund to \$0 if this

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supplemental is approved. Of course it is possible that a currently unidentified exonerated person may later qualify for payments, which would require future appropriations.

**STAFF RECOMMENDATION:** Staff recommends that the Committee not approve this request at this time, i.e. during the interim. Staff believes that the request should be resubmitted by the Judicial Branch in January 2018 as a regular supplemental. The amount requested by the Branch should reflect the inflation adjustments that have paid thus far. If the Department's request is approved next January as a regular supplemental there will be plenty of time to make the required lump-sum payment to the exonerated individual before the June 8, 2018 deadline.

**STAFF ANALYSIS:**

*BACKGROUND:* The *Compensation for Exonerated Persons* line item provides funding to compensate persons who are found actually innocent of felony crimes after serving time in jail, prison, or juvenile placement. If found actually innocent, the exonerated person is eligible to receive the following benefits:

- monetary compensation in the amount of \$70,000 for each year incarcerated, plus an additional \$25,000 for each year he or she served on parole and \$50,000 for each year he or she was incarcerated and awaited execution;
- tuition waivers at state institutions of higher education, if the exonerated person was incarcerated for at least three years;
- compensation for child support payments and associated interest owed by the exonerated person that were incurred during his or her incarceration;
- reasonable attorney fees; and
- the amount of any fine, penalty, court costs, or restitution imposed as a result of the exonerated person's wrongful conviction.

Statute requires the State Court Administrator to make an annual payment of \$100,000 to an exonerated person until the total amount owed by the State is paid. The annual payment to this exonerated person equaled \$100,000 in September 2013 and was subsequently adjusted for inflation. The inflation-adjusted payment equaled \$110,124 in August 2017 when the most recent payment was made.

*STATUTORY AUTHORITY:* Sections 13-3-114 and 13-65-101, et seq., C.R.S.

Senate Bill 17-125 added the following provision to statute, which permits lump sum payouts:

13-3-114 (8) (a) At any point after the state court administrator makes an annual payment to an exonerated person pursuant to subsection (2) of this section, the exonerated person may elect to receive the remaining balance of the state's duty of monetary compensation in a lump sum by:

- (I) Notifying the state court administrator, the governor, and the general assembly of such election, which notification must be provided in writing;
- (II) Completing a personal financial management instruction course; and
- (III) Acquiring and committing to maintain a qualified health insurance plan.

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(b) Upon receiving written documentation that an exonerated person has satisfied the requirements described in subsection (8)(a) of this section, the state court administrator shall pay to the exonerated person the balance of the state's duty of monetary compensation not later than one year after receiving such written documentation.

The Judicial Branch received the required documentation on June 8, 2017 and thus must make the lump sum payout by June 8, 2018. If the request is approved in January 2018 as a regular supplemental the required payment will be made to the exonerated individual before the June 8, 2018 deadline.