JUDICIAL BRANCH
FY 2020-21 JOINT BUDGET COMMITTEE HEARING AGENDA

Friday, December 13, 2019
9:00 am – 12:00 pm

9:00-10:00 COURTS AND PROBATION (JUD)

Main Presenters:
- Chief Justice Nathan B. Coats
- Steven Vasconcellos, State Court Administrator

Supporting Presenters:
- Hugh Wilson, Budget Manager
- Terry Scanlon, Legislative Liaison

10:00-10:25 OFFICE OF THE STATE PUBLIC DEFENDER (OSPD)

Main Presenter:
- Megan A. Ring, Colorado State Public Defender

Supporting Presenters:
- Karen Taylor, First Assistant Public Defender
- Maureen Cain, Director of Legislative Policy and Organizational Communication
- Karen Porter, Chief Financial Officer

10:25-10:35 BREAK

10:35-10:50 OFFICE OF THE ALTERNATE DEFENSE COUNSEL (OADC)

Main Presenters:
- Lindy Frolich, Alternate Defense Counsel
- Carrie Clein, ADC Commission Member

Supporting Presenters:
- Darren Cantor, Deputy Director
- Daniel Nunez, Controller/Budget Manager

10:50-11:05 OFFICE OF THE CHILD'S REPRESENTATIVE (OCR)

Main Presenters:
- Chris Henderson, Director
- Ashley Chase, Staff Attorney and Legislative Liaison

Supporting Presenter:
- Mark Teska, Chief Operating Officer

11:05-11:20 OFFICE OF THE RESPONDENT PARENTS' COUNSEL (ORPC)

Main Presenters:
- Melissa Thompson, Executive Director
- Becky Briggs, ORPC Commission Chairperson
- Diane Smith, ORPC Commission Vice Chair & Parent Advocate

Supporting Presenters:
- Linda Edwards, Chief Financial Officer
- Jill Cohen, Director of Programs – Social Worker

11:20-11:35 OFFICE OF CHILD PROTECTION OMBUDSMAN (OCPO)

Main Presenter:
- Stephanie Villafuerte, Child Protection Ombudsman

11:35-11:45 INDEPENDENT ETHICS COMMISSION (IEC)

Main Presenters:
- Elizabeth Espinosa Krupa, Chair, Independent Ethics Commission
- Dino Ioannides, Executive Director, Independent Ethics Commission

11:45-12:00 OFFICE OF PUBLIC GUARDIANSHIP (OPG)

Main Presenter:
- Sophia Alvarez, Director
- Hugh Wilson, Budget Manager for the State Court Administrator's Office

Supporting Presenters:
- Kelsey Lesco, Office of Public Guardianship Commissioner

OFFICE OF THE STATE COURT ADMINISTRATOR

Judicial Branch

FY 2019-20 Joint Budget Committee Hearing

Friday, December 13, 2019

9:00 am – 10:00 am

Main Presenters:

- Chief Justice Nathan Coats
- Steven Vasconcellos, State Court Administrator

Supporting Presenters:

- Hugh Wilson, Budget Manager
- Terry Scanlon, Legislative Liaison

Introductions and opening comments

QUESTIONS FOR THE OFFICE OF THE STATE COURT ADMINISTRATOR

JUD 1: Why have county court filings declined? Have recent statutory changes increased the jurisdiction of county courts? If so, shouldn't this increase their caseload?

Changes to laws and policies at the local, state and federal levels and changes to other criminal justice agencies can directly impact the volume of cases filed with the courts. For example, federal banking regulation changes related to debt collection practices have resulted in decreases to county court collection cases. Also, when broader economic shifts occur there may be different engagement with existing practices, such as municipalities retaining more traffic and lower level misdemeanor cases under the model traffic code to supplement lean revenues. While overall volume of cases may be down, there are still some class classes experiencing growth more recently. For example, misdemeanor case filings are showing a 2% increase compared to FY16. When considering workload impact of caseloads, the composition of the caseload is far more important than the overall volume of filings. The time it takes to process a traffic infraction is significantly less than the resource demands of a domestic violence case.

The General Assembly recently passed two pieces of legislation that are expected to increase the volume of filings in county courts. Senate Bill 18-56 increased the jurisdictional limit from $15,000 to $25,000 for civil cases in county court. While there is still concurrent jurisdiction with district court, allowing litigants to recover a greater amount of money in a simplified

court process is expected to attract more individuals to pursue claims of $25,000 or less in county court. Although the Governor signed the Act in May of 2019, the changes did not go into effect until January 1, 2019. A year-to-date comparison with preliminary data shows a nearly 4% increase in money cases filed in county court.

In the 2019 Legislative Session, the General Assembly changed the classification of drug possession offenses (House Bill 19-1263). This legislation reclassifies a number of felony drug possession offenses to misdemeanors. As a result, an unknown number of cases that the District Attorney would formerly charge as felonies and file in the district court will now be charged as misdemeanor offenses and filed in the county courts. This legislation does not go into effect until March of 2020, but the Department anticipates misdemeanor caseloads will increase as a result and will be monitoring the impact closely.

JUD 2: What is driving the felony caseload increase?

Felony drug cases, specifically drug possession cases, drive a large part of the increases to felony filings. In comparison to FY 2019, felony drug case filings, i.e. cases were a felony drug offense was the most serious charge, have increased approximately 88% since FY 2013 statewide. Additional cases types contributing to the increase include: violent offenses; property offenses (e.g. forgery/fraud, motor vehicle theft); and custody violations (e.g. bond violations, escapes, and contraband-related violations).

Felony Filings by Case Type FY14 v. FY19

Felony Case Type	FY14	FY19	Percent Change
Drugs	9,395	17,708	88.5%
Theft	5,120	6,462	26.2%
Assault	2,924	5,469	87.0%
Burglary	3,167	3,694	16.6%
Other	2,889	2,352	-18.6%
Menacing	1,839	2,255	22.6%
Sex Offense	1,738	2,032	16.9%
Trespass	1,493	1,924	28.9%
Fugitive	1,274	1,855	45.6%
Escape	1,354	1,757	29.8%

JUD 3: How long has the State been using private probation services?

The General Assembly authorized the Department to contract with private probation in 1996 through House Bill 96-1120, which took effect on July 1, 1996. The table below provides a

summary of the number of probationers supervised by private probation by district. Less than half of the judicial districts in Colorado currently utilize private probation.

Private Probation											
District	1st	4th	5th	8th	10th	11th	17th	18th	19th	20th	Total
Active Count 6/30/19	1,278	1,967	246	1,047	593	219	1,115	2,712	666	1,404	11,247

JUD 4: What kinds of cases are being referred to private probation?

Probation supervises individuals based on their individual and actuarial risks and needs rather than the type of crime they commit. In this case, *risk* refers to a person's probability of committing a crime again via the results of an actuarial risk assessment. An abundance of research showing no relationship between the type of crime and a individual's probability of re-offending.

Chief Justice Directive 16-01 states, "Given limited resources, lower (low medium and low) risk offenders, either felony or misdemeanor, and certain alcohol/drug/driving related offenders may be supervised by use of contract probation services…" As such, clients transferred to private probation have been assessed as lower risk to reoffend, based on the results of the Level of Supervision Inventory (LSI), a validated risk assessment. The LSI categorizes individuals into low, medium, and high risk to re-offend. Cases that are transferred to private are low risk or they are on the low end of the medium risk range. These individuals tend to have little to no criminal history and have few issues that are disrupting their life, such as substance abuse or employment problems. About nine out of ten clients transferred to private probation are lower risk and on supervision for a misdemeanor or petty offense.

JUD 5: What data does the Department collect concerning probation outcomes? Does the Department have any data comparing outcomes for public versus private probation services?

In the Department's *Annual Statistical Report*, the probation section provides outcome data for probation, including private probation. Additionally, probation publishes and submits an annual report to the legislature titled, *Pre-Release Termination and Post-Release Recidivism Rates of Colorado Probationers*. Both state and private outcomes are included in the annual report and the recidivism report; however, the recidivism report combines state and private probation data together, while the annual report provides the data in separate sections.

Since lower risk probationers are supervised by private probation, it is expected that most probationers will complete their probation successfully and remain crime-free upon completion of probation. Historically, private probation's success rates have been in the 81%-86% range, meaning more than 80% of probationers supervised by private probation

successfully complete their sentence. Additionally, lower-risk probationers are the least likely to recidivate. Historically, approximately 96% of low risk probationers remain crime-free at least one year after they complete their probation sentence.

Higher risk probationers are supervised by state probation. Due to the risk factors high risk probationers are less likely to be successful during supervision and post-supervision even with interventions and treatment. State probation also provides intensive supervision for those probationers that present with the highest risks and needs. Historically, state probation's success rates have been in the 59%-61% range, meaning approximately 60% of probationers supervised by state probation successfully complete their sentence. Additionally, higher-risk probationers are more likely to recidivate. Approximately 83% of high and 90% of medium risk probationers, who complete their probation sentence remain crime-free after successfully completing probation.

Beyond the data above, the Department has not compared state probation to private probation in greater depth. Private probation is a cost-saving measure more so than an efficacy-based concept. As the two programs are designed to interact with two different types of probationers, a specific in-depth comparison study has not been prioritized. However, the Department is contemplating an independent external process and outcome study of probation next year.

JUD 6: Last summer, troubling events were reported at the Judicial Department. Provide a detailed accounting of what occurred and the actions the Department has taken to ensure that these problems do not reoccur.

Background

This question refers to media reports in July of this year about a contract awarded to The Leadership Practice, LLC, a company owned by Mindy Masias, the former Chief of Staff for the State Court Administrator's Office (SCAO). Ms. Masias was employed by the Judicial Department for 23 years and reported directly to the State Court Administrator. She voluntarily resigned from the Judicial Department for personal reasons on March 19, and The Leadership Practice entered a contract to provide training to the Judicial Department on June 3. The July media reports brought to the Chief Justice's direct attention for the first-time certain material information that, for legal reasons, the Department is unable to go into detail about in answering this question. Within days afterward, the Department terminated the contract with Ms. Masias's company, and former State Court Administrator Chris Ryan and former SCAO Chief Administrative Officer Eric Brown resigned their positions.

This question also refers to media reports about an anonymous complaint received by the State Auditor's Fraud Hotline alleging occupational fraud on the part of former SCAO leaders and high-level SCAO employees. In May of this year, the State Auditor referred the complaint to the Chief Justice, who elected to have the Auditor conduct an independent investigation of the allegations, which is still ongoing.

The information below provides context regarding the Department's leadership development training initiatives, the process that resulted in a contract with The Leadership Practice, the fraud hotline investigation being conducted by the State Auditor, and actions taken by the Department in response to the reported events.

Leadership Development Contracting

Over the past 10 years, the Judicial Department—which totals approximately 4,000 employees and judicial officers—has placed an increasingly heavy emphasis on education and leadership training. Employees and judges have had the ability to receive intensive and comprehensive leadership development training through a centralized training program administered by SCAO. Around 2009, the Department began contracting with outside vendors to provide leadership development training to judges and employees. For FY 2014, the Department submitted a decision item request to the JBC to implement a leadership development and education program at a cost of $517,500.

The Department paid vendors an increasing amount of money annually, peaking at $689,000 in 2013. In 2015, the Department issued an RFP for leadership development training. The Department received three responses to the RFP and selected the previous vendors, who submitted a bid to provide the training at a cost of $633,500 per year. To help reduce this cost, the Judicial Department committed additional internal resources and staffing to assist in the development and delivery of the training programs. Between 2013 and 2018, the average annual cost for the vendors to provide training was $530,000. The leadership development and training opportunities have been valuable in creating a common culture within the department, and participants in the trainings have overwhelmingly provided positive feedback. The program has trained hundreds of Department judges and employees.

The Department's contract with the previous vendors was set to expire on September 30, 2019. In 2018, SCAO began work on a new RFP for leadership and training services. The previous State Court Administrator, after consulting with the Chief Justice, determined that the program needed to be restructured to provide more direct and targeted training to employees and focus on the unique work of the branch, as opposed to high-level theoretical leadership. In January of 2019, SCAO issued an RFP for a revised development and training program that placed a heavy emphasis on knowledge of judicial functions and operations. The RFP was posted for 22 days. The RFP was sent to 401 businesses, and the materials were downloaded by 24 of them. The Department received no questions about or responses to the RFP.

On March 20, Mr. Brown, who at the time was SCAO Chief Human Resources Officer, signed a sole source determination letter concluding that Ms. Masias's company, The Leadership Practice, was the only vendor capable of developing and delivering the training program described in the RFP. On June 3, Mr. Ryan executed a contract with The Leadership Practice on the Department's behalf in the amount of $532,000 per year. The contract with The

Leadership Practice required a more robust and tailored development and training program specific to the work of the Department and was an expansion of the leadership development training offered by the Department's previous vendors.

While the Department still firmly believes that leadership training is important to achieving its mission of serving the State of Colorado, the July media reports surfaced certain information about the vendor selected to provide such training. On July 17, former State Court Administrator Ryan, at the direction of the Chief Justice, notified Ms. Masias that the Department was terminating the contract with The Leadership Practice because it had ceased to further the public policy of the Colorado Judicial Branch, which the contract refers to as termination in the public interest, and because the vendor had defaulted by failing to comply with certain contractual duties and obligations. That same day, Mr. Ryan resigned his position, and two days later Mr. Brown resigned his position as Chief Administrative Officer.

The Office of the State Auditor Fraud Hotline Investigation

On May 16 of this year, the Office of the State Auditor (OSA) notified the Chief Justice that it had received an anonymous letter with allegations that could amount to occupational fraud. Consistent with the fraud hotline statute, Section 2-3-110.5, C.R.S., OSA gave the Judicial Department the option to investigate the allegations itself, investigate the allegations in conjunction with OSA, or request that OSA conduct the investigation itself. The Chief Justice elected to have OSA conduct the investigation independently. The investigation is in process, and it is not clear when it will be complete. The scope of the investigation includes the procurement process for and contract award to The Leadership Practice, allegations of misuse of paid time off by former SCAO directors, allegations of Family Medical Leave Act fraud, and improper use of administrative leave for certain SCAO employees. The Department is working closely with OSA to provide access to information and documents directly related to the scope of OSA's investigation.

Actions Taken in Response

In response to these events, the Judicial Department has taken a number of steps to reflect on past actions, review existing fiscal controls, and make enhancements to the selection process for future contracts awards. More fundamentally, the Department learned that the amount of money spent on services provided to the Department, even if initially determined through an RFP process, is not a default benchmark for future similar services.

As explained above, the Department terminated the contract with The Leadership Practice. The Department is reviewing whether its policies were followed in the procurement and contracting process. At this point, it appears that some requirements in the Department's fiscal rules were not strictly followed. The Department has also undertaken a review of its existing contracts to determine whether they have complied with the Department's contracting and procurement rules. Additionally, the Department is reviewing its fiscal rules for consistency with Executive Branch fiscal rules and for ways to further tighten fiscal

controls and enhance transparency in our contracting process. The Department has reviewed its capacity for procurement and contracting review and has asked the Joint Budget Committee for additional resources to procure and manage contracts around the state. The Department is currently working with a vendor to develop and implement a statewide ERP system to manage the overall contract process, vendor management and procurement functions.

The Supreme Court has taken a more active role in the work of SCAO. Historically, the Chief Justice has worked closely with the executive team at SCAO, in keeping with his or her constitutional role as the executive head of the judicial system, and the rest of the court has assisted with administration indirectly through various committees. Still, day-to-day operations have been largely the work of SCAO, given the court's other responsibilities to the public and the size of the organization. In light of recent events, however, Supreme Court Justices are serving as liaisons to work directly with the different Divisions at SCAO to provide support and strategic direction. The Supreme Court has discussed the situation with SCAO and employees and judges around the state and has encouraged them to report anything concerning in the course of their work. This is not a short-term measure. The Court is committed to long-term, active involvement in administrative operations of the Department.

There have been major changes in leadership at SCAO, including the appointment of current State Court Administrator Steven Vasconcellos through a robust, transparent, and competitive selection process. The Supreme Court has heightened expectations for SCAO leadership positions and has communicated these expectations clearly. SCAO is currently in the process of hiring three different division directors, who will serve as part of Mr. Vasconcellos's senior leadership team.
This summer and fall have largely been a reset period for the work of SCAO. This has presented the Supreme Court and SCAO leadership with an opportunity to take a deep look at its existing practices and explore opportunities to improve accountability to the public and service to the rest of the Department.

At the direction of the Chief Justice, the Department has asked the Attorney General's Office to be much more involved in providing advice to the Department on issues of contracting and personnel. The Attorney General's office has been integral in advising the Department over the past seven months.

The Department is working diligently with OSA to facilitate its completion of the fraud hotline investigation and will closely review and digest OSA's independent findings to identify areas for continued improvement.

JUD 7: Provide a brief history of the court reporter page rate.

The transcript preparer's rate per page has been increased two times since 1993. The transcript rate began at $2.00 per page in 1993 increased to $2.35 and finally increased to $3.00 where it has remained since Fiscal Year 2016.

JUD 8: What would be the cost to the Judicial Department if the court reporter page rate increased by 50¢ per page?

About $14,000/year

QUESTIONS ABOUT REQUESTS

JUD R1 ($500,000 Judicial budget reduction): Is this a one-time reduction or is it ongoing?

This is an on-going reduction. OSPB instructed Executive Agencies to submit budgets with a 2% budget increase (including all fund sources). The Judicial Department took the opportunity to review its programs and identified an opportunity to reduce General Fund expenditures by $500,000. The Department terminated its leadership and training contract in July of this year and does not intend to resume a similar education and training program this fiscal year. However, the Department sees value in some level of education and training that is specific to the work of the Department. The Department anticipates that it may submit a decision item in a future fiscal year detailing its education and training needs.

JUD R2(a) (Magistrates): Who conducts judicial officer workload studies for the Department? How do these studies inform the Department's budget requests?

The Judicial Department utilizes an independent vendor, selected through a competitive procurement process, to conduct all workload studies for judicial officers and trial court staff. The National Center for State Courts has conducted the most recent weighted caseload studies for the trial courts. Weighted caseload studies are the preferred method of measuring workload in courts and probation nationally. Using a weighted caseload approach to workload modeling offers an advantage over other approaches by assessing staff need based on the complexity of each case type. The utilization of a workload model allows the Department to closely monitor resource needs and deployment and helps objectively identify areas where additional resources are necessary to support the work and mission of the courts. The information regarding staffing levels is a critical component to the Department's evaluation of needs and is utilized to demonstrate and support budget requests for additional resources when appropriate.

JUD R2(b) (Magistrates) and JUD R3 (Additional Probation Officers): Provide a detailed explanation about how the requested judicial officers and probation officers will be deployed.

The Judicial Department's magistrate and probation officer request is based on workload needs identified in Class B County Courts and the Probation Staffing Model. The tables below outline the Class B County Court locations and the probation departments with the greatest resources needs. Final allocations will depend on the amount of funding received from the

General Assembly and an analysis just prior to FY 2021 allocations to determine if there were any dramatic changes in the distribution of resource needs since the budget request.

Proposed New Magistrate Allocation	
Class B County	**Total**
Adams	2.0
Weld	1.0
Larimer	1.0
Jefferson	1.0
El Paso	1.0
Arapahoe	1.0
Mesa	0.5
Pueblo	0.5
Total	**8.0**

Proposed Probation Staff FTE Allocation	
Judicial District	**FTE**
1st	2.0
2nd (Adult)	2.25
3rd	.25
4th	2.75
6th	.75
7th	.50
8th	2.1
9th	.25
11th	.45
12th	.25
13th	.50
17th	.85
18th	.50
19th	1.75
21st	.5
22nd	.25
Total	**15.9**

JUD R2(c) (Magistrates): Senate Bill 19-191 required each judicial district to develop a plan for setting bond for all in-custody defendants within forty-eight hours of arrest. In November, the Judicial Department issued a report on the cost of these plans. What were the findings? Would the Department use video links to conduct bail hearings remotely? Would the Department use the magistrates requested in R2 to address this requirement if it became law?

The Judicial Department submitted a report regarding the potential costs associated with the implementation of mandatory 48-hour bond hearings. While many variables remain unknown, according to the reports from the districts, statewide trial courts will require 4.6 FTE judicial officers and 10.10 FTE support staff (trial court and probation) to comply with a 48-hour bond setting requirement. Although we anticipate additional need for interpreter FTE as well as contractor needs for interpreter services, we are not currently able to create an estimate. We also anticipate technological and A/V needs to fulfill these plans. Costs come from both the equipment needed to make weekend bond hearings accessible to parties and the public, as well as the IT staff needed to support the equipment and technology in the districts. Obtaining the equipment alone, without any support staff, would require approximately $4.1 million. On demand Information Technology support options exist on a scale, though the risk of not holding hearings due to technological issues increases with the fewer in-person support positions. Additional FTE are necessary to ensure the continued type of technical support the courts receive. Hands-on, statewide weekday-level technical support on the weekends will cost up to $1.9 million, with lower-end vendor provided virtual services costing approximately $260,000. These estimates are subject to changes once more details regarding the exact process and requirements of any proposed legislation are available.

While the legislation requesting this report required each individual judicial district to submit a plan, several alternative strategies emerged in discussions and stakeholder meetings that are worth noting. These alternatives focus on ways judicial districts can coordinate to accomplish 48-hour bond settings including regionalization and/or the creation of a statewide bond commission. These alternatives will require additional research and discussion.

The magistrate request (R2) is <u>not</u> related to the resource needs identified in the SB19-191 report because the Judicial Department has not experienced a workload impact from the bill. SB19-191 did not implement changes to the timing of bond hearings but required an analysis of the broad concept of weekend bond hearings. While it is possible that magistrates received from R2 may share the burden of a 48-hour bond hearing requirement should it become law, the current magistrate request is separate.

JUD R3 (Additional Probation Officers): Last year there was discussion about using probation strategically. There was a conversation about using probation as an alternative to incarceration to save money and prevent unnecessary justice-system involvement. Are we still pursuing this strategy? Is this request related to this proactive strategy?

The discussion last year pertained to HB 19-1226 and the possibility of using Judicial Department resources for monitoring defendants on pre-trial supervision as an alternative to

pretrial detention. The concept centered around using Judicial Department staff to perform pretrial supervision, specifically in rural areas where local-level capacity limitations might prevent counties from implementing pretrial service programs. In those conversations, some stakeholders expressed concerns about using Judicial Department staff to perform pretrial supervision rather than local-level employees of county governments. Despite these concerns, the Department remains open to discussions about probation as an alternative to pretrial detention in local jails.

With respect to pre-plea or post-plea diversion programs, C.R.S. 18-1.3-101 (8)(9)(a)(b) authorizes probation to supervise individuals who have been sentenced to diversion and given suspended prosecution either before or after charges are filed, for a period not to exceed 2 years. Currently, this is an option that is rarely utilized. For the last five years, less than 1% of all new probation clients were diversion clients supervised by probation. Currently, probation has approximately 22 people in probation-based diversion programs in five judicial districts and counties (Gilpin, Arapahoe, Jefferson, Larimer, Prowers). Diversion programs are typically operated at the local level by District Attorney offices or local law enforcement.

As an alternative to post-sentence jail or prison incarceration, Colorado probation is, by far, the largest single sentencing option in Colorado. The active population in probation is more than 80,000 people in various levels of supervision and specialized programs. Our average daily population is about four times the number of inmates in DOC custody, nearly nine times the size the parole population and over 20 times the size of community corrections. Colorado probation is also the most economical per-person sentencing option. For adults, the annual cost per person is just over $1,500 compared to $6,000 on parole, nearly $9,000 in community corrections, and over $38,000 in DOC prison institutions. Overall, our adult population makes up 61% of the state funded corrections population yet only consumes 9% of state appropriations for that same corrections population. On the juvenile side, our population represents 82% of the juvenile corrections population yet only consumes about 9% of state appropriations for that same population. From this perspective, probation already exists as a large, economical, and strategic alternative to incarceration. Our budget request is intended to further advance this strategy and to maintain minimal staffing levels to meet the needs of the state and local communities.

JUD R9(a) (Courthouse Capital): What is the process for identifying requests for courthouse capital funding? How does the Department prioritize projects and calculate a reasonable amount of funding for each project?

Counties planning courthouse remodel/construction projects contact the State Court Administrator's office to notify the Department of their intent to proceed with a project. Department staff then work with the counties on courtroom design, requirements, and needs. The counties are initiating these projects, and the Department is merely reacting to their initiative and has no say in prioritization. The state funds courtroom furnishings, IT and

IT infrastructure, and A/V within the courtroom. Each project component is costed individually by Department staff and is identified in the budget submission annually.

JUD R9(b) (Courthouse Capital): What happens if a very large number of counties decide to build or refurbish courthouses at the same time? Are state Courthouse Capital expenditures required? Must the state fund them all when they are completed? Explain the statutory requirements and how the Department prepares its annual budget request for Courthouse Capital.

13-3-108 C.R.S. requires the board of county commissioners in each county to provide and maintain adequate courtrooms and other facilities. It is silent on what the state is to provide however, since unification of the court system in the late 1960's the state has assumed financial responsibility for the furnishings within the courtroom. What furnishing this includes has evolved over the years to include furniture, IT infrastructure (computers, networks including phone, wireless, recordings and other connected devises) and AV equipment for evidence presentation. If multiple counties decided to build/remodel their courthouses at the same time it could be potentially impactful financially to the State or if a front range county were to build a new courthouse, the cost to the State of furnishings could run into the millions. In the last few years, the number of county projects has been between six and fifteen each year and the appropriations have been:

FY17	$4,720,569
FY18	$2,639,800
FY19	$1,963,781
FY20	$4,135,390
FY21 Req:	$2,273,235

JUD R10 (IT Data Center Equipment Replacement): The request asks for funding to purchase servers. What are the alternatives? Leasing? Cloud-based services? What solution would be most cost-effective and reliable?

The Department is evaluating alternatives to purchasing servers, including leasing and cloud-based options and will provide the results to the Committee early in January.

Unnumbered Salary Survey Request (a): Identify the job classes involved in this request, stating the salary increases in dollars and percent for each.

Classification Title	FY20 Recommended Paygrade Realignment	Head Count in Classification	Total Increase (Dollars)**
Appellate Law Clerk*	3%	62	$ 122,174
Auxiliary Services	10%	1	$ 1,146
Business Intelligence Developer	2%	1	$ 2,521
Chief Staff Attorney	2%	1	$ 3,317
Customer Support Technician I	5%	2	$ 2,922
Customer Support Technician II	5%	3	$ 4,262
Deputy Chief Probation Officer	2%	8	$ 22,151
Deputy Court Executive	2%	8	$ 20,600
Human Resources Assistant	7.5%	2	$ 4,939
Human Resources Technician	3%	2	$ 2,090
Law Clerk	5%	82	$ 168,426
Legal Research Attorney	2%	26	$ 31,238
Payroll Analyst	4%	3	$ 8,305
Probation Manager	2%	13	$ 30,672
Probation Officer*	2%	861	$ 1,178,461
Senior Customer Support Tech	5%	4	$ 9,774
Senior Network Engineer	2%	1	$ 2,063
Senior Systems Engineer	2%	3	$ 6,525
Software Engineer I*	9%	3	$ 20,520
Systems Engineer I	3%	2	$ 2,157
Systems Engineer II	3%	3	$ 7,766
*Classifications where only the range minimum and incumbents will move.			
** Includes salary increase, PERA and Medicare			

Unnumbered Salary Survey Request (b): Compare the results of the Judicial Department's salary survey with the results of the Department of Personnel and Administration's salary survey. How do the salary ranges compare for similar job classifications?

The Judicial Department uses a separate compensation system structure for salary ranges and different methodologies for how it determines salaries compared to how DPA uses its compensation study. The Judicial Department has individual salary ranges for every job classification while the Executive Branch has a matrix system that slots job classifications into predetermined ranges. The Executive Branch analysis within its compensation survey focuses on job families and overall wage medians of its employees rather than analysis on all individual job classes that the Judicial Department uses.

The Judicial Department does use salary data from the Executive Branch for similarly situated job classifications within its salary survey performed by an outside vendor, Segal Waters. Using this information within the Department's custom survey ensures that it are

treating comparable job classification salary ranges in a similar manner while still allowing for appropriate market salary ranges for judicial personnel. However, the Department examines different factors than the Executive Branch for salary surveys.

The Department evaluates job ranges at the median of the market, and if our salary range is below the median of the market at a variable greater than 3%, we request additional dollars to move the salaries for those employees. If the additional dollars are not requested and we are forced to move the salary range to be competitive for hiring salary rates (recruitment), the current employees are not able to move along the salary range and are then being paid at the same rate as a new employee. This is called compensation compression and is a large factor in the retention of employees. For example, if a five-year employee is paid the same as a newly hired employee, the five-year employee will look elsewhere for employment. Given the low unemployment rate and the demands of higher wages for living on the front range, the Department sees substantial value in retaining knowledgeable and experienced employees.

ISSUE 2: S.B. 18-249 AND S.B. 18-251

I2 – JUD 1: For SB 18-251, what has been the experience in other judicial districts (other than the Western Slope) in contracting for the liaisons required by the bill? Has the Department been able to find appropriate people who are familiar with local behavioral health services to fill this role?

The Bridges Program was able in its first year to contract successfully with community partners to employ Court Liaisons in all 22 judicial districts as follows:

- Ten mental health centers covering 15 districts
- Three private non-profit behavioral health organizations, covering four districts
- Two pre-trial services providers, covering two districts
- One public health department, cover one district

While there is no shortage of appropriate individuals to fill the role of Court Liaison, contracting has presented significant challenges as follows:

- **Allocation of Funds**: Contractors have been unable to pay Court Liaisons the salaries initially anticipated in the creation of the legislation, which was an annual average of $64,000 plus benefits. Instead, Court Liaisons are paid an average of $43,000 plus benefits annually across all contracts, with the difference going toward the contractors' administrative expenses. This significantly lower salary presents challenges with both recruitment and retention. In contrast, contractors have indicated they feel the contract amount (average $85K) is not significant for the cost of the program.

- **Disruption of Services**: As a direct result of the lower salaries, six of the 29 liaisons have left the position for higher paid positions in the past year. Recruiting and training replacements is a slow process, and those districts have experienced 2-4 months of disruption in Court Liaison services.

- **Appropriate Supervision:** The majority of contracts reflect a 1:1 supervisor-to-liaison ratio, presenting a challenge for contractors. While contracted partners provide employment supervision to liaisons, many have not been able to provide the necessary guidance in navigating the criminal justice system nor implementing a program that is different than the rest of their services.

- **Secure File Storage Solutions and Case Management Systems:** For various reasons, all but two contractors have indicated they cannot provide secure file storage solutions and/or case management systems for the use of Court Liaisons.

I2 – JUD 2: Are we achieving the legislative intent of S.B. 18-251? Is it promoting collaboration and consultation among behavioral health providers, district attorneys, and defense attorneys about available community-based behavioral health services and supports, competency evaluations, restoration to competency services, and other relevant decisions and issues facing individuals with behavioral health conditions who are involved with the criminal justice system, including appropriateness for community treatment and resource availability? Please provide numbers to support your response.

The Bridges Program has been well-received by participants and stakeholders, including behavioral health providers, attorneys, judges, and the Office of Behavioral Health. As of December 1, 580 participants representing 724 cases have entered the Bridges Program. The program is expected to grow exponentially as more judges across districts begin utilizing Court Liaisons.

The impact of Court Liaison involvement on a defendant's well-being is often immediate and significant. In one month alone, Court Liaisons facilitated cross-agency responses that resulted in three successful suicide interventions. The Bridges Program is working to develop a program evaluation that will provide quantitative data to allow us to measure program effectiveness both quantitatively and qualitatively toward specific program goals and objectives. In the meantime, the below testimonials illustrate the positive impact Bridges is having on courts, defendants, and OBH competency programs:

- *A Court Liaison was assigned to work with a female participant who had been incarcerated in the County Jail for seven months. The Court Liaison coordinated services and family support to the point that all parties agreed there was enough stability for the participant to be released from jail and receive outpatient restoration services, rather than remain in jail awaiting inpatient restoration. The Judge's decision rested primarily on the fact that the participant would have the*

continued support of the Bridges Program. The participant has also joined the Bridges Program Statewide Steering Committee to help provide insight on the client experience.

- *A Court Liaison was assigned to work with a participant who has had an open case since 2016. The participant's frustration with the system over the years had escalated to the point that necessitated court security during his hearings. He was ordered to outpatient restoration but never engaged. The Court Liaison was able to contact this participant at court and connect him to outpatient restoration services for a same day intake. The participant now attends all of his restoration classes. He reports that he feels like, "God brought Bridges and outpatient restoration into his life for a reason," and that he feels supported and is making progress in a system that before seemed never-ending.*

- *A public defender in a rural community shared, "I'm so happy about [my client's] turnaround. He looked so good. I can't thank you enough for all of your help throughout this case. You did amazing work while remaining impartial and neutral. That's a very hard task." A family member in this same case stated to the Court Liaison, "Thanks to… your efforts as far as I am concerned the outcome for [defendant] couldn't have been better."*

- *A public defender in another community reported that not only were her clients appreciative of the program, but that a client not in the program requested to participate because he had heard positive things from other defendants where he was in custody.*

- *A director at the Colorado Mental Health Institute (CMHIP) reports, "Wonderful! I can already see/feel improvements. The Court Liaison is down here just feeding us contact info and such on cases - this is going to be such a wonderful program addition!"*

- *A district court judge shared, "Thank you for all your time and dedication to this. This is an invaluable tool in our extremely heavy caseload and addressing a very serious issue."*

- *Special masters overseeing the consent decree in the lawsuit with the Colorado Department of Human Services have encouraged coordination with the Bridges Program, calling the system in place to date "impressive" and "innovative." In an August 13, 2019, memo to Colorado Department of Human Services, special masters stated, "Although Bridges is not under our supervision, we certainly appreciate their work and view it as quite complementary to the goals of the Consent Decree and the work of CDHS that we do oversee."*

- *In an August 29, 2019, program review call with the Council of State Governments, the National Governors Association, the National Center for State Courts, and the National Criminal Justice Association, this group of consultants to the Governor's Office were highly encouraged by the efforts of the Bridges Program and stated, "It's calls like this that make our work worthwhile."*

ISSUE 3: JUDICIAL OFFICER STAFFING

I3 – JUD 1: The Department's 2018 workload study for county court judges shows that the work required for many types of cases has gone up. What types of cases have been affected? What are the reasons for the increase?

The 2018 county court judicial officer workload study indicated significant increases in the time required by judicial officers to process DUI/DWAI, domestic violence, and misdemeanor cases. Time associated with felony criminal work by county court judicial officers also increased. The study identified several factors influencing the increase in time required to handle these types of cases specifically. The Department believes that the expansion of technology and changes in policy and legal practices are key contributors to the change in workload. Some specific examples of how these factors contributed to an increase in the time associated with such cases are as follows:

- The county court has experienced an increase of court time required due to body camera footage and other related technologies. Judicial officers are reviewing lengthy camera footage submitted into evidence, and when these cases proceed to trial, the parties and juries are also spending increased time reviewing footage. This increases the number of multi-day jury trials. DUI cases, in particular, are impacted by these developments as there is often body camera or dashboard camera footage of these incidents.

- With legalization of recreational marijuana, the number of drug related Driving Under the Influence cases has increased. These cases involve blood tests rather than breath tests. At trial, the prosecution must call a toxicologist expert to testify to the blood test results and effects of the drugs. Often the defense may call a toxicology expert to give a contrary opinion. This means that most of these cases take at least two days instead of the normal one to one-and-a-half-day county court jury trial.

- The Rothgery v. Gillespie County decision in 2008 clarified the defendant's right to counsel at all initial proceedings, the county court has experienced an increase in cases where defendants are represented by court-appointed counsel. This has increased the number of appearances on cases and increased the length of time required to handle each appearance. More cases are set for jury trial, requiring evidentiary motions hearings and other pre-trial matters, even if the case is ultimately resolved before it proceeds to trial. For example, misdemeanor jury trials have increased approximately 93 percent in Jefferson County and approximately 14

percent in Adams County since FY14. County court has also seen more cases where mental competency to proceed is an issue. When a defendant is ordered to undergo a competency, sanity, or mental condition evaluation, a mental health stay is ordered in the case until the evaluation is completed and considered by the court. The court continues to set reviews and monitor progress during this time. Compared to FY18, mental health stays ordered in county court cases increased 18 percent statewide in FY19. Certain districts are experiencing more pronounced increases to competency work. For example, the number of mental health stays ordered in a misdemeanor or traffic cases increased by 114 percent in Mesa County and 80 percent in Arapahoe County between FY18 and FY19.

- With the passage of House Bill 15-1043, a person faces a felony charge for a fourth or subsequent drinking and driving offense. The increased penalties and collateral consequences due to DUI/DWAI convictions has contributed to an increase in litigation and trials in these cases.

- Senate Bill 16-116 created a new process for sealing certain criminal justice records. County court judicial officers are now required to review and process these motions that were previously handled via a separate district court filing. If the case in question involves a victim, the judge must review the motion, set the matter for hearing and call the case on record to ensure victim notification requirements are satisfied before ultimately ruling on the motion to seal. This process takes time and requires additional county court judge review of the case beyond what was previously required. There were 3,315 motions to seal in county court cases received in FY19; an increase of 20 percent in comparison to FY18.

- The increase of the county court civil jurisdictional limit as of January 1, 2019 (Senate Bill 18-056), has expanded the number of civil matters cases that may be heard in county courts. While the full scope of impact is not yet known, this change may result in both increases to the number of cases as well as the work required to process the cases involving disputes over greater dollar amounts. A year-to-date comparison with preliminary data shows a nearly 4% increase in money cases filed in county court.

I3 – JUD 2: Page 41: Since magistrates are not retained by voters, what is the process for holding magistrates accountable? When is it appropriate to utilize a magistrate rather than a judge? What would be the cost difference if county court judges rather than magistrates were requested in R2?

Magistrates report to the Chief Judge of the judicial district, are at-will employees and are subject to the Department's Personnel Rules and Policies. For instance, magistrates undergo the same performance appraisals received by other Judicial Department employees. Magistrates are evaluated on the essential functions and any additional functions assigned by their supervisor. Upon completion of the annual evaluation, the magistrate and supervisor

meet to discuss performance and actions can be taken for below standard or unacceptable performance.

Chapter 35 of the Supreme Court Rules outlines the Rules for Magistrates. While the matters that magistrates may preside over are limited, they can perform many of the same duties as a constitutionally elected or appointed judge. Work assignments are designated by the Chief Judge of the judicial district and can require performing judicial duties in any or all the following areas: criminal, civil, juvenile, domestic relations, probate, and traffic. Such duties may include deciding the merits of cases, hearing and evaluating evidence and witness credibility, analyzing laws and rules, making findings of facts and conclusions of law, and issuing oral or written decisions and orders to resolve cases. Magistrates cannot preside over jury trials, cannot rule on constitutionality of laws, and, in some cases, can only preside with the consent of the parties. Unlike statutorily created judgeships, magistrate positions can be utilized in various locations over time as workload and staffing needs change.

A request for 8.0 County Court Judges would cost approximately $692,115 more in FY21 than for 8.0 magistrates of which the salary differential (including PERA and Medicare) is $192,964; capital outlay is $335,920 and operating is $163,231.

OSPB's FY 2020-21 budget instructions asked executive-branch agencies to search for the following budget saving opportunities:

Unspent Funds

- **Positions vacant > six months –is it really needed?**
- **Reversions of prior year spending –is there a pattern or a one-time occurrence?**

Actuals vs Estimates

- **Fiscal Notes-did enacted programs really cost what was estimated?**
- **Decision Items –are there pilot programs still on-going? Did the Department receive permanent FTE for functions no longer needed?**
- **End of year spending-review purchases for the final 8 weeks of each fiscal year – were the purchases budgeted for in advance or end of year "spend-up"?**
- **Travel, meals, official functions –review for least cost vs maximum allowable.**

Unrequested Funds

- **Sunset recommendations—were any sunset recommendations not adopted by the legislature?**

- **Appropriations—was the Department appropriated more than was requested?**

- **Supplemental Requests—why did the Department not include these requests in regular budget cycle?**

Underutilized assets

- **Goods or services that could be purchased less expensively in private sector.**

In preparing the FY21 budget request, the Department was aware of the OSPB budget guidelines and consequently submitted a budget that is 3.1% (in total) greater than the FY20 appropriations. As part of the budget review process, the Department was initially able to identify $500,000 in General Fund savings.

Factors driving the Department's General Fund increase include the annualization of legislation (nearly $1 million), increased payments to OIT (FY19 - $4,527,616; FY20 - $7,401,966; FY21 request - $8,112,286), the state PERA increase of .5% and the decision item requests.

Subsequent to the November 1 budget submission, the Department has identified budget efficiencies that will be submitted in January as a budget amendment. The amendment identifies $6.0 million in reductions in the FY21 request, lowering Department's overall budget increase to 1.51% (compared to a statewide average of 2.6%) from the FY20 appropriation.

PUBLIC ACCESS TO COURT RECORDS

PA – JUD 1: Does the Judicial Department have a policy in place to ensure that the public may have access to its records showing how the courts perform their official duties, such as a uniform standard for sealing criminal court records? If not, why?

The Judicial Department, and judges throughout Colorado, share the General Assembly's commitment to transparency. Of course, some cases necessitate restricted public access for various reasons, such as safeguarding ongoing criminal investigations and protecting highly personal information in domestic relations cases. In the interest of promoting transparency while recognizing the need for restricted access in such cases, the Judicial Department has crafted the rules outlined below.

Access to records of the Judicial Department is governed by the provisions of the Public Access to Information and Records Rules (PAIRR), which are promulgated by the supreme court, as well as the determinations of judicial officers in individual cases. PAIRR Rule 1 incorporates Chief Justice Directive 05-01 and governs access to court records, such as filings in particular cases. PAIRR Rule 2 governs access to administrative records of the branch and largely mirrors the provisions of CORA. For both civil and criminal cases, judicial officers may restrict public access to court records in a particular case in accordance with the law.

The question references uniform standards for sealing criminal court records. Sealing of criminal court records typically involves an individual convicted of a crime attempting to have that conviction sealed so that there is no longer a public record of the conviction. Sealing is governed entirely by statute, and most criminal record sealing statutes are contained in Title 24. Judges are required to follow those statutory provisions in sealing criminal cases.

The question appears to be directed at something other than sealing of criminal records. Judges have the authority to "suppress" court records in certain situations, meaning that they can restrict public access to certain filings within a case or the entire case. Rule of Civil Procedure 121, section 1-5, and case law govern the restriction of public access to court records in civil cases. For criminal cases, restriction of public access to court records is governed by the Constitution and case law related to public access. The Department does not have a separate court rule governing restriction of public access to records in criminal cases, but the Criminal Rules Committee of the supreme court is in the process of drafting a proposal for the supreme court. The committee is expected to vote on a proposal in January 2020. In the vast majority of cases where the judge restricts public access, one of the parties to the case files a motion asking the judge to restrict access, and the opposing party has an opportunity to respond to that motion. In very few cases does a judge decide to restrict access without a request from the parties.

PA – JUD 2: How many other states have adopted a uniform standard to ensure reasonable accountability to the public?

The Department is not aware of how many other states have a uniform standard for restricting public access to records in criminal cases. Every state has open records statutes or court rules that address public access. In addition to general open records rules, some states specify the process for a court to follow in restricting public access, and other states have varying specificity of standards the court applies in restricting access.

PA – JUD 3: Will the Judicial Department use any of the increased appropriations that it is requesting for FY 2020-21 to provide better accountability to the public?

Undoubtedly, the requested appropriations will allow the Department to better serve the citizens of the state. The Department continually strives to be open and accountable, while at the same time recognizing that it is the repository for extremely sensitive information in both civil and criminal cases. The Department has a history and reputation of working with concerned citizens and legislators regarding its level of transparency and accountability.

PA – JUD 4: Has the Judicial Department complied with public accountability measures that the Colorado General Assembly has passed, such as H.B. 18-1152, which dealt with CORA and sexual harassment complaints?

Yes. On May 31, 2018, the supreme court amended the provisions of PAIRR 2 to mirror the provisions of CORA related to sexual harassment complaints. On January 24, 2019, the

supreme court amended the Rules of Procedure regarding Attorney Discipline to add a provision that the Office of Attorney Regulation Counsel's investigation records regarding allegations of sexual harassment shall be available to the complainant and the respondent. On September 19, 2019, the supreme court amended the Rules of Professional Conduct governing attorneys in the state to clarify that sexual harassment in connection with an attorney's professional activities constitutes a violation of the Rules and is grounds for discipline by the Office of Attorney Regulation Counsel.

PA – JUD 5: Describe how the Judicial Department currently handles CORA requests for sexual harassment complaints. Describe how the Department handles other types of CORA requests.

For sexual harassment complaints regarding Department employees, the Department handles PAIRR requests the same way that other branches handle CORA requests for that information. PAIRR is identical to CORA with respect to sexual harassment complaints against Department employees.

Complaints against judges are handled by the Colorado Commission on Judicial Discipline. Confidentiality of those proceedings is governed by the Constitution (Article VI, § 23(3)(g)), statutes (§§ 24-72-401 and 402, C.R.S.), and court rule (C.R.J.D. 6.5).

Requests for sexual harassment complaints regarding attorneys who are licensed by the Office of Attorney Regulation Counsel are treated the same as other complaints filed with OARC. The information in the complaints is confidential until there is a determination that there is reasonable cause to believe that grounds for discipline exist and OARC files and serves a complaint against an attorney. It is important to remember that OARC regulates attorneys, the vast majority of whom are not Department employees. These records are maintained by OARC in its capacity as the licensing and regulating authority for attorneys throughout the state.

PA – JUD 6: Describe how the Judicial Department currently decides to suppress records.

When a court receives a filing that may contain confidential personal information, a court clerk may temporarily restrict public access to the document until the clerk has reviewed the document and redacted the confidential information. But in general, the Department does not decide whether to suppress records. It is up to each individual judicial officer to decide, based on the law and facts before him or her, whether to restrict public access to some or all of the records in a case.

PA – JUD 7: In 2018, the Denver Post published a series of articles on suppression of court records. According to one of these articles:

> **More than 6,700 civil and criminal cases have been restricted from public access since 2013, usually by judges who agreed to a request from prosecutors or**

defense lawyers to shield them, The Post found. Of those, 3,076 are still under suppression orders that keep the details away from the public….

The Post found one criminal case — that of a board member and part-owner of the Broomfield Academy charged and convicted of felony sexual assault of a child and misdemeanor child abuse — in which prosecutors requested and received a suppression order to avoid publicity. The case remains suppressed.

It found another — of a member of the Adams County 14 school board eventually convicted with attempting to lure a child for sex — in which the judge ordered the suppression at the outset, without anyone even asking for it, because the judge "had concerns about releasing information," records obtained by The Post show. The case remains suppressed.

The case of Clifford Galley, 28, convicted of attempted first-degree murder, was one of a number The Post found that remained suppressed long after the defendant went to prison. Galley was sentenced to 169 years in prison and won't see freedom in his lifetime. Documents related to the case were suppressed after his arrest in 2013 and no one except for his lawyer, prosecutors or a judge could see them. Last month, a judge lifted the suppression order after The Post asked prosecutors' questions about it. His appeal, however, remains suppressed.

Does the Judicial Department think this type of suppression is appropriate? What has the Department done to address this issue?

The Judicial Department cannot comment on whether actions taken by judges in specific cases are appropriate. However, in response to the concerns raised in the Post articles, the Department scheduled and held multiple conferences with chief judges throughout the state. Those discussions were fruitful and revealed, among other things, that many of the suppression concerns involved requests by the prosecution at the beginning of a case either because the investigation was still ongoing or to avoid alerting the defendant that a warrant for his arrest had issued; after the investigation was completed and the defendant was arrested in those cases, there was no follow-up motion filed to notify the court that suppression was no longer necessary. That meant that the cases inadvertently remained suppressed. As mentioned, the Criminal Rules Committee of the Supreme Court is currently working on a new rule to avoid these and other issues the Department learned about through its review and the discussions it had with the chief judges. The goal of the rule the committee is working on is precisely to ensure transparency and public access. It is also worth mentioning that the Department understands that the number of cases restricted from public access has been greatly reduced since the discussions held with the chief judges.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

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 Department is on track to implement all legislation in the time prescribed in the legislation.

2 **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, 2019 (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-30-2019

None

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

a. **Are you expecting any changes in federal funding with the passage of the FFY 2020-21 federal budget? If yes, in which programs, and what is the match requirement for each program?**

None

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

N/A

c. **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 2019-20 or 2020-21.**

N/A

d. Compared to other states, Colorado ranks low in receipt of federal dollars. How can

the Department increase the amount of federal money received?

The Department pursues federal grants when it makes sense programmatically particularly in the Probation and the Problem-Solving Court programs. However, federal grants aren't necessary free and often require a state match or state paid management of grant or awards and the Department may not have the capacity to manage a grant within existing resources.

e. **What state funds are currently utilized to draw down (or match) federal dollars? What state funding would be required to increase the amount of federal funding received?**

None

4 **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?**

N/A

5 **Based on the Department's most recent available record, what is the FTE vacancy and turnover rate: (1) by department; (2) by division; (3) by program for programs with at least 20 FTE; and (4) by occupational class for classes that are located within a larger occupational group containing at least 20 FTE. To what does the Department attribute this turnover/vacancy experience? Do the statewide compensation policies or practices administered by the Department of Personnel help or hinder the department in addressing vacancy or turnover issues?**

Our current turnover can be linked back to the inability to move employee's through salary ranges. The statewide common policy decision of only giving across the board increases or no increase has completely negated the pay for performance program set into place that was to help move employees through the ranges. Without the two-tiered system of increases (Across the Board and Pay for Performance) coupled with the need to move salary ranges for market competitive starting wages, longer term employee salaries have not been able to progress through the range and are now compressed to be equal with employees who have started working with the state.

	Appellate	Probation	SCAO	Trial Courts
	Overall			
Terminations	2	103	26	192
Total Head Count	55	1226	256	1651
Turnover	3.6%	8.4%	10.2%	11.6%
	Voluntary			
Terminations	1	63	18	118
Total Head Count	55	1226	256	1651
Turnover	1.8%	5.1%	7.0%	7.1%
	Involuntary			
Terminations	0	8	2	26
Total Head Count	55	1226	256	1651
Turnover	0.0%	0.7%	0.8%	1.6%
	Layoffs			
Terminations	0	0	0	1
Total Head Count	55	1226	256	1651
Turnover	0.0%	0.0%	0.0%	0.1%
	Retirement			
Terminations	1	32	6	47
Total Head Count	55	1226	256	1651
Turnover	1.8%	2.6%	2.3%	2.8%
	Death			
Terminations	0	0	0	0
Total Head Count	55	1226	256	1651
Turnover	0.0%	0.0%	0.0%	0.0%

6 **Please identify how many rules you have promulgated in the past two years (FYs 2017-18 and 2018-19). 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.**

N/A

7 **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.**

Caseload is the main cost driver for the Judicial Department. Variations in caseload are mainly driven by policy decisions of the District Attorneys, such as charging practices. Legislative, social, and technological changes may influence not only the volume of cases, but trial court processes as well. For example, the expanded use of technology and body cameras in law enforcement has increased the amount of time spent reviewing evidence. Conversely, introducing E-Filing and other court technologies reduces material and data entry costs while also increasing accessibility of the trial courts. To the best of our knowledge, the Judicial Department is not experiencing significant price inflation compared to the general CPI.

8 **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?**

The Department's probation population has changed considerably over the last several years. The regular adult population has increased by more than 9,000 probationers from FY13-FY19, and the juvenile population has decreased by nearly 1,000 in that same timeframe. Adults sentenced to probation for felony convictions have increased by 33% over the last seven years (from 10,360 in FY13 to 13,773 in FY19). Additionally, the risk profile of probation's population has changed. Colorado probation has measured increases in the number of high-risk adults being sentenced to probation and a corresponding increase in severity of need. Probation has seen an 80% increase in high risk probationers from FY13 to FY19. Comparatively, probation's low risk population has only grown by 11% in that same timeframe. High risk probationers present with greater needs and have more complex and disrupted stability factors (e.g. homelessness), behavioral problems, acute mental illness, longer histories of failure on community supervision and higher probability of failure on probation. These cases require great strategic and time-intensive supervision increases workload demands of state probation officers. Despite legislative efforts to reduce penalties and decriminalize various offenses, felony filings continue to increase, and probation's higher-risk population continues to grow.

While total trial court filings have declined slightly in the last year, the decrease has not been uniform. Some significant case types have increased over the past several years. For example, felony criminal filings have experienced robust growth, increasing 58 percent since FY 2012. During this same time, mental health filings have increased 28 percent and probate filings have increased 15 percent.

The complexity of cases has also changed over time, contributing to increased time constraints on judicial officers. For instance, additional time is required to process DUI/DWAI,

domestic violence, and misdemeanor cases. In many jurisdictions, county court judicial officers handle preliminary proceedings in felony criminal cases or in some locations oversee lower level felony cases for the duration of the case. The time associated with felony criminal work by county court judicial officers is another area that has experienced an increase.

The increased number of self-represented parties has changed the workload demands on the trial courts as well. Over the past ten to fifteen years, more citizens are now participating in a court case without the services of an attorney. Self-represented parties present unique challenges to the court system in several ways. For example, self-represented litigants can increase the amount of time necessary for clerks to handle the day-to-day business of the courts as individuals require one-on-one procedural assistance. Pro se litigants may be unable to print necessary documents and forms and often lack access to and/or struggle to understand state statutes, court rules, and policies and procedures necessary to properly handle their cases. The provision of assistance to parties without attorney representation continues to be a significant demand on the trial courts and needs related to this issue continue to be monitored closely.

Colorado Courts are experiencing the impact of two specific demographic trends in the state of Colorado. The rapid increase in population over the age of 65 and increased diversity of Colorado's population both have implications for the courts.

As the population ages, the courts expect to see increases in probate, protective proceedings cases, guardianship and conservatorship proceedings. Unlike some types of court cases, which can be resolved in a year or less, many protective proceedings cases require long-term oversight by the courts. More than 3,000 new protective proceedings cases were filed in FY 2019, and roughly 15,000 probate matters are subject to ongoing court monitoring at any given time.

Language and cultural barriers can create obstacles such as misconceptions about the role of the court system and law enforcement. These challenges can keep litigants with limited English proficiency (LEP) from participating fully in their own court proceedings. Court interpretation and translation require increased management and scheduling as the trial courts as they are increasingly compelled to use language interpreters in court proceedings and translators for written documents. Additional time is required to determine the need for interpreter services, to schedule the appearance of interpreters, to conduct proceedings using interpreter services, and to process payments for interpreter services. Further, if an interpreter is not available or does not show up to a hearing, proceedings must be delayed. These factors can add significantly to the time required to resolve cases.

9 **Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps), the role of these technologies in the Department's interactions with the public and other state agencies, the Department's total spending on these efforts in FY 2018-19 and expected spending in FYs 2019-20 and 2020-21.**

The Judicial Department ("Department") currently provides several external facing applications/websites to support an important Department goal of providing Access to Justice. The applications include an external facing website with a variety of self-service functionality such as the ability to pay fees and fines online, information regarding public records, and several online court reports. Additionally, the Department provides a statewide e-filing system (Colorado Courts E-Filing), which was developed inhouse, for all civil, criminal, probate, water, and domestic relations cases. In April 2019 (FY19), the Department also launched pro se e-filing for domestic relations cases in the 8th and 18th judicial districts. The Department will continue its rollout of pro se e-filing across the state in FY20 and FY21.

In FY20 and FY21, the Department's strategy to increase Access to Justice includes planning, and possibly the implementation of, a new external website. The vision for the Department's new website will be to create Unity in Justice by integrating several new applications that will be benefit the citizens of Colorado such as the Colorado Legal Help Center (CLHC) website and Online Dispute Resolution (ODR). The goal for CLHC and ODR is to seamlessly integrate these applications with the Department's Colorado Courts E-Filing (CCE) system for easier Access to Justice and increased efficiencies throughout the court filing process. The Department is working with the State Internet Portal Authority (SIPA) on options to replace the Department's external website at a minimal cost. The Department estimates the CLHC system will cost approximately $130,000 but does not include the automation of all court forms. The total cost for the ODR system is currently unknown.

Additionally, in FY20 and FY21, the Department will be implementing a court reminder text messaging program to remind criminal defendants and juvenile participants to appear at each of their scheduled court appearances. The Department's court reminder program will also be used to notify these same participants of court closures due to inclement weather. The development of court reminder program will cost approximately $203,000 in FY20 with ongoing costs of approximately $99,186 per year.

Lastly, in FY20 and FY21, the Department will be putting together a strategy to add juvenile e-filing as part of the CCE application for attorneys and other state agencies to file juvenile cases with the Department. This added functionality will be developed with internal Department resources.

10 **There are many ways in which the Department may interact with internal or external customers, including the public and other departments. How is the Department gathering feedback and evaluating customer experience? Please address all interactions, e.g. technology, in-person, call centers, as well as total spending on these efforts in FY 2018-19 and expected spending in FYs 2019-20 and 2020-21.**

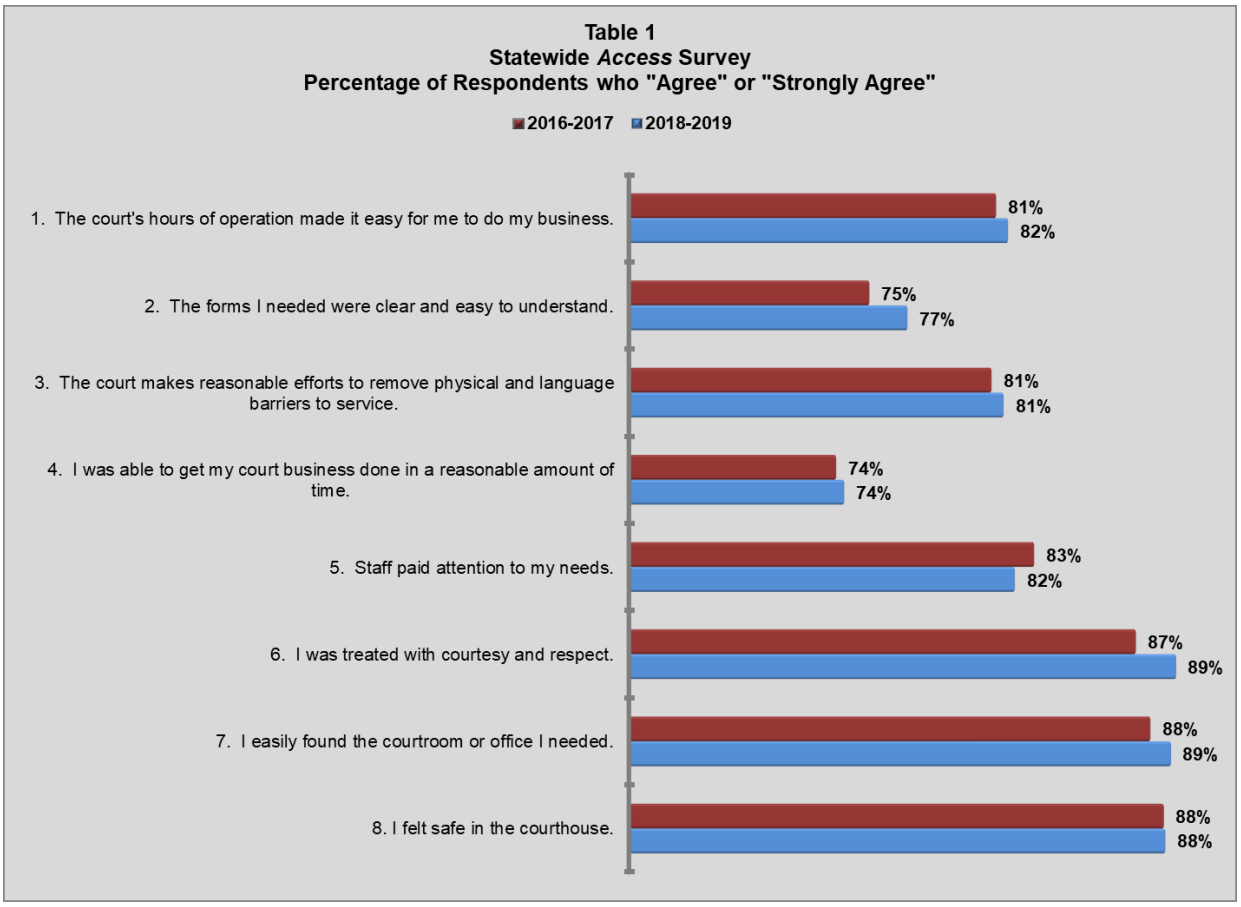
One of the primary ways the Department gathers customer feedback on trial courts is through Access and Fairness surveys. In order to gauge the level of perceived trust and confidence

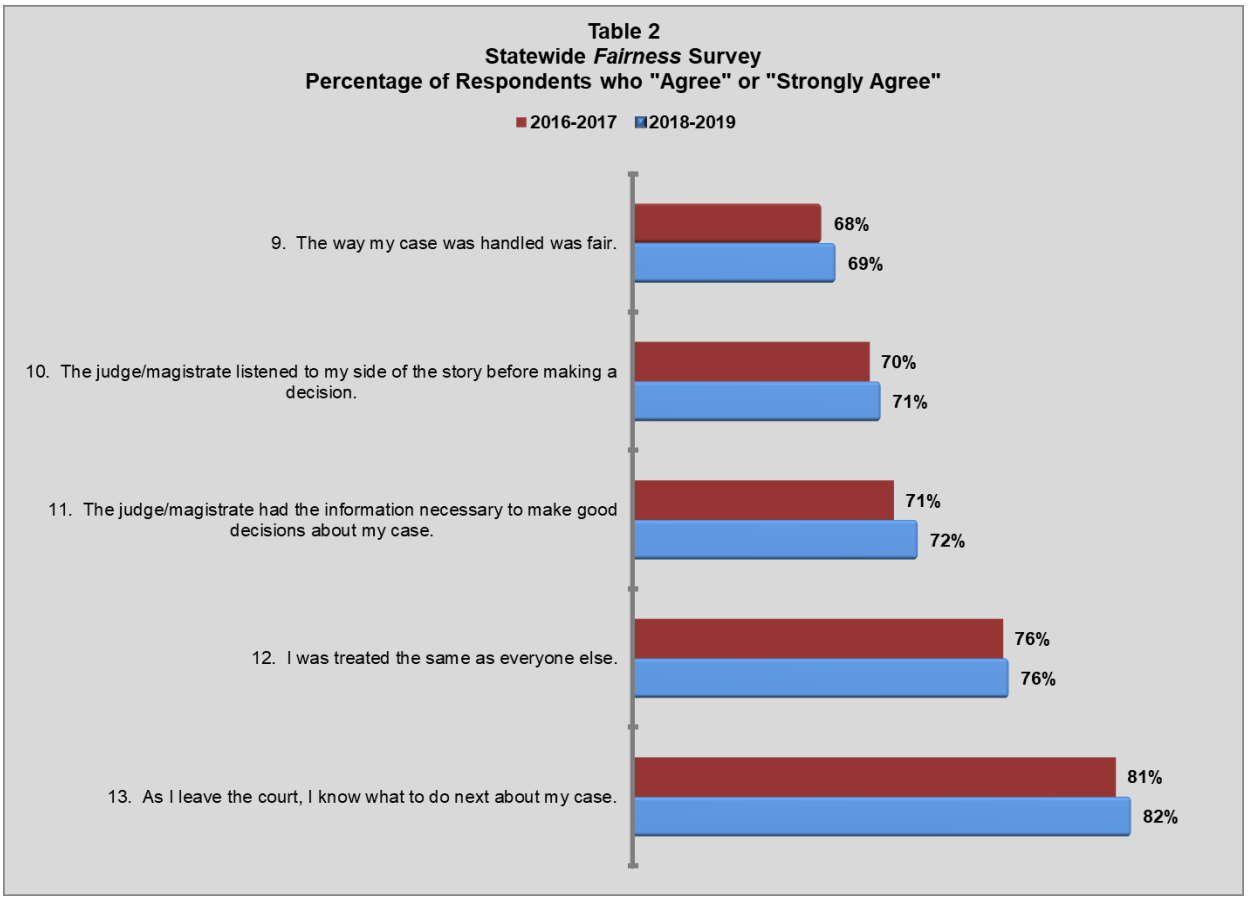
within the courts, the Judicial Department conducts an Access and Fairness survey in every judicial district in the state every two years. The purpose of the survey is to:

(1) Rate the court user's perceptions of the courts accessibility and its treatment of court users in terms of fairness, equality, and respect;

(2) Provide a general snapshot on how the public perceives access and fairness in the courts;

(3) Establish a baseline of information so that the courts can evaluate current practices and create plans for more improved and efficient court practices.





11 **Please highlight the long-term financial challenges of fulfilling the mission of the Department with particular attention to any scenarios identified in the Department's Long-Range Financial Plan involving an economic downturn, department-specific contingencies, emerging trends, or major anticipated expenses (Subsections 3-6 of Section 4 of the Long Range Financial Plan submitted pursuant to H.B. 18-1430).**

State Policy changes enacted by the General Assembly (Criminal Justice reform etc.) present the biggest financial challenge to the Department. Legislation such as SB19-191 requiring a bond hearing within 48 hours of arrest will impact courts operations and there will be a financial cost for implementation.

12 **In some cases, the roles and duties of existing FTE may have changed over time. For all FY 2020-21 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;**

The new FTE positions will be posted and filled competitively. A qualified candidate will be required to meet the minimum qualifications to perform the job. All new positions will require some degree of training.

b. **Specify why additional FTE are necessary; and**

The FY21 requested FTE are required to meet caseload/workload growth, improve operating practices or implement new statutory requirements.

c. **Describe the evaluation process you used to determine the number of FTE requested.**

Each Decision Item with FTE requested includes a detailed justification of the FTE need.

13 **Please describe the impact of Colorado's low unemployment rate on the Department's efforts to recruit and retain employees.**

Response: The unemployment rate in Colorado continues to have a specific impact on our recruitment and retention efforts for our specialized/niche positions. The unemployment rate sits around 2.7% (Sept 2019).

A study just completed by Bloomberg and Workday finds that college graduates are not bringing enough technical or soft skills to the job market requiring employers to build soft skills training programs and mentorships in order to remedy the lack of skill. While there are a lot of jobs open, we are seeing an increasingly wide gap between the jobs being created and the skills and experiences in the workforce to fill them. For Colorado Judicial this means that while we may be receiving enough applications for some roles, we are not seeing the quality we require for our professional standards. Specifically, for our IT positions we are seeing record lows in terms of applicants. For several positions we have only had 4 individuals apply even after posting the position multiple times and casting a wider net. These individuals are not adequately meeting the minimum qualifications for the position or who do not exhibit the qualifications needed to be successful in our organization. We are having to post position multiple times in order for find any viable applicants which then creates strain and production issues for our current employees who then begin to consider other opportunities where the work load may be more manageable. This cycle continues to throughout our recruitment/retention efforts.

Ex. Network Security Engineer was posted in September for 2 weeks and only received 7 applications of which no individuals were selected. The position was posted again for two weeks at the end of October with only 5 applicants of which once again none have been selected due to the lack of qualified applicants. We will now post a third time for the position.

We are also seeing many individuals leave our organization due to being offered higher salaries at other companies in the private sector. This has had an impact on our financial services, human resources, and information technology positions. The high cost of living in Colorado also makes it difficult to recruit as individuals are not making enough to cover the high cost of housing and living. Our state salaries and wages are barely increasing while the cost of living is now going up by 2-2.5% per year. Inflation is here (we just don't notice it) and the gap between wages and costs is not closing. This fact makes it more difficult for our current employees to refuse a job in the private sector that is willing to offer a higher salary.

Candidates are also able to be more selective on the opportunities they are seeking, and we have seen an increase in "ghosting" where applicants are applying and/or accepting interviews/offers and never reporting for duty or responding to correspondence to move forward in the process.

14 ***NOTE: An example template for providing data for this question will be provided by the JBC Staff.***

State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of General Fund for taxpayer refunds. Please:

a. List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds $100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.

Most of the cash revenues collected by the Judicial Department are court fines, fees and costs. The attachment at the end of this document provides a 3-year history of collections of these various sources. The notable exception to court fines and fee revenue for the Judicial Department is e-filing fees and probation supervision fees. E-filing fees are charged for electronic filings, network access, searches of court databases, etc. while the probationers pay a $50/month supervision fee. The revenues of the two funds are listed below:

Revenues			
	FY18	FY19	Projected FY20
Judicial IT CF	16,047,415	17,149,752	17,749,993
Offender Treatment and Services CF	18,635,772	19,062,533	18,586,601

b. For each source, list actual revenues collected in FY 2018-19, and projected revenue collections for FY 2019-20 and FY 2020-21.

It is difficult to predict revenue growth as they are fines and fees associated with court proceedings. In the last three fiscal years growth has averaged approximately 2%. Using a 2% growth factor would result in an aggregate revenue increase of $4.3 million in FY21.

c. **List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2020-21**.

None

15 **Please describe the Department's current practice regarding employee parking and other transportation options (i.e. EcoPass). Please address the following:**

a. **Does the Department have adequate parking for all employees at all locations?**

No

b. If parking is limited, how are available spaces allocated?

Most the Judicial Department employees work in county provided facilities and the individual counties determine parking policy. At the Ralph L Carr Judicial Center, parking is provided in a dedicated garage (for a monthly fee) with a wait list for those seeking a space.

c. If free parking is not available, how is parking paid for, and who pays (employee or Department)? (e.g. stipends, subsidized parking, eco passes)

The Department does not pay for or subsidize parking. The Department does provide for Eco pass for employees of the Ralph L. Carr Judicial Center for a $15/month fee to the employees. Two Judicial Districts, Jeffco and Denver also provide Eco passes for their employees.

d. If employees pay fees for parking, where is the revenue credited and how is it spent, and is it subject to TABOR?

The revenue from parking fees is deposited in the Judicial Center Cash Fund and is counted as Tabor revenue.

e. Do parking and/or transportation benefits factor into Department compensation and/or retention efforts?

Yes, transportation assistance is part of the Department's compensation package.

16 **Please identify all continuously appropriated funds within the Department's purview with a fund balance or annual revenue of $5.0 million or more. Please indicate if these funds are reflected in the FY 2019-20 Long Bill.**

Attorney Regulation Cash Fund which is identified in the Long Bill as the cash fund source for the Office of Attorney Regulation.

OFFICE OF THE STATE PUBLIC DEFENDER

JUDICIAL BRANCH

FY 2020-21 JOINT BUDGET COMMITTEE HEARING

Friday, December 13, 2019

10:00 am – 10:25 am

Main Presenter:

- Megan A. Ring, Colorado State Public Defender

Supporting Presenters:

- Karen Taylor, First Assistant Public Defender
- Maureen Cain, Director of Legislative Policy and Organizational Communication
- Karen Porter, Chief Financial Officer

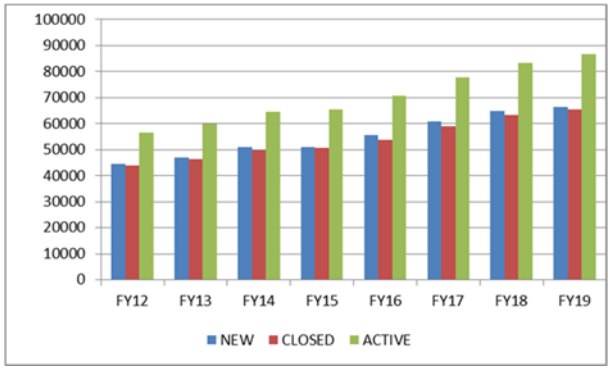
INTRODUCTIONS AND OPENING COMMENTS

QUESTIONS FOR THE OFFICE OF THE STATE PUBLIC DEFENDER

OSPD Question 1. What is driving the felony caseload increase (e.g., types of crimes, types and number of charges filed, etc.)?

Over the past few years, the OSPD has experienced significant increases in felony cases each year, amounting to a 53 percent increase in its active felony cases since FY 2011-12. The Judicial Department District Courts are also reporting significant increases and over the same timeframe have experienced approximately a 58 percent increase in their felony filings. This increase in felony filings is driving OSPD felony caseload/workload increases; 23 percent of the increase is due to violent offenses.

Felony Case Trends



According to a report published October 2019 by the Department of Public Safety's Division of Criminal Justice, Exploring the increase in district court filings in Colorado, 2013-2018, the

rise in felony filings are being shaped by a "complex dynamic that involves multiple interactions between demographic, behavioral, and institutional factors". While the report did not identify one particular factor that has contributed to the filing growth, the data did elucidate underlying factors that may be driving filing increases. Important findings included:

- *Overall population growth does not appear to be a significant contributor to the felony filing growth.*
- *Available data does not support the possibility that an overall increase in statewide arrestees explains the growth in felony filings. The number of adult arrestees did rise slightly between 2012 and 2017 but dropped in 2018. The arrest rate rose between 2013 and 2016 but then declined in 2017 and 2018.*
- *The number of people per year with felony filings increased from 30,515 to 41,134 and the number of people per year with multiple felony filings increased from 14.4 percent in 2013 to 19.7 percent in 2018.*
- *Over 33 percent of the increase in felony filings from 2013 to 2018 involved a drug offense as the top charge. Filings for drug distribution remained relatively stable between 2013 and 2018 while filings for drug possession increased substantially.*
- *There has been an increase in the number of individuals who have multiple drug possession cases in one year. In 2013, 23.7 percent of individuals charged with drug possession had more than one case. In 2018, 32.8 percent had more than one case. However, the number of persons charged with drug possession and drug distribution had declined from 23.2 percent to 13.4 percent.*
- *Property offenses accounted for 16.8 percent of the increase in felony filings the most common of which were forgery/fraud, burglary and other property crimes. In arrests for fraud/forgery increased from 4,427 to 6,349 between 2013 and 2018 while the arrests for burglary remained relatively flat with 2,841 in 2013 and 2,840 in 2018.*
- *The offense of Motor Vehicle Theft independently contributed 9 percent to the growth in filings between 2013 and 2018. The number of arrests for motor vehicle theft has also substantially increased. The percent of motor vehicle thefts filings that also contained a drug possession charge increased from 9.6 percent to 20.7 percent but still 79.3 percent of motor vehicle theft filings did not involve a drug possession charge.*
- *Violent offenses have contributed to the overall growth in felony flings: 22.6 percent of the cases comprising the filings increase between 2013 and 2018 had a violent offense as a top charge. The growth in in violent offense filings has primarily been driven by an increase in the number of assault cases, specifically aggravated assault. One reason for the rise in aggravated assaults filings may have to do with a statutory change in 2016 related to strangulation as a felony but this cannot be quantified.*
- *During a six-year period, nearly 44.5 percent of women defendants and 38.1 percent of men defendants were drug-involved (definition: had a drug related charge during the six year period).*
- *National data indicates that illicit drug use in Colorado has remained relatively flat since 2007.*

There has been recent discussion about the rise in felony sex assault filings. Judicial Department figures demonstrate that the felony sex assault filings as a percentage of total felony filings have been relatively flat over the last 5 years (between 5 percent and 3 percent

of total filings). However, OSPD has experienced a 23 percent increase in our felony sex assault caseload over the last 5 years.

OSPD Question 2. Are some individuals in Colorado who could afford to pay for their own defense receiving state-paid representation from the OSPD or the OADC? What are the requirements for a Colorado defendant to qualify for a public defender? Is it too easy to qualify? Have these requirements changed over time? How do these qualifications compare to those of other states? What percent of total Colorado cases currently receive OSPD or OADC representation? How does this compare with other states? How has the state-representation percentage changed over time?

By statute, Public Defender offices are responsible for the initial determination of eligibility for court-appointed counsel, although judges make the final determination and appoint counsel. Pursuant to Chief Justice Directive 04-04, any party requesting court-appointed representation on the basis of indigency must complete Form JDF208, Application for Public Defender, Court-Appointed Counsel or Guardian ad Litem. Applicants for Public Defender representation sign this form under penalty of perjury. Applicants qualify automatically for Public Defender representation if they are incarcerated or if their income falls at or below 125 percent of the federal poverty level (as determined by the U.S. Department of Health and Human Services).

Rates of OSPD representation in felony and juvenile cases have remained fairly consistent. In 2008, we provided representation in approximately 76% of the felony cases compared to 80% in 2019; in 2008, we provided representation in approximately 71% of the juvenile cases compared to 70% in 2019.

Our rate of representation in misdemeanor cases has risen over this same time. In 2008, we provided representation in approximately 37% of the misdemeanor cases, compared to 55% in 2019. This increase was driven in part by the "Rothgery bill" passed in January 2014 (amending C.R.S. 16-7-301(4)(a)), providing defendants in misdemeanors, petty offenses and traffic offenses counsel rather than mandating that they enter plea negotiations with the prosecution prior to having counsel.

At this time, we do not have information on comparisons to other states but can do further research with additional time.

OSPD Question 3. The total number of cases handled by the OADC seems high. What is driving the conflict of interest in these cases? Why can't the OSPD take a higher proportion of these cases? Who decides that there is a conflict of interest? Have the criteria for sending a case to the OADC changed over time? Is the OADC sometimes being used because the OSPD doesn't have enough resources to handle all the cases it potentially could handle? When there's a conflict, does the OSPD take the highest cost case?

Public Defenders conflict off cases when there is an ethical reason grounded in the Rules of Professional Conduct and case law that prohibit them from continuing representation. One obvious example is that a Public Defender cannot represent multiple clients in the same case or matter. In FY2018-19 approximately 88 percent of the cases in which the OSPD withdrew because of a conflict were situations involving co-defendant or witness conflicts. The remaining twelve percent were for other ethical reasons. The criteria for determining conflicts has essentially remained unchanged over time. Courts consider and grant a Public Defender's motion to withdraw from a case and then order the appointment of counsel through OADC.

Often, depending on the other ethical issues involved, when a case involves co-defendants the OSPD will take the most serious case.

OSPD Question 4. The Judicial Department's 2018 workload study for county court judges showed that the work required for many types of cases has gone up. Has the OSPD experienced an increase in the amount of time it takes to handle its cases? What types of cases have been affected? What are the reasons for the increase?

Our most recent workload study took place in 2016. At that time, we did learn that certain cases required additional time (for example, class one and two felonies, sexual assault cases and crimes of violence) and that attorneys spent more time appearing at advisements as a result of the Rothgery legislation, at juvenile detention hearings and in specialty courts. In addition, we believe that the changes in the volume of discovery, including body camera footage, has impacted workload.

OSPD Question 5. What would be the cost to the OSPD if the court reporter page rate increased by 50¢ per page?

A 50 cent per page increase is approximately a 16.7 percent increase. When calculated on the projected costs for transcripts for FY 2020-21, the impact would be an additional $343,669 for the OSPD.

OSPD Question 6. OSPB's FY 2020-21 budget instructions asked executive-branch agencies to search for the following budget saving opportunities:

Unspent funds

Positions vacant > six months--is it really needed?

- Reversions of prior year spending--is there a pattern or a one-time occurrence?

Actuals vs estimates

- Fiscal notes--did enacted program really cost what was estimated?
- Decision items--are there pilot programs still on-going? Did the Department receive permanent FTE for a function no longer needed?
- End-of-year spending--review purchases for final 8 weeks of each fiscal year – were the purchases budgeted for in advance or end of year "spend-up"?
- Travel, meals, official functions -- review for least cost vs max allowable.

Unrequested funds

- Sunset recommendations--were any sunset recommendations not adopted by the legislature?
- Appropriations--was the Department appropriated more than was requested?
- Supplemental requests--why did the Department not include these requests in regular budget cycle?

Underutilized assets

- Goods or services that could be purchased less expensively in private sector.

Using these guidelines, review your agency's budget and report the results.

We carefully manage our budget throughout the year and, over the past few years, our reversion rate has been approximately .5 percent. In addition, our actual expenditures for fiscal notes and operational costs have proven to be consistent and very close to our estimated amounts. A few years ago, we did have a fiscal note for the Rothgery legislation

where we gave back some attorney FTE and funds when our estimate had been slight over-stated.

We do not have any active pilots, we have not had any sunset recommendations and we do not have any appropriations higher than what was requested.

The OSPD has a centralized purchasing system. We continually review purchasing needs with a crucial eye towards obtaining the best value for the dollar, whether the supplier is in the private or public sector.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUIRED

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.

   We have fully implemented all legislation.

2. 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, 2019 (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-30-2019

   The OSPD does not have any outstanding audit recommendations.

3. If the Department receives federal funds of any type, please respond to the following:
   a. Are you expecting any changes in federal funding with the passage of the FY 2020-21 federal budget? If yes, in which programs, and what is the match requirement for each program?
   b. Does the Department have a contingency plan if federal funds are eliminated?
   c. 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 2019-20 or 2020-21.
   d. Compared to other states, Colorado ranks low in receipt of federal dollars. How can the Department increase the amount of federal money received?
   e. What state funds are currently utilized to draw down (or match) federal dollars? What state funding would be required to increase the amount of federal funding received?

   The OSPD does not receive any federal funds.

4. 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?

The OSPD does not spend any money on public awareness campaigns.

5. Based on the Department's most recent available record, what is the FTE vacancy and turnover rate: (1) by department; (2) by division; (3) by program for programs with at least 20 FTE; and (4) by occupational class for classes that are located within a larger occupational group containing at least 20 FTE. To what does the Department attribute this turnover/vacancy experience? Do the statewide compensation policies or practices administered by the Department of Personnel help or hinder the department in addressing vacancy or turnover issues?

In FY 2018-19 the OSPD's turnover rate was 16.7 percent and vacancy rate was 2.4 percent. Below is a breakout by occupational class:

Occupational Group	FY 19 Turnover Rate	FY 19 Vacancy Rate
Attorneys	18.2%	2.5%
Investigators/Social Workers	6.9%	2.4%
Administrative Assistants	26.2%	2.2%
Central Admininistration	10.1%	1.4%
Total	**16.7%**	**2.4%**

While we have seen many reasons for why attorneys leave the OSPD, a consistent theme over time has been the opportunity for higher pay in other jobs, including government jobs. Last year, the agency requested and received funds to raise attorney salaries to align closer to the market. As a result, the agency has already seen a significant decrease in attorney turnover. As of the first four months of FY 2019-20, the vacancy rate has dropped to 1.4 percent.

The statewide compensation policies administered by the Department of Personnel can help to some degree with our agency's vacancy and turnover issues if funding keeps the OSPD at or near market level.

6. Please identify how many rules you have promulgated in the past two years (FYs 2017-18 and 2018-19). 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 OSPD does not promulgate rules.

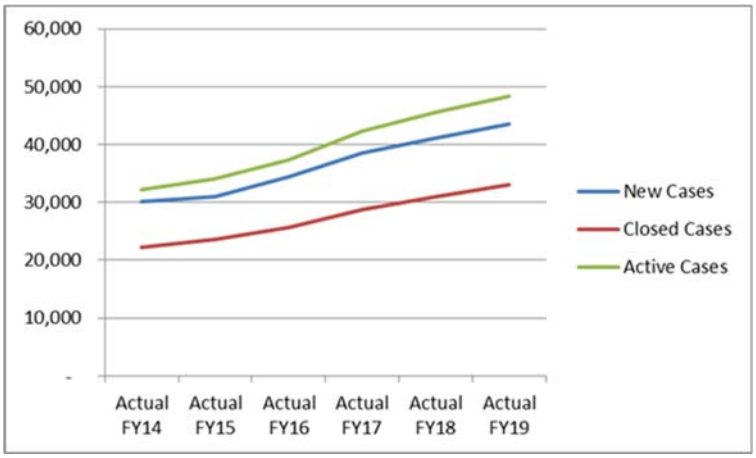
7. What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

As stated previously, our largest cost increases are tied directly to the surge in felony cases. An increase in felony cases requires more resources and thus additional FTE. Since we are a service-oriented agency with 87% of our appropriation devoted to personal services, any increase in FTE will have a direct impact on our budget.

8. 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?

Over the past five years, the OSPD has seen its active felony cases increase from 64,450 cases in FY 2013-14 to 86,668 cases in FY 2018-19. However, more significant within this category is the increase in the number of trial and pre-trial cases. These are cases that are taken to final disposition and require the greatest attorney effort, time and dedication of resources. Active felony trial and pretrial cases have increased from 32,199 cases in FY 2013-14 to 48,327 cases in FY 2018-19 – a 50 percent increase. Felony cases make up approximately 46 percent of our cases yet require 66 percent of our trial FTE resources.

OSPD Felony Cases
Trial & Pre-trial



9. Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps), the role of these technologies in the Department's interactions with the public and other state agencies, the Department's total spending on these efforts in FY 2018-19, and expected spending in FYs 2019-20 and 2020-21.

The Office of the State Public Defender is currently working on a project to revamp its public website to be released this fiscal year. The focus of the project is to make information for the public easier to find and understand, particularly for those that need our services. The new website will also make information regarding our budget and our mission clearer in describing the extent and quality of services we provide to indigent Coloradans. We will also be looking at options for making the application process for a Public Defender available electronically; however, those forms are owned and maintained by the Judicial Department. Regarding costs, we are currently doing this work with in-house staff and minimal costs.

10. There are many ways in which the Department may interact with internal or external customers, including the public and other departments. How is the Department gathering feedback and evaluating customer experience? Please address all interactions, e.g. technology, in-person, call centers, as well as total spending on these efforts in FY 2018-19 and expected spending in FYs 2019-20 and 2020-21.

The Office of the State Public Defender (OSPD) is a single purpose program that is devoted to providing effective criminal defense representation to indigent persons charged with crimes except where there is a conflict of interest. Our clients are indigent people who face the

possibility of incarceration, are unable to afford private counsel and without counsel would otherwise be denied their constitutional right to representation throughout the criminal proceedings.

11. Please highlight the long-term financial challenges of fulfilling the mission of the Department with particular attention to any scenarios identified in the Department's Long Range Financial Plan involving an economic downturn, department-specific contingencies, emerging trends, or major anticipated expenses (Subsections 3-6 of Section 4 of the Long Range Financial Plan submitted pursuant to H.B. 18-1430).

    (Section 4/subsection 3) Scenario Evaluation: Downturn. Any reduction in funding will have direct effects on staffing. The statutory function of the OSPD is to "provide legal services to indigent persons accused of crime 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."

    In order to comply with our constitutional and statutory mandates, the OSPD must have resources and staffing levels to meet the requirements of providing effective representation. If the OSPD is not adequately funded, caseloads will exceed both our internal standards and national standards relating to the number of cases an attorney can effectively handle without impairing quality or breaching professional obligations. 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.

    The Office of Attorney Regulation states an attorney is not competent to provide effective representation if their caseload is too high. There are serious implications to overly high caseloads per attorney, including that the attorney may be subject to disciplinary action for accepting more cases than can be competently handled. In addition, overly high caseloads may result in rulings of ineffective representation for Public Defender clients. If a Public Defender is found ineffective, the result could be a new trial causing an exponential increase in the number of cases processed in our system.

    (Section 4/subsection 4) Scenario Evaluation: Department-Specific Contingency. Current projections show our staffing level falling to 80 percent this year and 79 percent by FY 2020-21. This current and growing staffing deficit presents a threat to the Public Defender's ability to ethically, responsibly and effectively meet its constitutionally and statutorily mandated mission.

    There is another potential urgency to our request: forecasts indicating a slowdown in Colorado's economy in the very near future. Historically, such economic conditions negatively affect income levels, thereby increasing the number of people who qualify for our services. If this forecast holds true, the number of cases and workload requirements will rise at an even faster rate than currently projected.

12. In some cases, the roles and duties of existing FTE may have changed over time. For all FY 2020-21 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;

The OSPD strives to successfully complete all critical responsibilities. Four of our FY 2020-21 requests require additional FTE and the majority of those positions will be filled with entry-level staff. For any of the non-entry level positions, existing staff may apply and will be trained if selected for the position.

b. Specify why additional FTE are necessary; and

All of our requests for FTE are either directly or indirectly tied to increasingly higher caseloads.

- *R-1, OSPD Staffing Requirements. We requested an annualized amount of 59.6 FTE.*
- *R-2, IT. We requested an annualized amount of 3.0 FTE.*
- *R-3, Social Workers. We requested an annualized amount of 9.0 FTE.*
- *R-6, Golden Courtroom Staffing. We requested an annualized amount of 1.6 FTE.*

c. Describe the evaluation process you used to determine the number of FTE requested.

Our workload staffing model was used for R-1 and R-6. Where no workload staffing model exists, an internal analysis was utilized for R-2 and R-3.

13. Please describe the impact of Colorado's low unemployment rate on the Department's efforts to recruit and retain employees.

The OSPD hires most of its attorneys directly out of law school and recruits from both inside and outside of Colorado. Colorado's low unemployment rate has not had an impact on this process to date. Hiring for many non-attorney positions has been more challenging in that most of our positions are hired at entry-level and it is difficult to compete against employers who can pay more.

The low unemployment rate does impact retention, as many of our employees who leave the OSPD have the opportunity for higher pay in other jobs, including government jobs.

14. *NOTE: An example template for providing data for this question will be provided by the JBC Staff.*

State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of General Fund for taxpayer refunds. Please:

a. List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds $100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.
b. For each source, list actual revenues collected in FY 2018-19, and projected revenue collections for FY 2019-20 and FY 2020-21.
c. List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2020-21.

The OSPD does not collect any revenues.

15. Please describe the Department's current practice regarding employee parking and other transportation options (i.e. EcoPass). Please address the following:
    a. Does the Department have adequate parking for all employees at all locations?

    As a statewide system, the OSPD has 22 offices throughout the state. As such, access to parking and any related costs vary widely. In some areas, mostly rural, parking is plentiful and either free of charge or available for a nominal fee. Employees and clients in some urban areas have more difficulty finding adequate parking and usually pay more substantial parking fees.

    b. If parking is limited, how are available spaces allocated?

    The downtown Denver area has limited parking and most parking garages in downtown Denver (state or non-state operated) have a waiting list to allocate spaces as they become available.

    c. If free parking is not available, how is parking paid for, and who pays (employee or Department)? (e.g. stipends, subsidized parking, eco passes)

    Employees of the OSPD pay for their own parking. The OSPD does participate in the EcoPass program and offers subsidized passes.

    d. If employees pay fees for parking, where is the revenue credited and how is it spent, and is it subject to TABOR?

    N/A

    e. Do parking and/or transportation benefits factor into Department compensation and/or retention efforts?

    In some locations, where either availability or costs are an issue, transportation realities are a factor in retention efforts.

16. Please identify all continuously appropriated funds within the Department's purview with a fund balance or annual revenue of $5.0 million or more. Please indicate if these funds are reflected in the FY 2019-20 Long Bill.

    The OSPD does not have any of these types of funds.

OFFICE OF THE ALTERNATE DEFENSE COUNSEL

JUDICIAL BRANCH

FY 2019-20 JOINT BUDGET COMMITTEE HEARING

Friday, December 13, 2019
10:35 am – 10:50 am

Main Presenters:

- Lindy Frolich, Executive Director
- Carrie Clein, OADC Commission Member

Supporting Presenters:

- Darren Cantor, Deputy Director
- Daniel Nunez, Chief Financial Officer

INTRODUCTIONS AND OPENING COMMENTS

QUESTIONS FOR THE ALTERNATE DEFENSE COUNSEL

OADC Question 1: What is driving the felony caseload increase (e.g., types of crimes, types and number of charges filed, etc.)?

Answering this is pure speculation on our part, but as Senator Lee commented at the Department's budget briefing, charging decisions are made by the individual district attorney offices across the state. Certainly, if there are more cases filed, the OADC would likely end up with more cases. As the charts below demonstrate, based on the cases worked on by the OADC, it is impossible to pinpoint what else might be driving the increase in felony caseload.

Felony Cases	FY16	FY17	% change	FY18	% change	FY19	% change
F1	329	389	*18.2%*	418	*7.5%*	457	*9.3%*
F2	728	772	*6.0%*	795	*3.0%*	767	*-3.5%*
F3	2,011	2,063	*2.6%*	2,222	*7.7%*	2,477	*11.5%*
F4	3,057	3,067	*0.3%*	3,398	*10.8%*	3,712	*9.2%*
F5	1,849	2,350	*27.1%*	2,726	*16.0%*	3,112	*14.2%*
F6	1,279	1,526	*19.3%*	1,822	*19.4%*	1,749	*-4.0%*
F- Unclassified				2		58	
DF1	339	419	*23.6%*	516	*23.2%*	563	*9.1%*
DF2	313	336	*7.3%*	399	*18.8%*	470	*17.8%*
DF3	429	490	*14.2%*	509	*3.9%*	531	*4.3%*
DF4	1,680	2,125	*26.5%*	2,613	*23.0%*	3,018	*15.5%*
Grand Total	**12,014**	**13,537**	***12.7%***	**15,420**	***13.9%***	**16,914**	***9.7%***

Felony Cases Trial Court None of the Above	FY16	FY17	% change	FY18	% change	FY19	% change
F1	116	159	37.1%	181	13.8%	206	13.8%
F2	523	553	5.7%	565	2.2%	550	-2.7%
F3	1,583	1,639	3.5%	1,727	5.4%	1,930	11.8%
F4	2,551	2,605	2.1%	2,903	11.4%	3,196	10.1%
F5	1,500	1,954	30.3%	2,226	13.9%	2,507	12.6%
F6	1,035	1,278	23.5%	1,521	19.0%	1,473	-3.2%
F- Unclassified				2		55	
DF1	336	413	22.9%	507	22.8%	548	8.1%
DF2	297	326	9.8%	380	16.6%	444	16.8%
DF3	401	445	11.0%	447	0.4%	455	1.8%
DF4	1,531	1,912	24.9%	2,315	21.1%	2,642	14.1%
Grand Total	**9,873**	**11,284**	**14.3%**	**12,774**	**13.2%**	**14,006**	**9.6%**

OADC Question 2: Are some individuals in Colorado who could afford to pay for their own defense receiving state-paid representation from the OSPD or the OADC? What are the requirements for a Colorado defendant to qualify for a public defender? Is it too easy to qualify? Have these requirements changed over time? How do these qualifications compare to those of other states? What percent of total Colorado cases currently receive OSPD or OADC representation? How does this compare with other states? How has the state-representation percentage changed over time?

Indigence determinations are made by the Colorado State Public Defender pursuant to C.R.S .§21-1-103(3) ("The determination of indigency shall be made by the state public defender, subject to review by the court"), even when defendants and juveniles become OADC clients. See § 21-2-103(2). ("In cases involving conflicts of interest for the state public defender, the determination of indigency shall be made by the state public defender in accordance with section 21-1-103.")

The indigence guidelines are set by Chief Justice Directive 04-04, attached to the end of this document. As a result, this is a question that is best addressed by the Office of the Colorado State Public Defender.

OADC Question 3:

- The total number of cases handled by the OADC seems high. What is driving the conflict of interest in these cases?

The chart below breaks down the reasons for the public defender conflicts of interest as that data is entered by the contractors in the OADC billing system (CAAPS).

Conflict Reason	Count
Co-Defendant	10,932
Victim/Witness	6,841
Ethical Conflict	5,585
PD defendant is potential witness	532
Def is witness vs PD client	442
Irreconcilable Differences	378
Breakdown in attorney/client relationship	79
PD is potential witness	61
Ineffective assistance by PD's office	53
Habitual criminal charges	17
ADC to investigate merits of 35c	16
Attack prior convictions	16
Reconsideration of sentence	15
Review 35c / appeal for merit	13
Withdrawal of guilty plea	12
Prior ADC attorney withdrew	10
Confidential informant	8
Collateral attack	6
Alternate suspect	3
Defendant assisting detectives	2
Sealed motion to withdraw	1
Grand Total	**25,022**

- Why can't the OSPD take a higher proportion of these cases? Who decides that there is a conflict of interest? Have the criteria for sending a case to the OADC changed over time? Is the OADC sometimes being used because the OSPD doesn't have enough resources to handle all the cases it potentially could handle? When there's a conflict, does the OSPD take the highest cost case?

These are questions that can only be answered by the OSPD since they are the ones that notify the court when there is a conflict.

OADC Question 4: The Judicial Department's 2018 workload study for county court judges showed that the work required for many types of cases has gone up. Has the OADC experienced an increase in the amount of time it takes to handle cases? What types of cases have been affected? What are the reasons for the increase?

As the following chart shows, the average cost per case (the only method OADC has for determining the amount of work on a particular case) has decreased consistently since FY10, with the exception of FY19 where there was a very slight increase. This is in spite of two rate increases in that same time period. Based on this it does not appear that there has been an increase in the amount of time it takes attorneys to handle cases. We have taken steps to reduce the hours the highest-cost contractors (attorneys) put into a case by helping them find lower-cost resources, such as legal researchers and case assistants. In our budget, we are requesting approval of a Decision Item OADC R2 (Coordinator of Adjunct Services) which would assist in locating and

distributing these resources with the goal of further reducing the overall cost by driving more work to the lower-cost contractors and reducing the work performed by the highest-cost contractor.

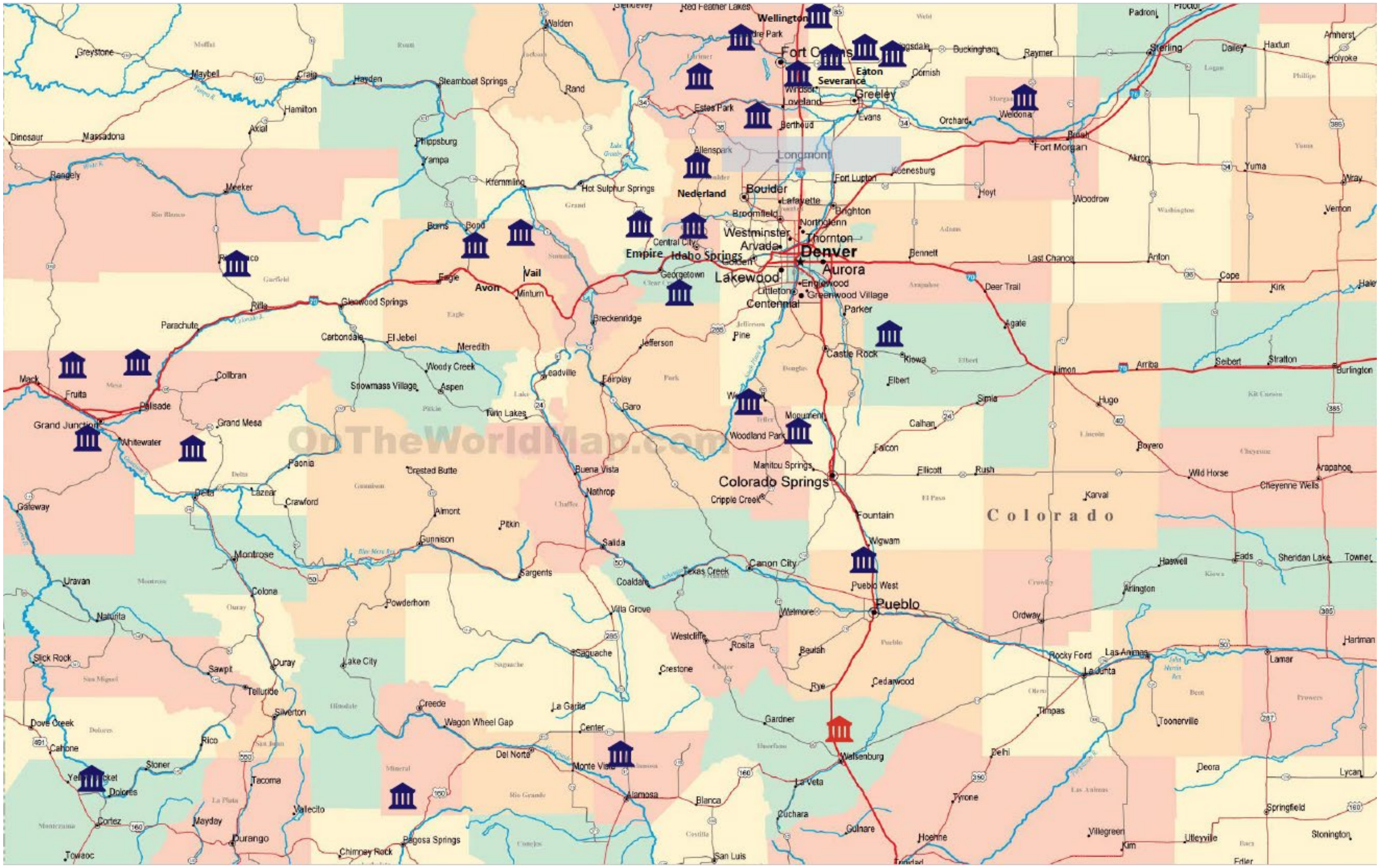
	FY10	FY11	FY12	FY13	FY14	FY15*	FY16	FY17	FY18	FY19**
Overall Average Cost per Case	$1,697	$1,620	$1,641	$1,593	$1,599	$1,722	$1,581	$1,523	$1,456	$1,474
change from prev FY		*-4.5%*	*1.3%*	*-2.9%*	*0.4%*	*7.7%*	*-8.2%*	*-3.7%*	*-4.4%*	*1.2%*

**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.*

***In FY19, there was an 6.7% rate increase for attorney contractors, a 7% increase for Investigators, and a 10% increase for Paralegals, resulting in a disproportionate increase in expenditures for that year.*

OADC Question 5: Senate Bill 18-203 requires municipalities to provide independent and competent legal counsel by January 1, 2020 for each indigent defendant charged with a municipal code violation that has a possible sentence of incarceration. Municipal defenders must be either overseen by or periodically evaluated by an entity that is independent of the municipality and its court. The OADC can serve as such an entity. Please provide an update on the OADC's implementation of this bill.

Pursuant to C.R.S. §§ 13-10-114.5(3)(b)(I), 21-2-103(5), and 21-2-108, the OADC has created the Municipal Court Program (MCP) which will begin on January 1, 2020. This program will evaluate the independence and competence of court-appointed counsel in the 56 municipalities that have applied and been approved to be a part of the program for the upcoming calendar year. The evaluation process will consist of interviews with municipal court staff, interviews with court-appointed counsel, document review including training reports and pleadings, and court-observation. Evaluation reports will be submitted to each municipal court by the end of the calendar year. The MCP is managed by 2 (two) full-time staff members at the OADC, a Municipal Court Coordinator and a Municipal Administrative Support Specialist. The maps below show the participating Municipal Courts.


Wellington
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Empire
Idaho Springs
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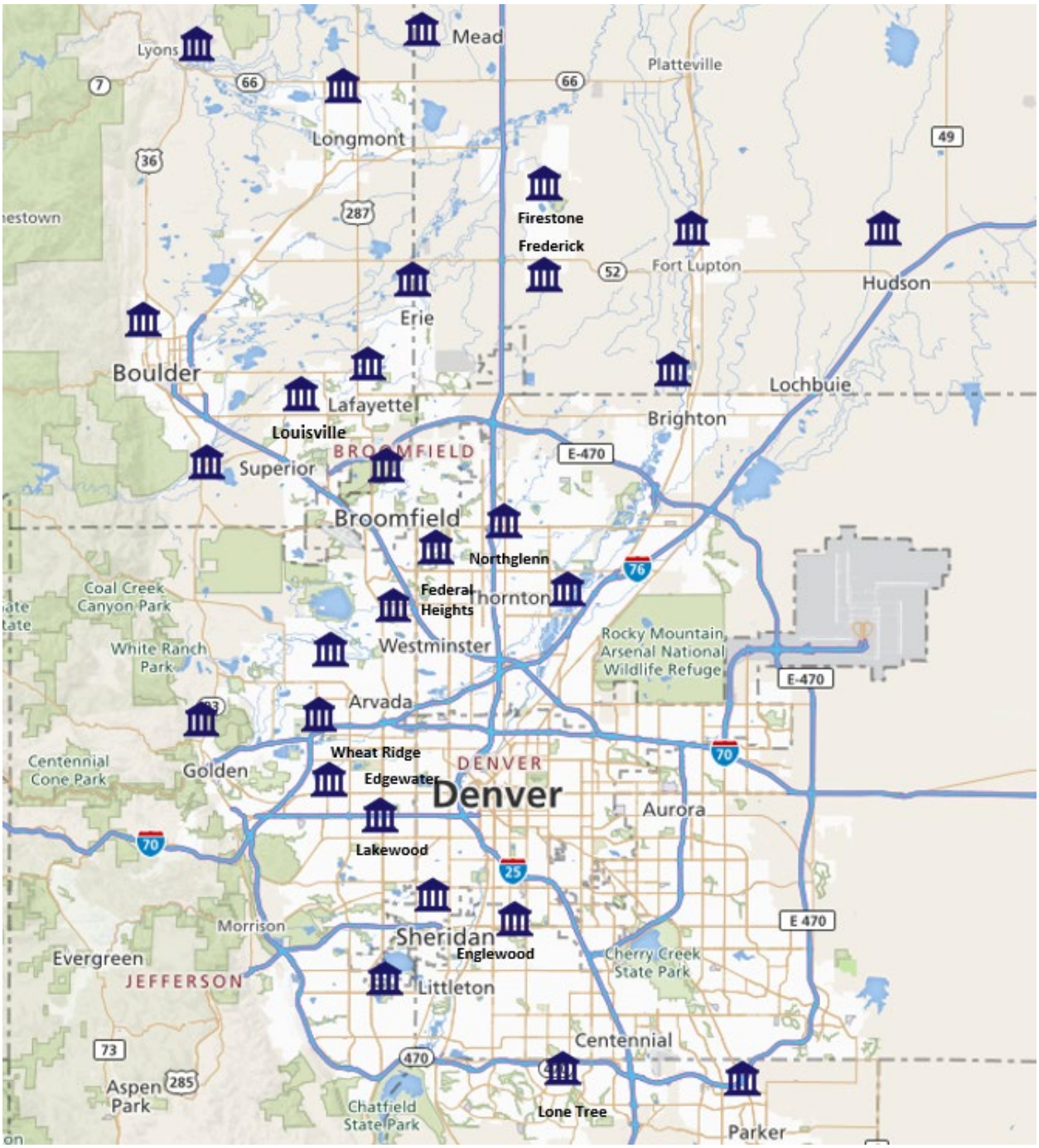
Arvada
Denver
Aurora
Lakewood
Centennial
Castle Rock
Vail
Avon
Colorado Springs
Pueblo
Grand Junction
Fort Morgan
Colorado


Mead
Lyons
Platteville
Longmont
Firestone
Frederick
Fort Lupton
Hudson
Erie
Boulder
Lafayette
Lochbuie
Brighton
Louisville
BROOMFIELD
Superior
E-470
Broomfield
Northglenn
Coal Creek Canyon Park
Federal Heights
Thornton
White Ranch Park
Westminster
Rocky Mountain Arsenal National Wildlife Refuge
E-470
Arvada
Wheat Ridge
Centennial Cone Park
Golden
DENVER
Edgewater
Denver
Aurora
Lakewood
Morrison
Sheridan
Englewood
E 470
Evergreen
JEFFERSON
Cherry Creek State Park
Littleton
Centennial
Aspen Park
Chatfield State Park
Lone Tree
Parker

OADC Question 6: What would be the cost to the OADC if the court reporter page rate increased by 50¢ per page?

The cost to the OADC in FY19 would have been $76,121.

OADC Question 7: The JBC asked judicial branch agencies to go through some of the budget preparation exercises that OSPB asked executive branch agencies to go through as they prepared their November 2019 budget requests:

Unspent funds

- Positions vacant > six months--is it really needed?

N/A – The OADC has not had any positions vacant for more than six months.

- Reversions of prior year spending--is there a pattern or a one-time occurrence?

OADC has no pattern for reversions. Due to the difficulty in caseload projections, some years the Agency has unspent funds while in other years it has used part of the $1,000,000 transfer authority from another Judicial Branch agency. See chart below.

	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Caseload	12,594	11,878	12,585	13,290	15,084	16,680	18,244	20,103	22,638	25,022
Caseload % change	*0.96%*	-5.69%	5.95%	5.60%	13.50%	10.58%	9.38%	10.19%	12.61%	10.53%
Budget Appropriated	$ 23,692,141	$ 24,556,665	$23,228,010	$22,560,446	$ 22,896,598	$ 29,645,966	$ 30,062,991	$31,403,173	$ 31,738,129	$ 41,896,458
Supplemental / Special Bills	$ 864,524	$ (2,280,711)	$ (893,604)		$ 3,159,191	$ 75,116	$ 1,513,302	$ 620,334	$ 3,655,200	$ 1,761,780
Transfers In/(Out)	$ (449,385) [a]	$ -	$ -	$ 100,000 [b]	$ (500,000) [c]	$ 640,000 [d]	$ -	$ 911,747 [e]		
Reversion to GF	$ (904,818)	$ (1,779,180)	$ (137,820)	$ -	$ (102,072)	$ -	$ (24,681)	$ -	$ -	$ (3,959,689)
Actual Expenditures	$ 23,202,462	$ 20,496,774	$ 22,196,586	$22,660,446	$ 25,453,717	$ 30,361,082	$ 31,551,612	$32,935,254	$ 35,393,329	$ 39,698,549

a FY10 amount transferred to OCR
b FY13 amount transferred from OSPD
c FY14 amount transferred to OCR
d FY15 amount transferred from OCR
e FY15 amount transferred from OCR

Actuals vs estimates

- Fiscal notes--did enacted program really cost what was estimated?

Yes.

- Decision items--are there pilot programs still on-going? Did the Department receive permanent FTE for a function no longer needed?

N/A

- End-of-year spending--review purchases for final 8 weeks of each fiscal year -- were the purchases budgeted for in advance or end of year "spend-up"?

The purchases were budgeted for in advance.

● Travel, meals, official functions -- review for least cost vs max allowable.

N/A

Unrequested funds
● Sunset recommendations--were any sunset recommendations not adopted by the legislature?

N/A

● Appropriations--was the Department appropriated more than was requested?

No

● Supplemental requests--why did the Department not include these requests in regular budget cycle?

Supplemental Requests are due to the unpredictability of the Agency's caseload.

Underutilized assets
● Goods or services that could be purchased less expensively in private sector

The OADC looks to both the private sector as well as the State's existing purchasing agreements to find the best value.

Attachment A
Chief Justice Directive 04-04
Amended July 2006

Applicant Name _____ Court _____

Case Number _____ Case Name _____

FISCAL STANDARDS - ELIGIBILITY SCORING INSTRUMENT

Use information from Form JDF208 and information provided by applicant during screening interview. Circle the points in the category that applies and transfer to the "Points" column. Total at end.

Factor				Points
1. Income Guidelines **Gross income from all members of the household who contribute monetarily to the common support of the household.** Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workman's Compensation Benefits, Unemployment Benefits, and alimony. **Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, and veteran's benefits earned from a disability, child support payments or other public assistance programs.** **NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the Applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income.)**	At or below guidelines	Up to 10% above guidelines	11% to 75% above guidelines (Not eligible if income is more than 75% above guidelines.)	
	150	**100**	**0**	
2. Expenses vs. Income **(Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included.)**	Monthly expenses exceed income by over $100	Monthly expenses are within $100 of income	Monthly income exceeds expenses by over $100	
	50	**25**	**0**	
3. Charge (most severe) vs. Assets which could be used to pay defense costs **(Assets to include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.)**	Class 1 – Class 3 Felony or Habitual Offender related	Class 4 - Class 6 Felony	Class 1 - Class 3 Misdemeanor or jailable Traffic	
Assets $0 - $750	**150**	**125**	**50**	
Assets $751 - $1,500	**125**	**100**	**25**	
Assets $1,501 - $2,500	**100**	**75**	**0**	
Assets $2,501 - $5,000	**75**	**50**	**0**	
Assets $5,001 - $7,500	**50**	**25**	**0**	
Assets $7,501 - $10,000	**25**	**0**	**0**	
Assets over $10,000	**0**	**0**	**0**	
TOTAL POINTS				

150 or greater	**Less than 150**
☐ Indigent - Eligible for Public Defender (Note: Reimbursement of costs of representation may be ordered by the court pursuant to Section 21-1-106, C.R.S.)	☐ Not Eligible for State-Funded Counsel

☐ EXCEPTION REQUESTED TO [ALLOW / DISALLOW] APPOINTMENT OF [PUBLIC DEFENDER / ALTERNATE DEFENSE COUNSEL (if PD conflict)] NOTWITHSTANDING THE ABOVE SCORE. (Documentation justifying request is attached.)

Evaluated by _____ _____ _____
Print/Type Name | Evaluator Signature | Date

1

Attachment B
Chief Justice Directive 04-04
Amended February 2018
Amended March 2019

INCOME ELIGIBILITY GUIDELINES (Amended January 2019)								
Family Size	Yearly Poverty Guideline	Monthly Poverty Guideline	Monthly Income*	Monthly Income plus 10%	Monthly Income plus 75%	Yearly Income*	Yearly Income plus 10%	Yearly Income plus 75%
1	$12,490	$1,041	$1,301	$1,431	$2,277	$15,613	$17,174	$27,322
2	$16,910	$1,409	$1,761	$1,938	$3,083	$21,138	$23,251	$36,991
3	$21,330	$1,778	$2,222	$2,444	$3,888	$26,663	$29,329	$46,659
4	$25,750	$2,146	$2,682	$2,951	$4,694	$32,188	$35,406	$56,328
5	$30,170	$2,514	$3,143	$3,457	$5,500	$37,713	$41,484	$65,997
6	$34,590	$2,883	$3,603	$3,963	$6,305	$43,238	$47,561	$75,666
7	$39,010	$3,251	$4,064	$4,470	$7,111	$48,763	$53,639	$85,334
8	$43,430	$3,619	$4,524	$4,976	$7,917	$54,288	$59,716	$95,003
* 125% of poverty level as determined by the Department of Health and Human Services.								
*For family units with more than eight members, add $460 per month to "monthly income" or $5,525 per year to "yearly income" for each additional family member.								
Source: FEDERAL REGISTER (84 FR 1167, 01/11/2019)								

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

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 OADC does not have any outstanding legislation to be implemented.

2 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, 2019 (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-30-2019

The OADC has no outstanding recommendations identified in the Annual Report of Audit Recommendations.

3 If the Department receives federal funds of any type, please respond to the following:

a. Are you expecting any changes in federal funding with the passage of the FFY 2020-21 federal budget? If yes, in which programs, and what is the match requirement for each program?

N/A

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

N/A

c. 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 2019-20 or 2020-21.

N/A

d. Compared to other states, Colorado ranks low in receipt of federal dollars. How can the Department increase the amount of federal money received?

N/A

e. What state funds are currently utilized to draw down (or match) federal dollars? What state funding would be required to increase the amount of federal funding received?

N/A

4 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?

The OADC is not spending money on public awareness campaigns.

5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate: (1) by department; (2) by division; (3) by program for programs with at least 20 FTE; and (4) by occupational class for classes that are located within a larger occupational group containing at least 20 FTE. To what does the Department attribute this turnover/vacancy experience? Do the statewide compensation policies or practices administered by the Department of Personnel help or hinder the department in addressing vacancy or turnover issues?

In August of 2018 the OADC Training Director resigned and returned to practicing law. The Training Director position was filled in the same month. At the FY19 FTE count of 14, the turnover rate for ADC is 7.14%.

6 Please identify how many rules you have promulgated in the past two years (FYs 2017-18 and 2018-19). 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 OADC has not promulgated any new rules in the last two years.

7 What are the major cost drivers impacting the Department?

The major cost driver impacting the OADC is the increase in the number of cases to which OADC attorneys are appointed.

Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

N/A

8 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?

The Agency has experienced caseload increases each fiscal year since FY12 as demonstrated by the following chart:

	FY12 Actual	FY13 Actual	FY14 Actual	FY15* Actual	FY16 Actual	FY17 Actual	FY18 Actual	FY19** Actual
Caseload	12,585	13,290	15,085	16,680	18,244	20,103	22,638	25,022
Expenditures	$ 22,187,179	$ 22,660,445	$ 25,453,717	$ 29,694,094	$ 30,037,642	$ 32,935,253	$ 35,387,940	$ 39,658,549

**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.*

***In FY19, there was an 6.7% rate increase for attorney contractors, a 7% increase for Investigators, and a 10% increase for Paralegals, resulting in a disproportionate increase in expenditures for that year.*

As the Agency's caseload increases, so does its expenditures as approximately 95% of the Agency's total appropriation goes toward paying contractors for their work on cases.

9 Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps), the role of these technologies in the Department's interactions with the public and other state agencies, the Department's total spending on these efforts in FY 2018-19, and expected spending in FYs 2019-20 and 2020-21.

Currently, the Department's public-facing efforts mainly consist of limited access to an informational website. For the public, the website provides brief information about such topics as the process for obtaining counsel through the Agency, the process for becoming a contractor with the Agency, and occasional news items of interest, both about the Agency and about other resources in the community. A listing of links to outside organizations is maintained on the site and updated whenever additional resources become available. Public events, such as the Agency's Commission meetings, are listed on the public site. In addition to the informational site hosted by the Agency, outside listing sites such

as Google, Bing, etc., are monitored and updated so the public may contact the Agency.

The bulk of the content currently available on the informational website is geared toward the Agency's nearly 900 contract attorneys, investigators, paralegals, legal researchers, case assistants, social workers, and forensic clinical advocates, as well as their administrative staff. The Agency is constantly seeking ways to reduce individual email and telephone inquiries by producing easily accessed and helpful information regarding processes within the Agency. This includes, in addition to the informational website, periodic blog updates, a weekly email regarding current opinions issued by the U.S. Supreme Court, the 10th Circuit Court of Appeals, the Colorado Supreme Court, the Colorado Court of Appeals, and any other statutes or opinions that would impact the performance of the Agency's contractors, an on-demand podcast of the weekly caselaw update email, and an email notification system for training opportunities. An expert database provides information to help match contractors and experts without consuming Agency staff resources, and an eLibrary of motions, briefs, case opinions, legal research, and juvenile/social science research is also maintained on the site. A quarterly newsletter was launched in 2018 to provide updates, staff biographies, reminders, training event notifications, etc. In FY19 $4,125 was expended for related costs. The OADC anticipates spending $2,130 in FY20 and $12,130 in FY21 to maintain these technologies. The FY21 increase is due to a one-time Expert Data Base Upgrade funding request.

10 There are many ways in which the Department may interact with internal or external customers, including the public and other departments. How is the Department gathering feedback and evaluating customer experience? Please address all interactions, e.g. technology, in-person, call centers, as well as total spending on these efforts in FY 2018-19 and expected spending in FYs 2019-20 and 2020-21.

The OADC's most effective means for gathering feedback is its annual process of interviewing and evaluating potential and renewing current contract attorneys, investigators, and social workers. These interviews and evaluations occur both in person and telephonically. The OADC also solicits feedback from judicial districts about OADC lawyers. The OADC also sends out annual

surveys to contractors as laid out in its Performance Management System. No additional costs, outside of current FTE expenses, are utilized to accomplish this.

11 Please highlight the long-term financial challenges of fulfilling the mission of the Department with particular attention to any scenarios identified in the Department's Long Range Financial Plan involving an economic downturn, department-specific contingencies, emerging trends, or major anticipated expenses (Subsections 3-6 of Section 4 of the Long Range Financial Plan submitted pursuant to H.B. 18-1430).

The major long-term financial challenge the OADC faces is accurately forecasting its future caseload, which directly affects the overall expenditures as seen on the chart in question # 8. Due to the complexity of that forecast there is currently no way for the OADC to measure the possible affect an economic downturn, contingencies, emerging trends, or major anticipated expenses would have on long-term financials.

12 In some cases, the roles and duties of existing FTE may have changed over time. For all FY 2020-21 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;

Uncertain. The OADC will post the FY21 requested positions statewide. If staff chose to apply and if they qualified, they would go through the normal interview process. If hired they would assume the roles of the new position.

b. Specify why additional FTE are necessary; and

The complexity and scope of work required by the positions in the FY21 request cannot be absorbed by current OADC staff.

c. Describe the evaluation process you used to determine the number of FTE requested.

As detailed within the FY21 Budget Request the OADC identified several processes and tasks that require additional staff. The Agency also reviewed the State Court Administrators Office's Compensation Plan and job descriptions to identify the type of FTE needed to achieve the Agency's vision, mission, and performance measures.

13 Please describe the impact of Colorado's low unemployment rate on the Department's efforts to recruit and retain employees.

The OADC has seen very little turnover since the Agency's inception in FY97. The OADC anticipates little to no impact from the State's low unemployment rate.

14 ***NOTE: An example template for providing data for this question will be provided by the JBC Staff.***

State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of General Fund for taxpayer refunds. Please:

a. List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds $100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.

N/A

b. For each source, list actual revenues collected in FY 2018-19, and projected revenue collections for FY 2019-20 and FY 2020-21.

N/A

c. List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2020-21.

N/A

15 Please describe the Department's current practice regarding employee parking and other transportation options (i.e. Eco Pass). Please address the following:

a. Does the Department have adequate parking for all employees at all locations?

No, there is not adequate parking for all the employees at the OADC.

b. If parking is limited, how are available spaces allocated?

When hired, staff can place their name on a wait list for parking. Per building management, it takes, on average, a little over 2 years before new staff can be assigned a parking spot. Monthly

parking costs $120 to 135/month. Until a space is available, staff can either use public transportation (each staff member in the metro area is provided an Eco pass) or pay for parking daily, which in OADC's vicinity averages about $10 to $13 per day.

c. If free parking is not available, how is parking paid for, and who pays (employee or Department)? (e.g. stipends, subsidized parking, eco passes)

OADC employees pay for their own parking. The OADC does offer Eco passes to all staff, which the OADC pays for out of its Operating LBLI.

d. If employees pay fees for parking, where is the revenue credited and how is it spent, and is it subject to TABOR?

If using a State-run parking garage the cost of parking is deducted from the employee's paycheck and the amount placed into a balance sheet account within DPA. The revenue is then placed into an OADC balance sheet account using a CORE transaction and is eventually moved (credited) to the Agency's Operating LBLI. Those amounts are then used to pay the building for the employee's parking spot. The OADC does not use a TABOR balance sheet account during this process.

e. Do parking and/or transportation benefits factor into Department compensation and/or retention efforts?

No

16 Please identify all continuously appropriated funds within the Department's purview with a fund balance or annual revenue of $5.0 million or more. Please indicate if these funds are reflected in the FY 2019-20 Long Bill.

N/A

Office of the Alternate Defense Counsel

Judicial Branch

Fiscal Year 2020-2021 Budget Presentation

Lindy Frolich, Director

December 13th, 2019

Garfield County Courthouse

9NEWS.com

8 men accused of soliciting child prostitution

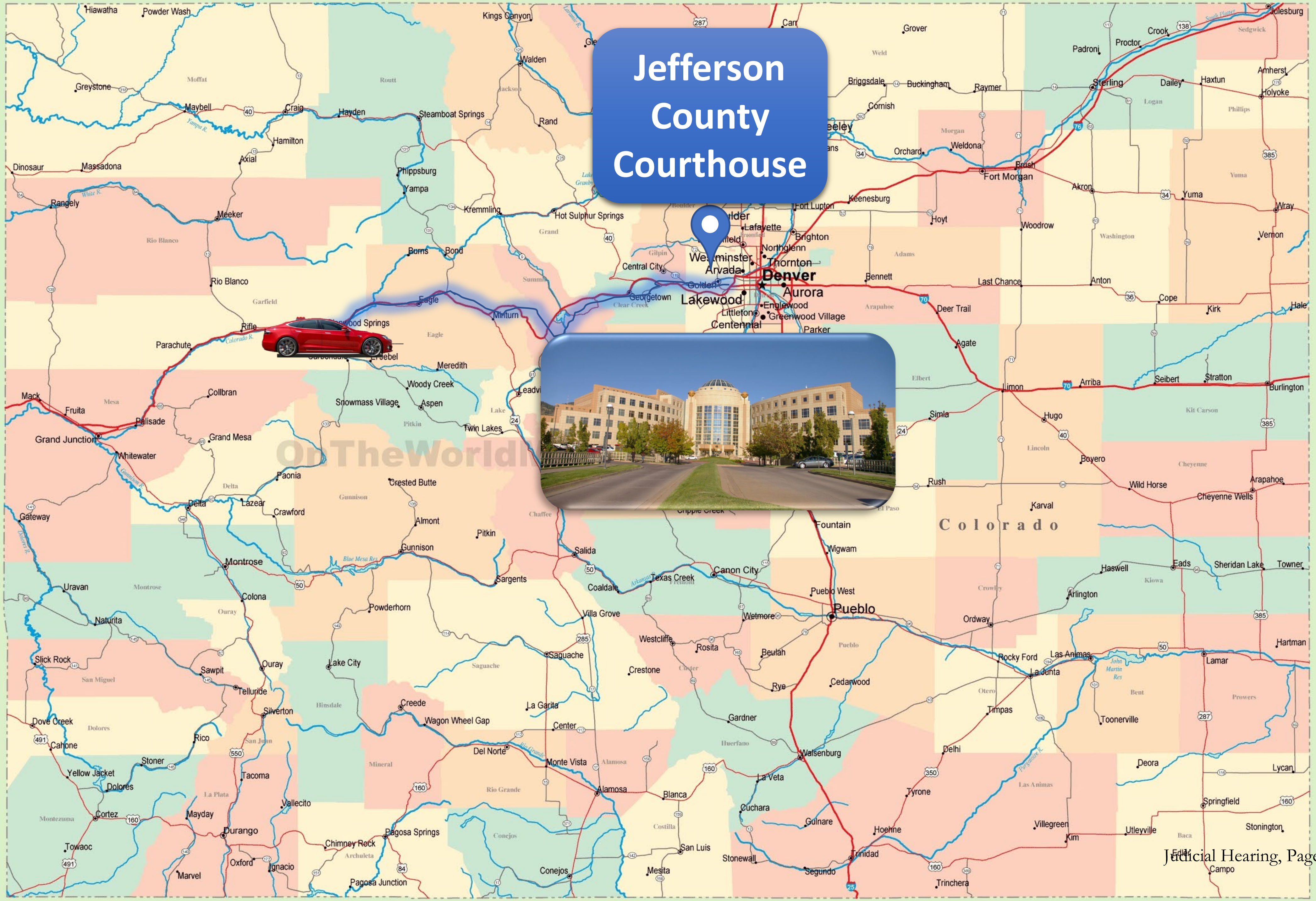
The men were arrested as part of a internet child exploitation operation in western Colorado.

Author: Janet Oravetz
Published: 11:20 AM MDT September 19, 2019
Updated: 11:20 AM MDT September 19, 2019

GARFIELD COUNTY, Colo. — Eight men were arrested on charges of soliciting child prostitution during an internet child exploitation operation conducted last week by various law enforcement agencies, according to the Garfield County Sheriff's Office (GSCO).

As part of the investigation, undercover investigators posted ads advertising sex with children on several websites, social media sites, and applications to lure individuals seeking sexual encounters with children, a release from the GCSO says.

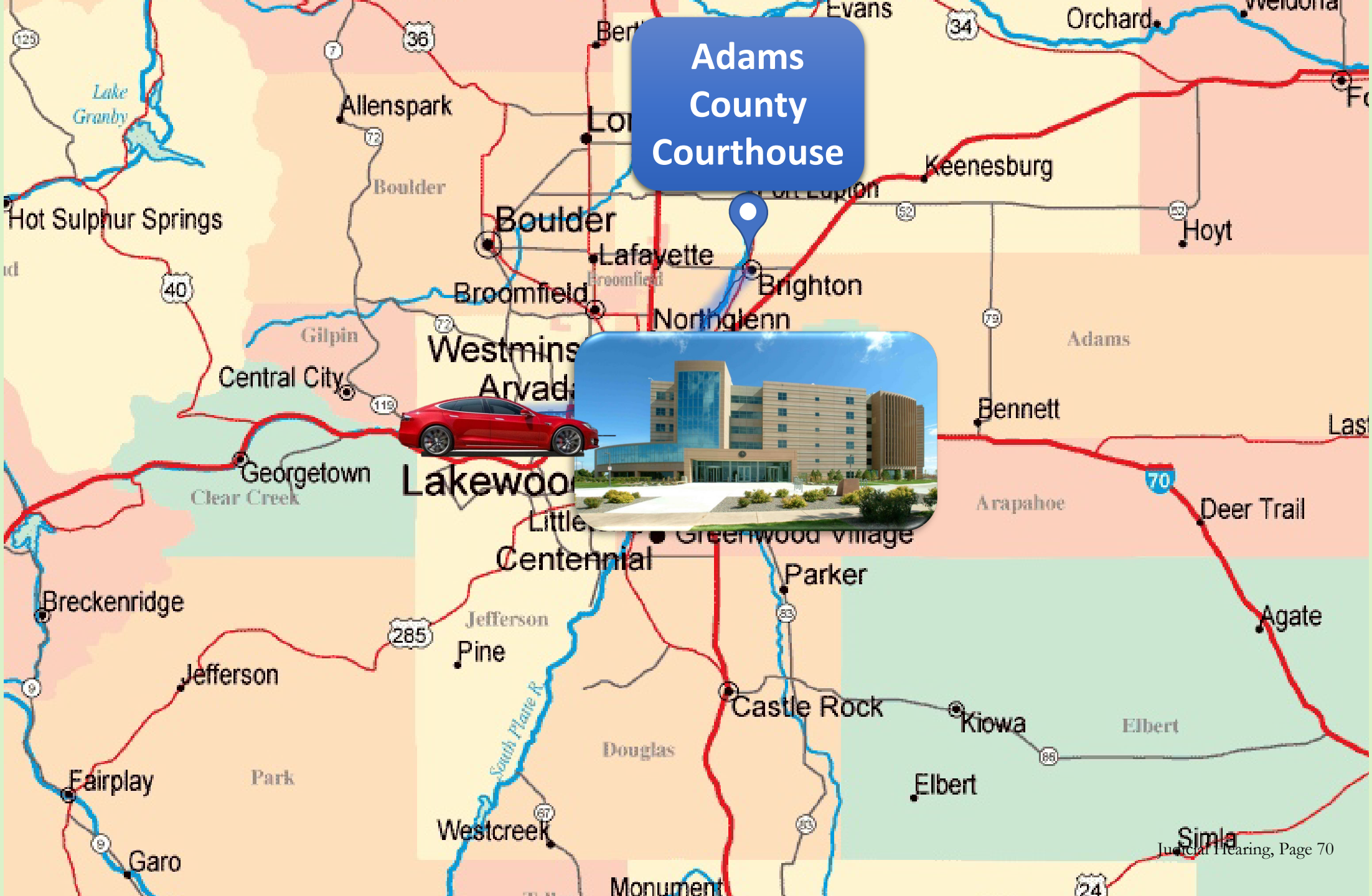
Jefferson County Courthouse



Attorney Appointments

[redacted]

Opened Date	County	GJ or Case +	Attorney Appointment
Tue 10/16/2018	Jefferson	205 Jeffco Spanish Speakers	Court Jefferson
Tue 10/16/2018	Jefferson	205 Jeffco Spanish Speakers	
Tue 10/16/2018	Jefferson	205 Jeffco Spanish Speakers	Gustavo Bermudez
Tue 10/16/2018	Jefferson	205 Jeffco Spanish Speakers	Christine Antoun
Tue 10/16/2018	Jefferson	205 Jeffco Spanish Speakers	Andres Guevara
Tue 10/16/2018	Jefferson	205 Jeffco Spanish Speakers	Peter Menges
Tue 10/16/2018	Jefferson	205 Jeffco Spanish Speakers	
Tue 10/16/2018	Jefferson	205 Jeffco Spanish Speakers	Amber St Clair


Adams County Courthouse
Lake Granby
Allenspark
Boulder
Hot Sulphur Springs
Boulder
Lafayette
Broomfield
Brighton
Northglenn
Keenesburg
Hoyt
Gilpin
Central City
Adams
Bennett
Georgetown
Clear Creek
Arapahoe
Deer Trail
Centennial
Parker
Breckenridge
Jefferson
Pine
Agate
Jefferson
Castle Rock
Kiowa
Elbert
Douglas
Park
Fairplay
Elbert
Westcreek
Garo
Simla
Monument
Orchard
Evans

THEDENVER CHANNEL.COM

More than 40 arrested in largest black-market marijuana bust in Colorado history

Posted: 12:30 PM, May 24, 2019 **Updated:** 12:42 PM, May 24, 2019

DENVER — A total of 42 people were arrested in three days after during one of the largest black-market marijuana enforcement actions in Colorado's history, according to the leaders of the joint investigation.

The U.S. Drug Enforcement Administration, 18th Judicial District Attorney's Office and 17th Judicial District Attorney's Office made the announcement Friday morning.

Lindsey-Flanigan
Courth
Berthoud
Evans
Orchard
Lake
Granby
Allenspark
Longmont
Keenesburg
Boulder
Fort Lupton
Hot Sulphur Springs
Hoyt
Gilpin
Westminster
Thornton
Adams
Central City
Arvada
Denver
Bennett
Golden
Aurora
Georgetown
Lakewood
Clear Creek
Englewood
Arapahoe
Deer Trail
Breckenridge
Agate
Jefferson
Kiowa
Elbert
Fairplay
Park
Elbert
Westcreek
Garo
Simla
Monument

Charges filed after raids on Denver Hells Angels clubhouse, tattoo parlors

POSTED 2:48 PM, NOVEMBER 23, 2019, BY ASSOCIATED PRESS

FACEBOOK TWITTER LINKEDIN PINTEREST EMAIL PRINT MORE

DENVER — Prosecutors have charged 13 people with violating the Colorado Organized Crime Control Act after raids of the Hells Angels motorcycle clubhouse in Denver, a body shop and several tattoo parlors across the city turned up drugs and dozens of firearms.

District Attorney Beth McCann says that in addition to the organized crime charges, some of the defendants face charges of assault, kidnapping, robbery, motor vehicle theft and running a chop shop. The defendants' arrest warrants have been sealed.

The investigation started in June, and federal and state authorities conducted a series of early morning raids Nov. 7. They seized dozens of firearms in addition to methamphetamine, cocaine, cash, passports and other items.

Those charged range in age from 27 to 81.

The names of the accused are:

- Jason P. Sellers, 44
- Michael J. Dire, 74
- Jared B. Orland, 47
- Clinton Williams, 45
- William "Kelly" Henderson, 42
- William "Curly" E. Whitney, 81
- Justin A. Wright, 35
- Peter M. Baron, 30
- Dominic Robichaud, 47
- Dustin Ullerich, 47
- Adam Mulcahy, 27
- Jimmy D. Salazar, 44
- Derek A. Beste, 30
- Jerome J. Guardiola, 35, remains at large

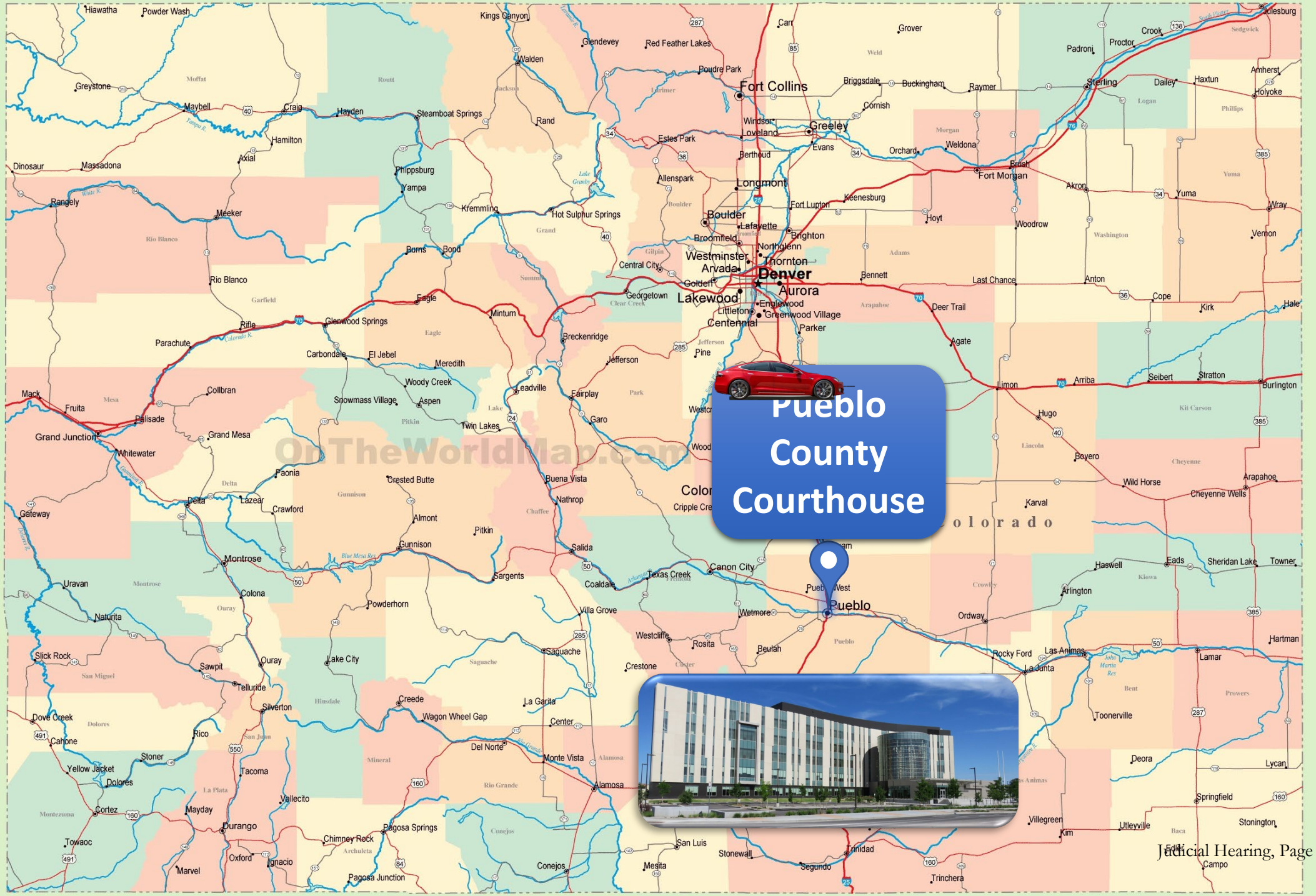
Douglas County Courthouse
Berthoud
Evans
Orchard
Allenspark
Longmont
Lake Granby
Boulder
Keenesburg
Fort Lupton
Hot Sulphur Springs
Boulder
Hoyt
Lafayette
Broomfield
Brighton
Northglenn
Gilpin
Westminster
Thornton
Adams
Central City
Arvada
Denver
Bennett
Golden
Georgetown
Lakewood
Clear Creek
Arapahoe
Deer Trail
Littleto
Centenn
Village
Breckenridge
Jefferson
Pine
Castle Rock
Douglas
Park
Fairplay
Westcreek
Garo
Simla
Monument

- 23 separate defendants charged – COCCA, Theft, Burglary Tools
- 8 represented by OADC
- 15 still awaiting arrest (likely OADC clients upon arrest)

Attorney Appointments

[redacted]

Opened Date	County	GJ or Case +	Attorney Appointment
Mon 12/17/2018	Douglas	209 Douglas Holiday Fun	DA-Douglas
Mon 12/17/2018	Douglas	209 Douglas Holiday Fun	Court-Douglas
Mon 05/13/2019	Douglas	209 Douglas Holiday Fun	Jesse Hall
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
Fri 01/11/2019	Douglas	209 Douglas Holiday Fun	Juliet Miner
To Be Determined	Douglas	209 Douglas Holiday Fun	
Mon 12/17/2018	Douglas	209 Douglas Holiday Fun	John Sullivan
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
Thu 02/07/2019	Douglas	209 Douglas Holiday Fun	Martha H. Eskesen
Mon 12/17/2018	Douglas	209 Douglas Holiday Fun	Amber St.Clair
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
Thu 01/03/2019	Douglas	209 Douglas Holiday Fun	Jennifer Henslee
To Be Determined	Douglas	209 Douglas Holiday Fun	
To Be Determined	Douglas	209 Douglas Holiday Fun	
Tue 05/21/2019	Douglas	209 Douglas Holiday Fun	Tiffany Drahola
Tue 01/02/2018	Douglas	209 Douglas Holiday Fun	R. Scott Reisch


Pueblo
County
Courthouse
Denver
Aurora
Lakewood
Fort Collins
Greeley
Pueblo
Colorado
Grand Junction
Durango
Montrose
Glenwood Springs
Steamboat Springs
Boulder
Longmont
Loveland
Sterling
Fort Morgan
Limon
Trinidad
La Junta
Lamar
Alamosa
Salida
Gunnison
Craig
Rifle
Meeker
Rangely
Dinosaur
Massadona
Hayden
Yampa
Hot Sulphur Springs
Kremmling
Granby
Grand Lake
Estes Park
Berthoud
Windsor
Evans
Greeley
Weldona
Orchard
Fort Lupton
Keenesburg
Hoyt
Woodrow
Brush
Akron
Yuma
Wray
Vernon
Haxtun
Holyoke
Amherst
Julesburg
Sedgwick
Crook
Proctor
Padroni
Briggsdale
Buckingham
Raymer
Cornish
Poudre Park
Red Feather Lakes
Glendevey
Walden
Kings Canyon
Carr
Grover
Lafayette
Broomfield
Brighton
Northglenn
Thornton
Westminster
Arvada
Golden
Bennett
Last Chance
Anton
Cope
Kirk
Hale
Deer Trail
Agate
Littleton
Englewood
Greenwood Village
Centennial
Parker
Pine
Jefferson
Central City
Georgetown
Clear Creek
Idaho Springs
Breckenridge
Minturn
Eagle
Burns
Bond
Rio Blanco
Parachute
Rifle
Carbondale
El Jebel
Meredith
Woody Creek
Aspen
Snowmass Village
Collbran
Mack
Fruita
Palisade
Grand Mesa
Whitewater
Paonia
Crested Butte
Buena Vista
Nathrop
Twin Lakes
Leadville
Fairplay
Garo
Almont
Pitkin
Gunnison
Crawford
Lazear
Delta
Gateway
Uravan
Naturita
Slick Rock
Dove Creek
Cahone
Rico
Stoner
Yellow Jacket
Dolores
Cortez
Towaoc
Mayday
Vallecito
Tacoma
Silverton
Telluride
Sawpit
Ouray
Lake City
Creede
Wagon Wheel Gap
Del Norte
Monte Vista
La Garita
Center
Saguache
Crestone
Villa Grove
Powderhorn
Sargents
Texas Creek
Canon City
Coaldale
Pueblo West
Wetmore
Westcliffe
Rosita
Beulah
Ordway
Rocky Ford
Las Animas
Arlington
Haswell
Eads
Sheridan Lake
Towner
Hartman
Toonerville
Deora
Lycan
Springfield
Stonington
Villegreen
Kim
Utleyville
Campo
Trinchera
Segundo
Stonewall
San Luis
Mesita
Conejos
Chimney Rock
Pagosa Springs
Pagosa Junction
Oxford
Ignacio
Marvel
Hiawatha
Powder Wash
Maybell
Craig
Hamilton
Axial
Phippsburg
Yampa
Rangely
Meeker
Rio Blanco
Eagle
Minturn
Glenwood Springs
Parachute
Rifle
Carbondale
El Jebel
Meredith
Woody Creek
Aspen
Snowmass Village
Collbran
Mack
Fruita
Palisade
Grand Junction
Whitewater
Paonia
Crested Butte
Buena Vista
Nathrop
Twin Lakes
Leadville
Fairplay
Garo
Almont
Pitkin
Gunnison
Crawford
Lazear
Delta
Gateway
Uravan
Naturita
Slick Rock
Dove Creek
Cahone
Rico
Stoner
Yellow Jacket
Dolores
Cortez
Towaoc
Mayday
Vallecito
Tacoma
Silverton
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Sawpit
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Lake City
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Monte Vista
La Garita
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Saguache
Crestone
Villa Grove
Powderhorn
Sargents
Texas Creek
Canon City
Coaldale
Pueblo West
Wetmore
Westcliffe
Rosita
Beulah
Ordway
Rocky Ford
Las Animas
Arlington
Haswell
Eads
Sheridan Lake
Towner
Hartman
Toonerville
Deora
Lycan
Springfield
Stonington
Villegreen
Kim
Utleyville
Campo
Trinchera
Segundo
Stonewall
San Luis
Mesita
Conejos
Chimney Rock
Pagosa Springs
Pagosa Junction
Oxford
Ignacio
Marvel
Limon
Arriba
Seibert
Stratton
Burlington
Hugo
Boyero
Wild Horse
Cheyenne Wells
Karval
Arapahoe
Lincoln
Cheyenne
Kit Carson
Yuma
Phillips
Logan
Morgan
Washington
Adams
Arapahoe
Jefferson
Park
Lake
Chaffee
Gunnison
Delta
Mesa
Garfield
Rio Blanco
Moffat
Routt
Jackson
Larimer
Weld
Grand
Summit
Eagle
Pitkin
Gilpin
Boulder
Crowley
Kiowa
Bent
Prowers
Baca
Las Animas
Huerfano
Pueblo
Custer
Fremont
Saguache
Hinsdale
Mineral
Alamosa
Rio Grande
Conejos
Archuleta
La Plata
Montezuma
Dolores
San Miguel
Ouray
Montrose
San Juan
Colorado R.
Gunnison R.
Blue Mesa Res.
Arkansas R.
Rio Grande
John Martin Res.
OnTheWorldMap.com

KKTV 11 NEWS
YOUR BREAKING NEWS LEADER

By Tony Keith | Posted: Thu 3:34 PM, Apr 18, 2019 |
Updated: Fri 7:08 AM, Apr 19, 2019

PUEBLO, Colo. (KKTV) - Authorities announced a massive drug bust operation that was years in the making out of Colorado.

On Thursday, the Pueblo Police Department announced two people were still wanted out of Pueblo in the case. Diana "Dee" Sandoval, aka "Diana Pacheco" and Ray Rodriguez, aka"Joker." Both are pictured at the top of this article.

The city of Pueblo shared information on "Operation Double Dippin" with the public on Wednesday. The investigation started in February of 2017 and resulted in the indictment and/or arrests of 65 people by the Colorado Attorney General's Office and by the Pueblo County district attorney. As of Wednesday, 40 of the 65 people charged have been arrested. During the investigation, $1.25 million was seized along 33.7 pounds of cocaine, 126.6 pounds of methamphetamine, 56.2 pounds of heroin, 31 guns and seven vehicles.

The investigation started with small street-level buys of drugs in Pueblo. Over time, authorities realized the breadth of the illegal drug operation was taking place over the entire Front Range of Colorado, according to the city of Pueblo.

- FY2019-20 Annual Budget of **$48,139,361**
- 15.9 FTE

FY 2020-21 Requests

R-1 Caseload GF $4,202,859

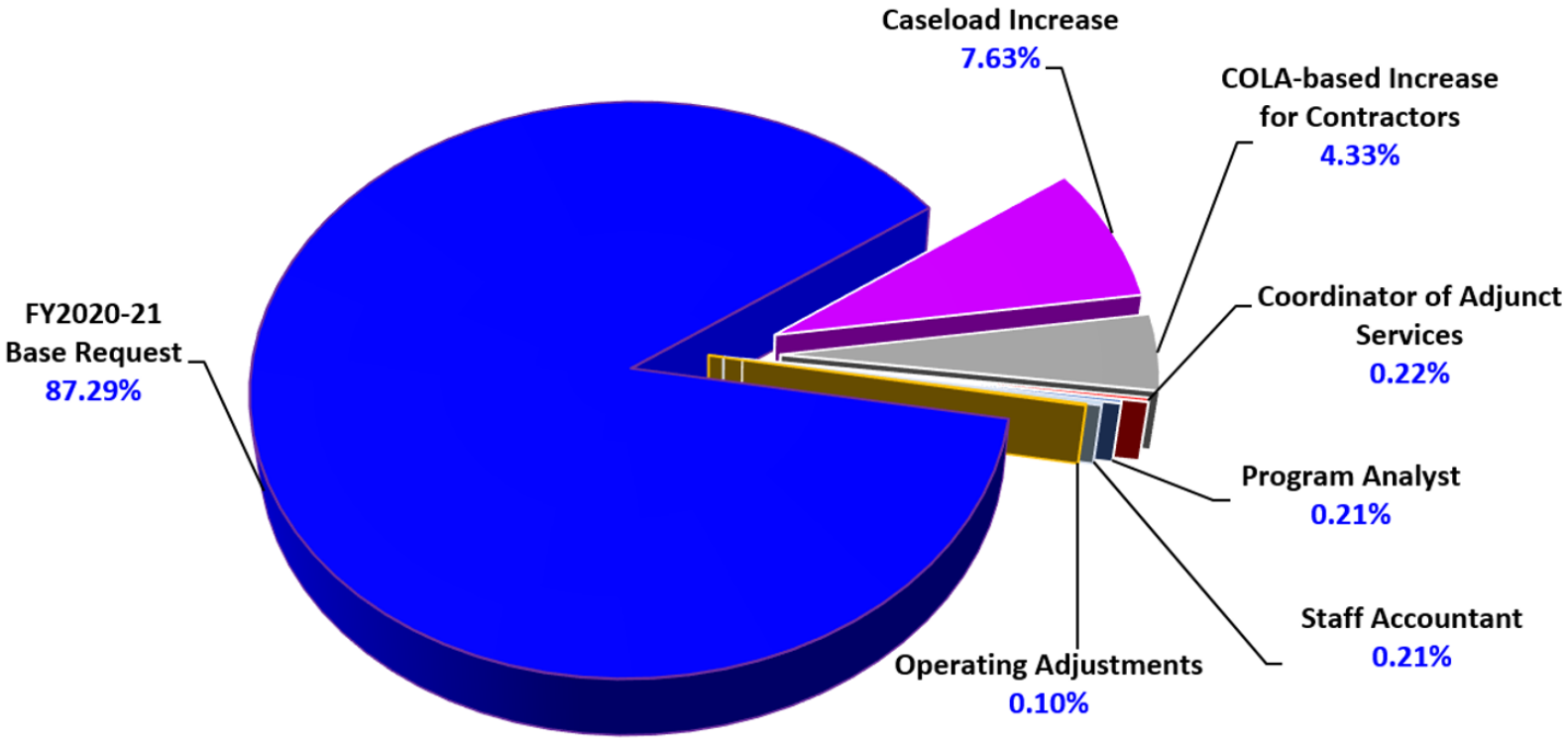
R-2 Coordinator of Adjunct Services $122,049

R-3 Staff Accountant $116,373

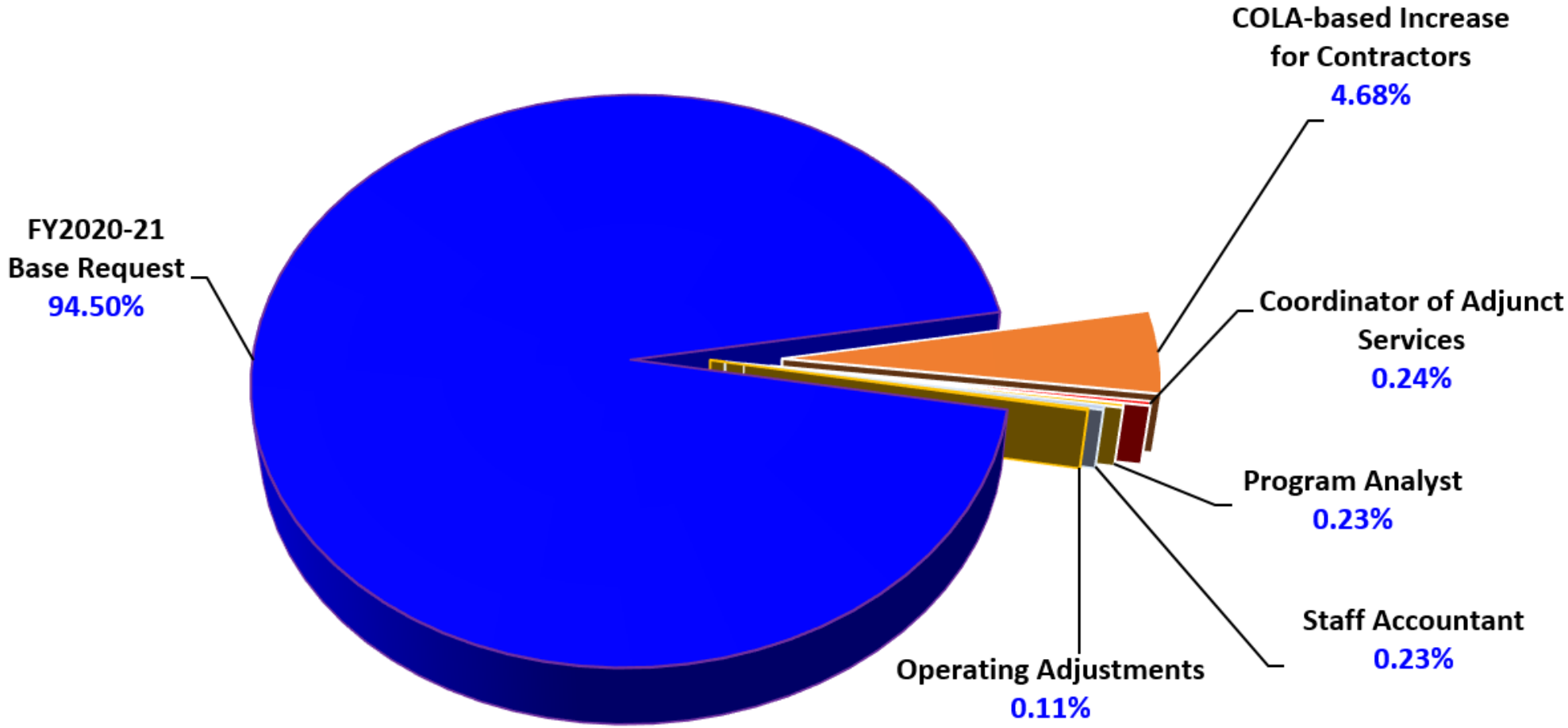
R-4 Programs Analyst $117,653

R-5 Operating Adjustments $57,545

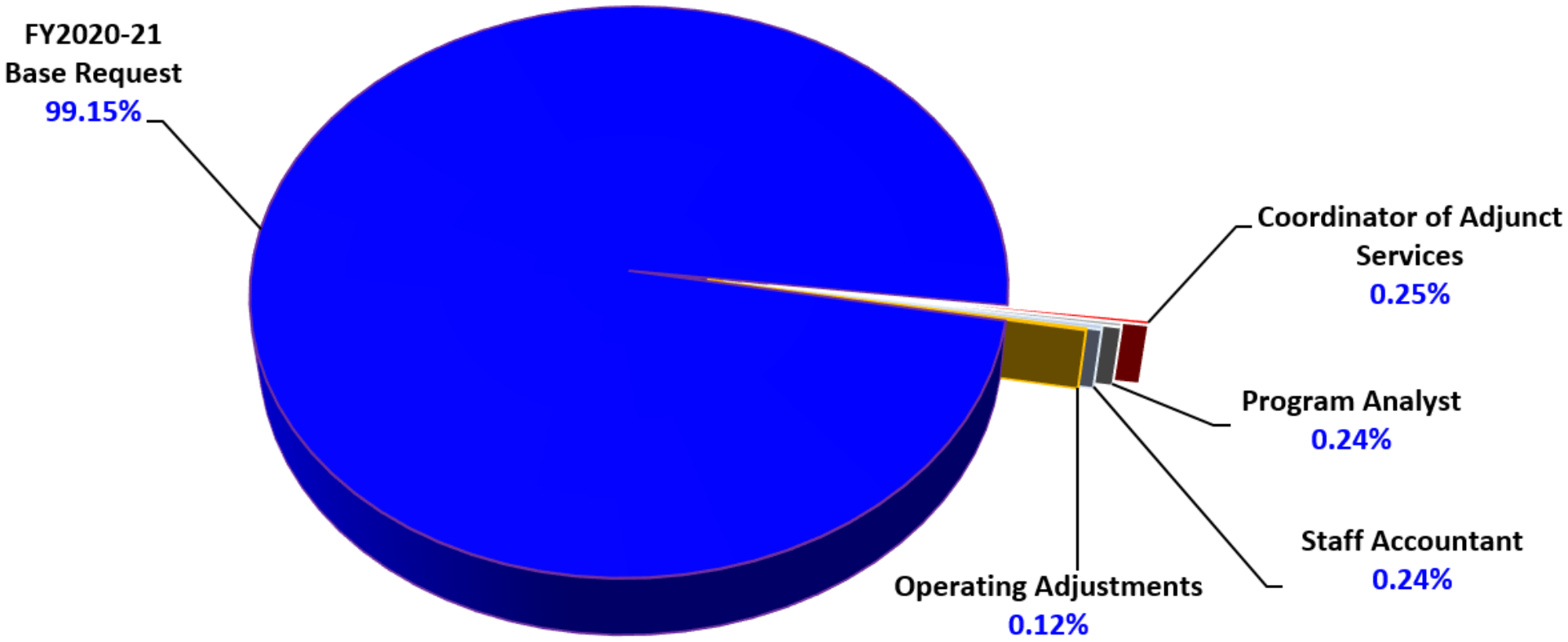
R-6 COLA-based Contractor Hourly Rate Increase $2,383,172



FY 2020-21 Budget Request



FY 2020-21 Budget Request



Average Cost per Case – Savings to the State of Colorado

	FY10	FY11	FY12	FY13	FY14	FY15*	FY16	FY17	FY18	FY19**
Overall Average Cost per Case	$1,697	$1,620	$1,641	$1,593	$1,599	$1,722	$1,581	$1,523	$1,456	$1,474
change from prev FY		*-4.5%*	*1.3%*	*-2.9%*	*0.4%*	*7.7%*	*-8.2%*	*-3.7%*	*-4.4%*	*1.2%*

($1,697 - $1,474) = $223 x 25,022 = $5,579,906

**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.*

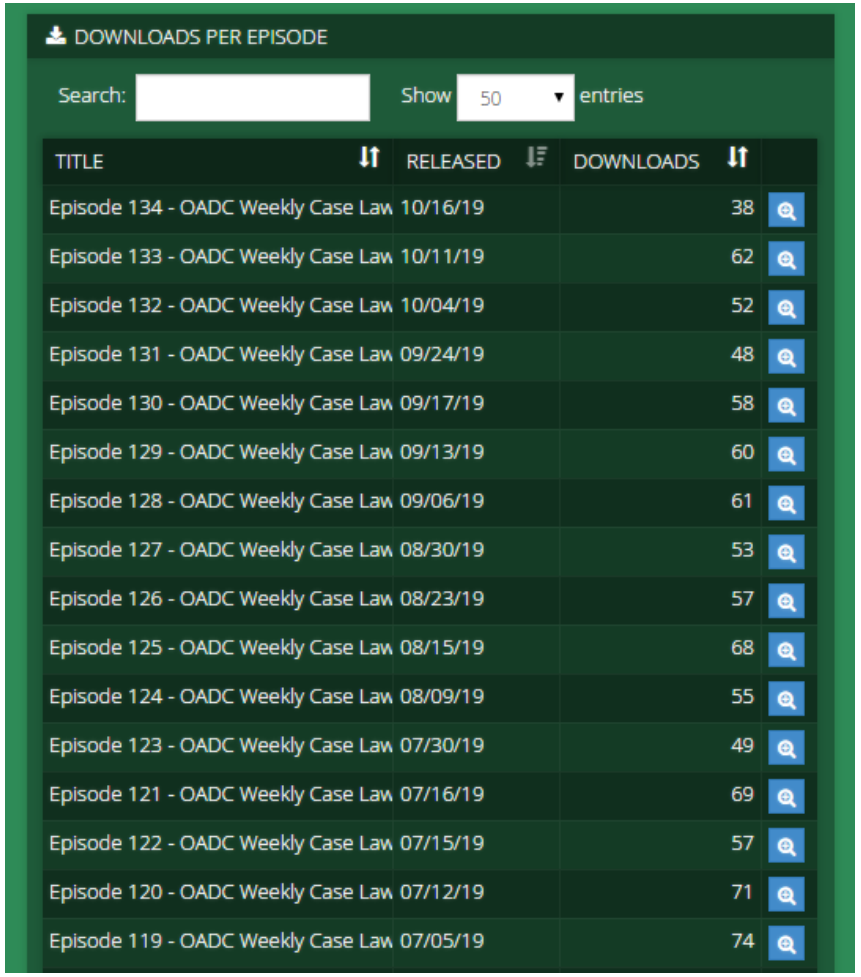
***In FY19, there was an 6.7% rate increase for attorney contractors, a 7% increase for Investigators, and a 10% increase for Paralegals, resulting in a disproportionate increase in expenditures for that year.*

CAT-GIFs.com

Adjunct Services – Savings to the State of Colorado

	FY19 Hours	FY19 Average Hourly Rate	FY19 Cost
Legal Researcher	2,350	$ 70.50	$ 165,669.70
Case Assistant	6,223	$ 16.58	$ 103,154.78
	8,573		$ 268,824.49
Attorney	8,573	$ 80.62	$ 691,170.47
Savings to the State of Colorado in FY19			**$ 422,345.98**

Campaign Name	Total Sent	Open Rate	Total Unique Opens	Mobile Open Rate	Desktop Open Rate	Click Through Rate	Total Unique Clicks	Bounce Rate	Total Bounces	Unsub Rate	Total Unsub
7.3.19 Case Summaries	882	53.90%	467	31.60%	68.40%	4.70%	22	1.80%	16	0.00%	0
7.12.19 Case Summaries	869	50.80%	437	30.20%	69.80%	4.60%	20	1.00%	9	0.00%	0
7.17.19 Case Summaries	869	51.50%	440	33.80%	66.20%	10.20%	45	1.60%	14	0.00%	0
7.26.19 Case Summaries	875	49.80%	427	33.20%	66.80%	10.80%	46	1.90%	17	0.00%	0
8.2.19 Case Summaries	875	49.90%	429	25.50%	74.50%	8.40%	36	1.80%	16	0.00%	0
8.9.19 Case Summaries	880	48.70%	421	25.90%	74.10%	4.00%	17	1.80%	16	0.00%	0
8.16.19 Case Summaries	880	50.20%	434	32.00%	68.00%	7.80%	34	1.70%	15	0.00%	0
8.26.19 Case Summaries	883	55.00%	481	30.20%	69.80%	31.60%	152	0.90%	8	0.00%	0
8.30.19 Case Summaries	883	54.90%	475	31.00%	69.00%	7.80%	37	2.00%	18	0.00%	0
9.06.19 Case Summaries	833	48.20%	394	32.80%	67.20%	1.50%	6	1.80%	15	0.10%	1
9.20.19 Case Summaries	890	44.20%	386	30.00%	70.00%	4.90%	19	1.80%	16	0.00%	0
9.13.19 Case Summaries	890	50.10%	440	24.40%	75.60%	7.50%	33	1.30%	12	0.00%	0



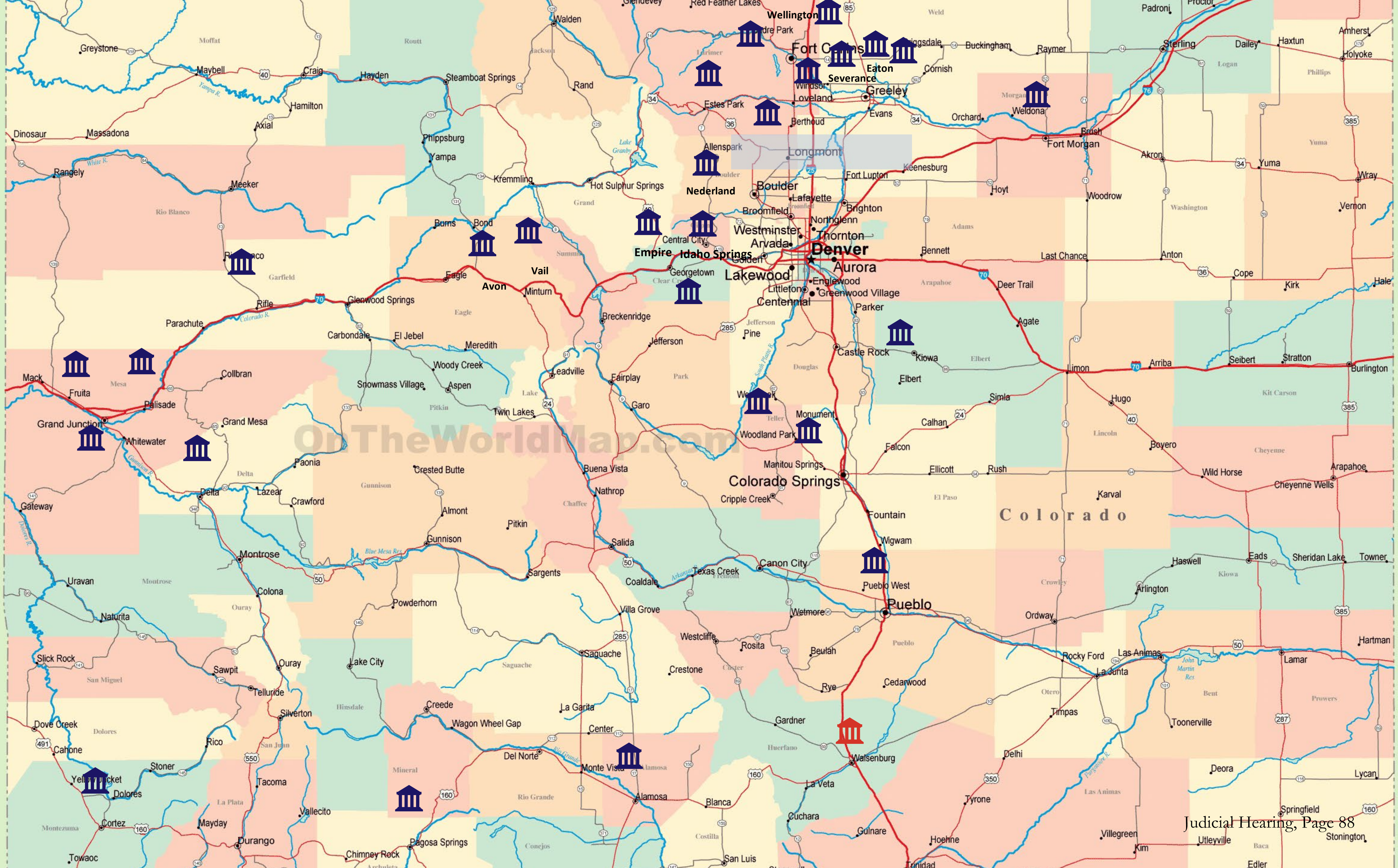
	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15* Actual	FY16 Actual	FY17 Actual	FY18 Actual	FY19** Actual	FY11 to FY19 % change
Caseload	11,878	12,585	13,290	15,085	16,680	18,244	20,103	22,638	25,022	110.66%
Caseload % change	*na*	5.95%	5.60%	13.51%	10.57%	9.38%	10.19%	12.61%	10.53%	
Expenditures	$ 20,496,774	$ 22,187,179	$ 22,660,445	$ 25,453,717	$ 29,694,094	$ 30,037,642	$ 32,935,253	$ 35,387,940	$ 39,658,549	93.49%
Expenditures % change	*na*	8.25%	2.13%	12.33%	16.66%	1.16%	9.65%	7.45%	12.07%	
Transactions	39,739	43,327	46,144	53,440	59,057	64,997	72,753	98,891	121,981	206.96%
Transactions % change	*na*	9.03%	6.50%	15.81%	10.51%	10.06%	11.93%	35.93%	23.35%	
Average Case Transactions	3.35	3.44	3.47	3.54	3.54	3.56	3.62	4.37	4.87	45.71%

**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.*

***In FY19, there was an 6.7% rate increase for attorney contractors, a 7% increase for Investigators, and a 10% increase for Paralegals, resulting in a disproportionate increase in expenditures for that year.*

Municipal Court Program

- Evaluating court-appointed counsel in 56 municipal courts
  - Independence
  - Competence
- Begins January 1, 2020
  - OADC will conduct interviews, document review and court observations
  - Evaluation Reports to Municipal Courts by end of year
- OADC Municipal Court Staff (2 FTE):
  - Kimberly Simmons, Municipal Court Coordinator
  - Maria Consuelos, Municipal Administrative Support Specialist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Idaho Springs
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Glenwood Springs
Carbondale
Rifle
Parachute
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Craig
Maybell
Hayden
Steamboat Springs
Walden
Kremmling
Hot Sulphur Springs
Sterling
Fort Morgan
Brush
Akron
Yuma
Wray
Holyoke
Julesburg
Limon
Burlington
Castle Rock
Kiowa
Elbert
Woodland Park
Manitou Springs
Colorado Springs
Cripple Creek
Fountain
Pueblo West
Pueblo
Canon City
Salida
Buena Vista
Leadville
Fairplay
Aspen
Snowmass Village
Grand Junction
Fruita
Palisade
Whitewater
Delta
Montrose
Gunnison
Crested Butte
Ouray
Telluride
Silverton
Durango
Cortez
Dolores
Pagosa Springs
Del Norte
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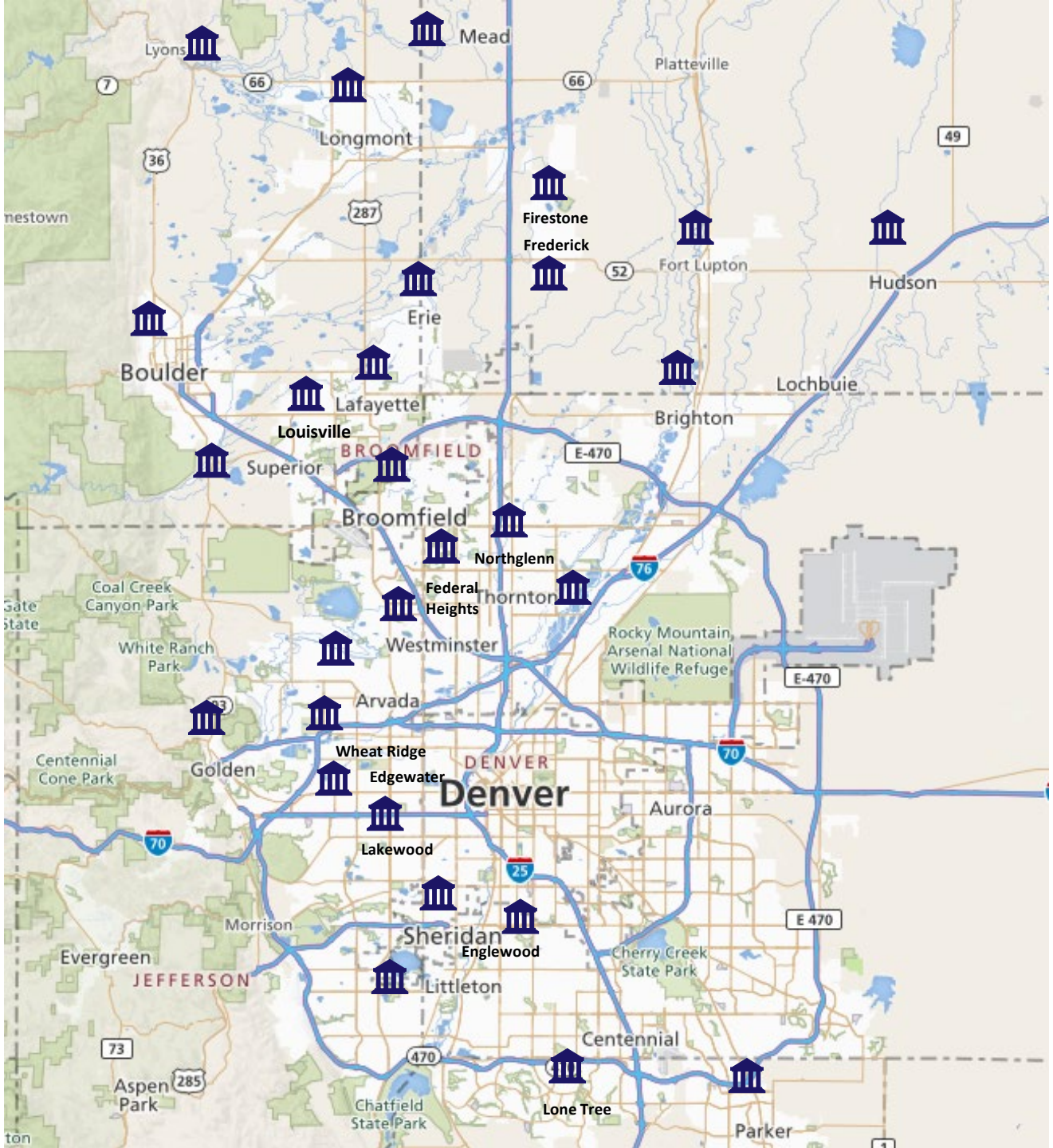
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Firestone
Frederick
Fort Lupton
Hudson
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Boulder
Lafayette
Louisville
Lochbuie
Brighton
Superior
BROOMFIELD
E-470
Broomfield
Northglenn
Federal Heights
Thornton
Coal Creek Canyon Park
White Ranch Park
Westminster
Rocky Mountain Arsenal National Wildlife Refuge
Arvada
Wheat Ridge
Edgewater
DENVER
Denver
Golden
Centennial Cone Park
Aurora
Lakewood
Morrison
Sheridan
Englewood
Cherry Creek State Park
Evergreen
JEFFERSON
Littleton
Centennial
Lone Tree
Aspen Park
Chatfield State Park
Parker

Carrie Clein,
OADC Commission Member

Top 10 Reasons we need a miniRat

10 Rural Colorado deserves adequate legal services.

9 Finding people in rural Colorado to provide legal services takes time.

8 Mass distribution of the current case law saves money and produces better results.

7 Mass distribution of the current case law takes time.

6 Adequate support services save money and produce better results.

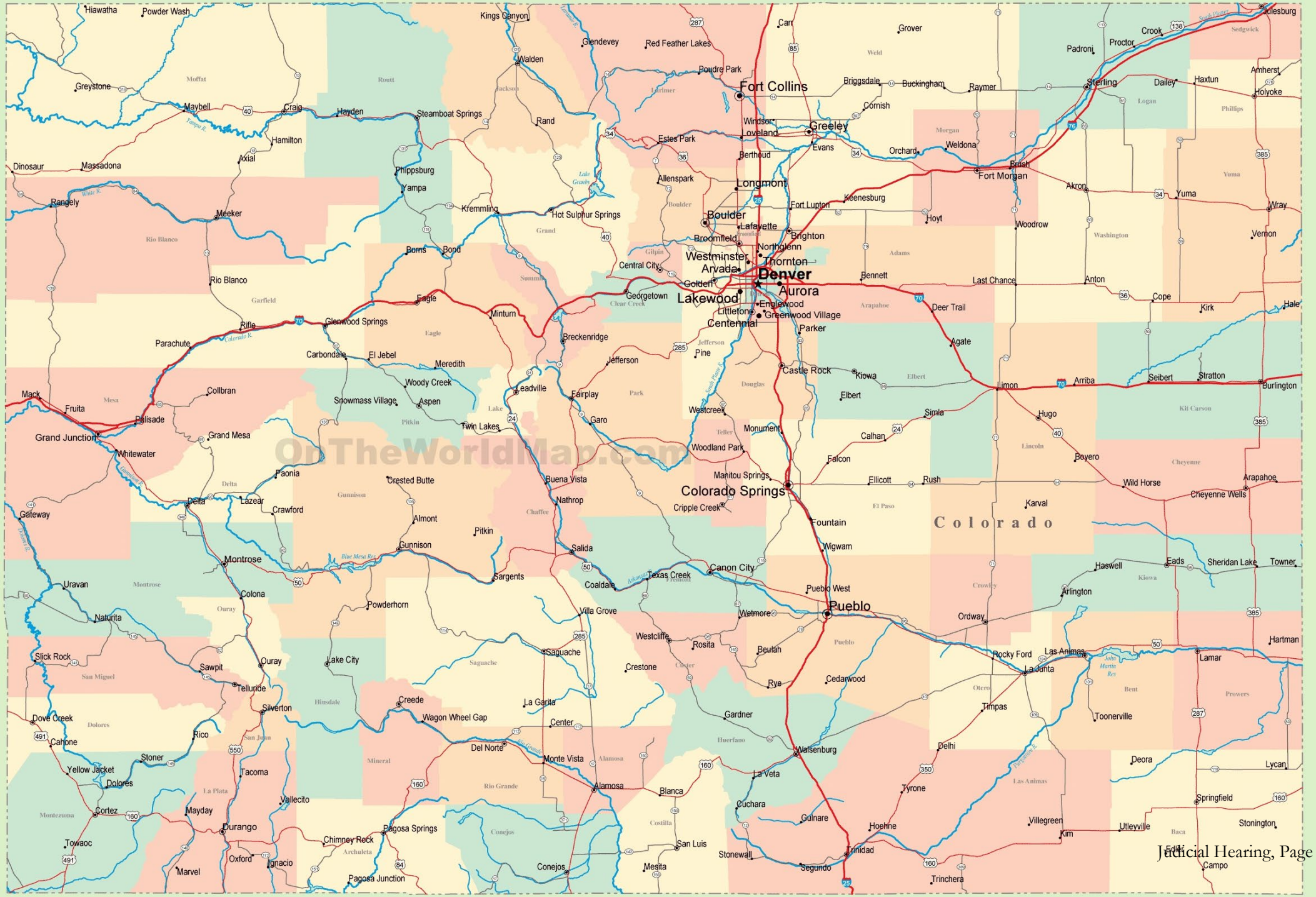
5 Managing people to provide adequate support services takes time.

4 A robust e-Library filled with current legal materials saves money and provides better results.

3 Maintaining a robust and current legal e-library takes time.

2 Attorneys are the most expensive people on the team and have highly specialized knowledge about the law.

1 Every hour spent by an attorney on a task that could be adequately performed by another lower-cost member of the legal team is a waste of money and detracts from the attorney's ability to apply their highly specialized knowledge of the law.



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Questions ?

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    darren@coloradoadc.com
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    daniel@coloradoadc.com

OFFICE OF THE CHILD'S REPRESENTATIVE

JUDICIAL BRANCH

FY 2020-21 JOINT BUDGET COMMITTEE HEARING

Friday, December 13, 2019

10:50 am – 11:05 am

Main Presenters:

- Chris Henderson, Executive Director
- Ashley Chase, Staff Attorney and Legislative Liaison

Supporting Presenters:

- Mark Teska, Chief Operating Officer

INTRODUCTIONS AND OPENING COMMENTS

QUESTIONS FOR OCR

OCR Question 1. OCR R6 (Title IV-E Funding): Does the Department of Human Services agree with this request?

OCR Response:
Yes, the Department of Human Services has submitted a corresponding FY 2020-21 Budget Request.

OCR Question 2. OCR R6 (Title IV-E Funding): What is the appropriate time for attorneys to become involved in the D&N process, both in terms of representing parents and children/youth? What are the benefits of earlier intervention by attorneys?

OCR Response:
While GALs are typically appointed at the initial hearing in a D&N case or upon the filing of a D&N petition, Section 19-3-203, C.R.S. recognizes the authority of a court to appoint a GAL prior to the filing of a petition for good cause. Appointment of an attorney to provide independent legal representation to a child or youth may provide an important safeguard, particularly when other parties are represented.

County departments of social services engage with children and families outside of formal court proceedings through prevention programs, referral, assessment and investigation; differential response; and voluntary services and placement arrangements. Depending on the case and the circumstances of the child and

family, this engagement may result in decisions about safety planning, services, placement, parental responsibilities and guardianship, and the need for a formal court filing. The county's decisions regarding whether and what protective actions to take may significantly impact a child. While a decision not to remove a child from an unsafe placement may lead to harm for the child, a decision to remove a child from a home may also cause unnecessary trauma.

The new federal guidance allowing IV-E reimbursement for attorney services recognizes the critical role attorneys for children play in safety planning and ensuring fulfillment of counties' obligation to make reasonable efforts to prevent or eliminate the need to remove children from their homes. An attorney's independent investigation and advocacy on behalf of a child can ensure the county department has key information relevant to making an informed decision about the safe and appropriate placement for the child, a safety plan for the child, prevention and intervention services for the child and family, and supportive relatives and kin. The child's attorney also promotes the child's voice and advocates for the child's interests throughout the investigation. With the enhanced representation made possible through IV-E funding, attorneys can also provide legal advocacy on other matters that may have brought the child to the department's attention, such as public benefits, housing, guardianship, disability, mental health needs, and education.

OCR Question 3. OCR R6 (Title IV-E Funding): Detail your plans for how the requested funding will be used in FY 2020-21 and future fiscal years.

OCR Response:

The OCR is in the process of finalizing its plans to enhance attorney representation with the newly available federal IV-E funding and its MOU with the Department of Human Services. To ensure effective programming and oversight, the OCR is taking a gradual approach to using these dollars and intends to begin with two key areas: expanding accessibility and availability of Social Service Professionals (SSPs) to GALs and expanding its litigation supports.

- SSPs: Currently, OCR contract attorneys may engage with SSPs only if they hire or contract with qualified professionals to provide this support. At this time, the OCR does not directly contract with SSPs to provide this support on an as-needed basis. A direct contracting structure would promote SSP use by attorneys with smaller practices and in rural areas. Approximately 40% of attorneys who responded to OCR's recent annual "Attorney Satisfaction Survey" indicated that they would prefer engaging with SSPs who contract directly with OCR rather than having to hire an SSP on their own. While a direct contracting structure will result in additional costs, the IV-E dollars will allow OCR to implement this structure without seeking additional General Funds.

Additionally, the OCR has begun the process of analyzing its current billing policies and procedures in light of attorney satisfaction survey responses about effective use of SSPs and feedback OCR's SSP Coordinator has received from statewide meetings with GALs and SSPs. To date, OCR's billing policies and procedures prohibit GALs and their SSPs from both billing for the same activity, requiring GALs to choose only one professional to perform the activity or to forego billing for one professional. However, there are times when allowing both the SSP and the GAL to perform the same activity would enhance GAL's representation, such as case consultation, observing interactions between children and parents, and observing children in their placements. The newly available IV-E dollars provide an opportunity for the OCR to refine its policies to support the true costs of effective use of SSPs without having to seek additional General Funds.

- Litigation Support: The OCR's current litigation support list primarily targets appeals and trial level support on potential appellate issues, an area that has become increasingly important with the increase in D&N appeals and recent developments in appellate law. Additionally, the OCR's litigation support list also identifies a few attorneys who can support GALs on education matters and one organization that can support GALs in obtaining required court findings so children can apply for Special Immigrant Juvenile Status, an immigration status available for some children under a court's jurisdiction. The OCR has long sought to expand this litigation support list to enhance its educational supports and to provide supports in other specialized topics, such as sibling contact, adoption and guardianship subsidies, disability rights and accommodations, rights and needs of LGBTQ youth, and placement advocacy. While all GALs must have basic knowledge of these topics, each of these are specialized topics within themselves and receiving support from an attorney with extensive knowledge and experience will enhance advocacy, improve judicial decisions, and result in better outcomes for children. Additionally, the OCR intends to expand its litigation support list to offer supports from legal experts related to but not directly addressed in D&N and delinquency proceedings, such as Social Security and other public benefits, housing, and parentage and child support (for teen parents). The American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (Standard D-12) recognize the value of this expanded scope of representation.

It is important to note that OCRs' use of SSPs and litigation support are existing OCR programs. The OCR has endeavored to implement these programs in a cost-neutral manner to the state, which has limited the supports the OCR can provide. By investing the newly available IV-E funding into targeted enhancements to these programs, the OCR will be able to expand this programming to the benefit of children without additional costs to the state.

OCR Question 4. H.B. 19-1316 (Modernizing Marriage Laws for Minors) sets the minimum age for marriage at 16 and requires judicial approval of any marriage where a party is under 18. How many cases in this area has the OCR thus far been involved in? What has been the impact of this legislation so far?

OCR Response:

Seven (7) Underage Marriage petitions have been recorded in the OCR's ongoing case management and billing system (CARES) since July 1, 2019.Of the seven petitions in our CARES system two minors account for four of the cases (they each filed on two separate occasions out of the same county). All but one of the petitioners was 17 at the time their case were filed and the filings occurred in four different counties (two metro and two rural). To date only one petition has been approved (with at least one pending). The OCR is preparing to train on this new case type in early 2020.

OCR Question 5. What would be the cost to the OCR if the court reporter page rate increased by 50¢ per page?

OCR Response:

The OCR does not incur significant costs for transcripts as OCR attorneys receive a copy of a transcript at no cost as OCR attorneys are typically responding to appeals and, therefore, receive a copy of the transcript at no cost. The OCR estimates the cost of a $0.50 per page increase to be less than $1,000.

OCR Question 6. OSPB's FY 2020-21 budget instructions asked executive-branch agencies to search for the following budget saving opportunities:

Unspent funds

- Positions vacant > six months--is it really needed?

OCR Response:

The OCR had two positions vacant more than six months during FY 2018-19. Its Social Services Professional (SSP) Coordinator is a new position approved in the OCR's FY 2018-19 budget. Staff prepared a job description for this position shortly after the 2018-19 Long Bill was finalized. However, with the OCR's previous Executive Director's retirement date of July 31, 2018 and the incoming Executive Director's extensive experience using SSPs as a GAL, OCR decided to delay the recruitment for the new SSP Coordinator position until after the new Executive Director was hired in August 2019. When the new Executive Director started, he had many responsibilities, including the implementation of recommendations from the OCR's performance audit. Once the audit was presented, the OCR focused its attention on finalizing the SSP Coordinator job description and interviewed candidates in November and December 2018. The OCR selected a highly qualified candidate requiring relocation; as a result a start date was delayed, causing the position to be vacant for more than six months. This is a vital new

position which will significantly expand and enhance SSP supports for GALs throughout Colorado.

The OCR's El Paso County office has a part time (0.4 FTE) administrative support position. The previous incumbent had been with the office for many years. After her retirement, the office reorganized its administrative staff resulting in a delay in hiring the replacement. The office has received several applications and is in the process of interviewing candidates.

- Reversions of prior year spending--is there a pattern or a one-time occurrence?

OCR Response:
Any significant reversions of prior year spending are typically from the OCR's Court-appointed Counsel appropriation. This is the OCR's largest budget item. The OCR performs a very detailed analysis for each of its major case types to estimate its subsequent year budget request. There are many complexities in estimating future caseload, including but not limited to, judicial filing fluctuations that do not necessarily correlate with the OCR's appointments, appointments of guardians *ad litem* (GALs) that are at the discretion of judicial officers, and the increasing cost of appeals. In some years the OCR has sufficient funding in its Long Bill appropriation, while in other years a supplemental appropriation is necessary. The OCR continues to refine its Court-appointed Counsel appropriation, especially with more reliable data from its case management billing system that launched April 1, 2018.

Actuals vs estimates

- Fiscal notes--did enacted program really cost what was estimated?

OCR Response:
The OCR received an appropriation for HB19-1316 (Modernizing Marriage Laws for Minors) requiring the appointment of a GAL for underage parties seeking a marriage license. The OCR received an appropriation of $57,600 for the cost of an estimated 80 appointments per year for this new case type. This number was based on the amount of underage applications in the state filed by minors the previous year. In FY 2019-20 GALs have been appointed in 7 cases. While it may appear that the OCR overestimated the number of appointments, the requirement to appoint a GAL in these case types may be providing a deterrent to minors seeking to marry. After annualizing the estimated number of cases, the appropriation may exceed the actual appropriation from the bill. The OCR will continue to monitor the appointments/costs associated with this case type throughout the year.

- Decision items--are there pilot programs still on-going? Did the Department receive permanent FTE for a function no longer needed?

OCR Response:
To date, the OCR has implemented two pilot programs related to SSP programming: multidisciplinary law office (MDLO); and rural district contract pilot. The OCR implemented these pilots with existing funding and did not request additional FTEs. The OCR's Social Services Professional Coordinator (approved in the OCR's FY 2018-19 budget request) is utilizing the information obtained from the pilot programs to expand and enhance SSP supports for guardians *ad litem* (GALs).

- End-of-year spending--review purchases for final 8 weeks of each fiscal year -- were the purchases budgeted for in advance or end of year "spend-up"?

OCR Response:
The OCR incurred approximately $92,000 in non-payroll related operating expenditures during May and June of 2019 (total Operating budget: approx. $215,000). Approximately $8,000 was spent on unbudgeted items (three Microsoft Surfaces for staff attorneys to use in the field). The remaining expenditures, including approximately $46,000 for ongoing technology-related expenditures (i.e., regular IT support and maintenance of the OCR's case management and billing system), were for routine ongoing operating expenditures (i.e., not "spend-up" at the end of the fiscal year).

- Travel, meals, official functions -- review for least cost vs max allowable

OCR Response:
The OCR reimburses for actual and approved travel expenses, not to exceed federal General Services Administration (GSA) rates without Executive Director approval. Any cost savings from revising the OCR's current policies would be expected to be minimal.

Unrequested funds

- Sunset recommendations--were any sunset recommendations not adopted by the legislature?

OCR Response:
The legislature did not recommend the sunset of any program associated with the OCR.

- Appropriations--was the Department appropriated more than was requested?

OCR Response:
The OCR reverted minimal funding in various appropriations, including its most significant appropriation, Court-appointed Counsel. However, during FY 2018-19 the OCR requested and received a supplemental appropriation of approximately $1.1 million, of which it expended approximately $400,000.

- Supplemental requests--why did the Department not include these requests in regular budget cycle?

OCR Response:
The OCR requested and received an increase in its Court-appointed Counsel appropriation in its FY 2018-19 budget request. Actual expenditures exceeded its projected expenditures approved in the Long Bill, necessitating a supplemental appropriation.

Underutilized assets

- Goods or services that could be purchased less expensively in private sector

OCR Response:
The OCR is not aware of any underutilized assets (i.e., goods or services that could be purchased less expensively in the private sector).

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

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.

OCR Response:
The Office of the Child's Representative (OCR) is not aware of any legislation that is either partially implemented or has not been implemented.

2 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, 2019 (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-30-2019

OCR Response:
The OCR does not have any high priority outstanding recommendations in the "Annual Report: Status of Outstanding Audit Recommendations."

3 If the Department receives federal funds of any type, please respond to the following:

a. Are you expecting any changes in federal funding with the passage of the FFY 2020-21 federal budget? If yes, in which programs, and what is the match requirement for each program?

OCR Response:
The OCR does not receive federal funds directly; rather it receives reappropriated funds from the Department of Human Services and the State Court Administrator's Office (SCAO). The OCR was notified by the SCAO that it would no longer receive its $20,000 annual grant from the Court Improvement Program (used to support OCR's training program). Additionally, the OCR's 2020-21 budget includes a request for $1,481,902 in spending authority (reappropriated funds) resulting from a revised federal rule allowing the OCR to request reimbursement for certain attorney costs associated with the legal representation of children who are candidates for foster care. The required match is met from the OCR's Court-appointed Counsel expenditures (General Fund).

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

OCR Response:
The OCR has requested an increase of $20,000 (General Fund) in its 2020-21 budget request to offset the reduction in reappropriated training funds.

c. 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 2019-20 or 2020-21.

OCR Response:
The OCR is not aware of any federal sanctions or potential sanctions.

d. Compared to other states, Colorado ranks low in receipt of federal dollars. How can the Department increase the amount of federal money received?

OCR Response:
As indicated above (OCR question 3), the OCR will begin claiming federal reimbursement (through the Department of Human Services) for certain legal costs. Any reimbursement received (reappropriated funds from CDHS) will be used to enhance the legal representation of children in accordance with SB19-258. Additionally, through its committee participation, such as the SB18-254 Taskforce, the OCR contributes to CDHS's efforts to draw down federal Title IV-E dollars.

e. What state funds are currently utilized to draw down (or match) federal dollars? What state funding would be required to increase the amount of federal funding received?

OCR Response:
State general funds provide the match for Title IV-E Administrative reimbursement. As the state already funds the OCR's entire Court-appointed Counsel appropriation, no increase in general funds are necessary to match and draw down the federal funds.

4 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?

OCR Response:
The OCR does not spend money on public awareness campaigns.

5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate: (1) by department; (2) by division; (3) by program for programs with at least 20 FTE; and (4) by occupational class for classes that are located within a larger occupational group containing at least 20 FTE. To what does the Department attribute this turnover/vacancy experience? Do the statewide compensation policies or practices administered by the Department of Personnel help or hinder the department in addressing vacancy or turnover issues?

OCR Response:
The OCR's vacancy rate in FY 2018-19 was 4.6%; its turnover rate was 3.1%. While the OCR is not subject to the statewide compensation plan and policies, the OCR is hopeful its common compensation plan with other independent Judicial agencies will help address vacancy and turnover issues.

6 Please identify how many rules you have promulgated in the past two years (FYs 2017-18 and 2018-19). 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.

OCR Response:
The OCR does not promulgate any rules (i.e., regulations).

7 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.

OCR Response:
Contract attorney caseload and workload are the primary cost drivers impacting the OCR. Additionally, the increasing complexity in juvenile law does impact the OCR's caseload and workload.

Because the rates paid to contractors are already established, the general CPI is not a direct factor in the OCR's costs. Appropriations that may be influenced by the CPI represent less than one percent of the OCR's total appropriations. The general increase in CPI and the cost of living in Colorado does directly impact the attorneys the OCR contracts with to provide high quality legal services to children and youth. As the cost of living continues to rise in Colorado, it is important for the OCR to meet these rising needs by seeking periodic increases in the established rates paid to contractors.

8 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?

OCR Response:
The OCR projects a slight increase in its Dependency and Neglect (D&N) and a more substantial increase in its Juvenile Delinquency (JD) caseloads. OCR attorneys are appointed in all D&N cases and at the discretion of the court in JD cases. While it is difficult to quantify all the factors driving these increases, conversations with attorneys and judges point to an increased prevalence of D&N-like issues in JD cases and an increasing awareness of adequately addressing the needs presented in JD cases as a means of promoting long-term success and minimizing the potential for future court involvement. Additionally, while Appellate appointments represent a relatively small portion of the OCR's overall caseload, these filings increased significantly in FY 2017-18 due to the complexity and length of D&N cases. The OCR expects this increased caseload to continue through FY 2020-21.

9 Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps), the role of these technologies in the Department's interactions with the public and other state agencies, the Department's total spending on these efforts in FY 2018-19, and expected spending in FYs 2019-20 and 2020-21.

OCR Response:
The OCR's website provides useful information to and allows for feedback and records requests from the public. Additionally, the website provides significant resources for attorneys, including a litigation toolkit to enhance best practices and efficiencies, a complete Guided Reference in Dependency (GRID), and centralized access to the OCR's policies. The OCR plans on overhauling its website in the current fiscal year to enhance the resources already provided to its contract attorneys, as well as enabling OCR to staff to more easily update and maintain the site. The OCR anticipates nominal costs regarding website maintenance and design going forward.

10 There are many ways in which the Department may interact with internal or external customers, including the public and other departments. How is the Department gathering feedback and evaluating customer experience? Please address all interactions, e.g. technology, in-person, call centers, as well as total spending on these efforts in FY 2018-19 and expected spending in FYs 2019-20 and 2020-21.

OCR Response:
The OCR considers its customers to include the children and youth who receive legal representation and the attorneys with whom the OCR contracts to provide the representation. The OCR regards the families involved in cases, the judicial officers who rely on accurate and independent information from OCR attorneys, the professionals who interact with OCR attorneys, and the members of the public who have contact with OCR attorneys and questions about the legal representation of children as key stakeholders in OCR's delivery of services. The OCR accomplishes all these activities using existing FTEs. The OCR engages with these customers and stakeholders in the following ways:

- OCR's Engaging and Empowering Youth Program directly solicits feedback from youth through surveys, focus groups, and other outreach, such as Know Your Rights materials. In FY 2018-19, the OCR gathered 108 surveys and held 6 focus groups.
- OCR's annual attorney evaluation and verifications process relies on formalized stakeholder feedback from judicial officers and numerous professional stakeholders involved in the child welfare and juvenile justice systems. As part of its triannual review of attorney contracts, the OCR interviews child, caregiver, and parent references for each attorney seeking to renew the OCR contract.

- OCR's annual Attorney Satisfaction Survey allows the OCR to obtain formalized feedback from its contractors and its employees in the El Paso GAL Office. In FY 2018-19, 142 attorneys responded to the survey. OCR also uses other survey instruments throughout the year to obtain feedback on key policy and programming initiatives.
- OCR's "Provide Feedback" link on its website allows members of the public to submit compliments and complaints about OCR attorneys and also provides mechanisms to file complaints about members of OCR's staff.
- Ongoing contact with attorneys, judicial officers, and other stakeholders enables the OCR to stay constantly updated on attorney and judicial district needs. OCR staff is in contact with attorneys on a daily basis and engages in meetings with attorneys, judicial officers, and other professional stakeholders throughout the year.

11 Please highlight the long-term financial challenges of fulfilling the mission of the Department with particular attention to any scenarios identified in the Department's Long Range Financial Plan involving an economic downturn, department-specific contingencies, emerging trends, or major anticipated expenses (Subsections 3-6 of Section 4 of the Long Range Financial Plan submitted pursuant to H.B. 18-1430).

OCR Response:

As the OCR's budget is caseload and workload driven and the variables impacting caseload and workload are outside of the OCR's control, OCR's main challenge in accurately predicting its Long-Range Financial Plan is continuing to accurately project caseload and workload. Because OCR's case types involve vulnerable children and families and the circumstances driving case filings and workload tend to escalate during economic downturns, an economic downturn would likely increase OCR's caseload and workload, requiring OCR to request additional Court-appointed Counsel dollars through the annual budget process or a supplemental request.

12 In some cases, the roles and duties of existing FTE may have changed over time. For all FY 2020-21 budget requests that include an increase in FTE:

OCR Response:

The OCR is requesting 1 FTE staff attorney position and to increase two existing 0.8 positions to 1.0 FTE (0.4 FTE).

a. Specify whether existing staff will be trained to assume these roles or these duties, and if not, why;

OCR Response:
For the new staff attorney position, the OCR would reassign some of the district liaison and committee functions currently required of the Executive and Deputy Director, who are currently trained on these duties. The new staff attorney would also expand OCR's programming through the expansion of OCR's litigation support opportunities and the development of supports for case types other than D&N. The OCR's Deputy Director would supervise these projects and therefore be cross-trained on any new programs or procedures.

b. Specify why additional FTE are necessary; and

OCR Response:
OCR's current workload is not sustainable, and taking on new initiatives that would continue to advance OCR's programming and improve efficiencies is currently not feasible.

Each staff attorney serves as a liaison to five to seven judicial districts, and effective oversight of attorneys in the districts requires staff attorneys to engage in extensive review and follow-up as outlined in the OCR's billing policies, ongoing oversight procedures, and annual applications and verifications processes. While staff attorneys will no longer need to engage in initial level review of the numerous data sources and reports key to OCR's oversight as a result of the two new Program and Performance Analyst positions, the OCR has learned in just one year of its audit implementation that its enhanced protocols identify many more potential issues that must be handled by staff attorneys who have a specialized understanding of their districts' needs and GAL practice. Additionally, staff attorneys must maintain contact with key stakeholders in each district, support individual attorneys in the districts and respond to issues as they arise, and investigate complaints. The numerous federal and state initiatives focusing on child welfare and juvenile justice reform, ongoing changes to the case and statutory law in OCR's case types, and increasing complexity and severity of the cases themselves have placed more demands on staff attorney time to ensure that OCR's policy and support work remain comprehensive, updated, and informed.

Notably, the OCR's 3.8 attorney staff include the Executive and Deputy Directors. In addition to their management responsibilities, the Executive and Deputy Directors each serve as OCR district liaisons to five to six judicial districts and perform the core substantive responsibilities of staff attorneys. Because of the OCR's lean agency structure, the Executive and

Deputy Director each take on specialized projects as well, such as the coordination of OCR's appellate litigation support, monitoring of appeals and filing *amicus* briefs, supporting the El Paso County GAL office, and maintaining the Guided Reference in Dependency.

While the OCR has managed to sustain its key oversight and support responsibilities, it has done so because of the willingness of staff to put in numerous extra hours on an ongoing basis.

c. Describe the evaluation process you used to determine the number of FTE requested.

OCR Response:
The OCR considered staff's current workload, its programming and oversight priorities for FY 2020-21, and the additional extensive hours staff dedicated to fulfilling the OCR's statutory obligations during FY 2018-19.

13 Please describe the impact of Colorado's low unemployment rate on the Department's efforts to recruit and retain employees.

OCR Response:
The OCR has not had significant difficulty recruiting and retaining employees in its Denver office. However, the OCR has historically experienced challenges filling its attorney positions in its El Paso County office. Last year the Joint Budget Committee approved a salary increase that has helped in the retention of entry level attorneys. The OCR is again addressing the issue of retention this year within its common compensation plan. The OCR continues to face challenges recruiting and retaining contract GALs in rural areas and are hopeful the proposed rate increase will stabilize and retain GALs in challenging jurisdictions.

14 ***NOTE: An example template for providing data for this question will be provided by the JBC Staff.***

State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of General Fund for taxpayer refunds. Please:

a. List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds $100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.

OCR Response:
Other than its General Fund appropriation, the OCR is unaware of any authority subjecting the reappropriated funds to TABOR.

b. For each source, list actual revenues collected in FY 2018-19, and projected revenue collections for FY 2019-20 and FY 2020-21.

OCR Response:
Please see attached schedule.

c. List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2020-21.

OCR Response:
All of the OCR's decision items request either General Fund appropriation or reappropriated funds. The OCR is unaware of any authority subjecting the reappropriated funds to TABOR.

15 Please describe the Department's current practice regarding employee parking and other transportation options (i.e. EcoPass). Please address the following:

a. Does the Department have adequate parking for all employees at all locations?

OCR Response:
The OCR has adequate parking for its employees in the El Paso County office. Parking for the Denver Office is limited as explained below.

b. If parking is limited, how are available spaces allocated?

OCR Response:
Denver employees are able to place their names on a waiting list for a parking space in the garage at 1290 Broadway. It frequently takes two years or more for an employee to obtain a space in the garage. Several employees in the Denver office have not yet been offered a space in the garage and must use daily pay options or public transportation.

c. If free parking is not available, how is parking paid for, and who pays (employee or Department)? (e.g. stipends, subsidized parking, eco passes)

OCR Response:
Employees in the Denver office who have a space in the Judicial parking garage or the garage at 1290 Broadway pay for their own parking. However, the OCR does provide an EcoPass (at OCR expense) to all Denver employees.

d. If employees pay fees for parking, where is the revenue credited and how is it spent, and is it subject to TABOR?

OCR Response:
The OCR is charged monthly for all parking spaces in the Judicial Building or the garage at 1290 Broadway. Employees are charged for the cost of their space through a monthly payroll deduction that directly offsets the monthly parking charges paid by the OCR.

e. Do parking and/or transportation benefits factor into Department compensation and/or retention efforts?

OCR Response:
No.

16 Please identify all continuously appropriated funds within the Department's purview with a fund balance or annual revenue of $5.0 million or more. Please indicate if these funds are reflected in the FY 2019-20 Long Bill.

OCR Response:
The OCR does not have any continuously appropriated funds.

Office of the Child's Representative

Presentation to the Joint Budget Committee

December 13, 2019

Office of the Child's Representative: Mission and Values

Mission

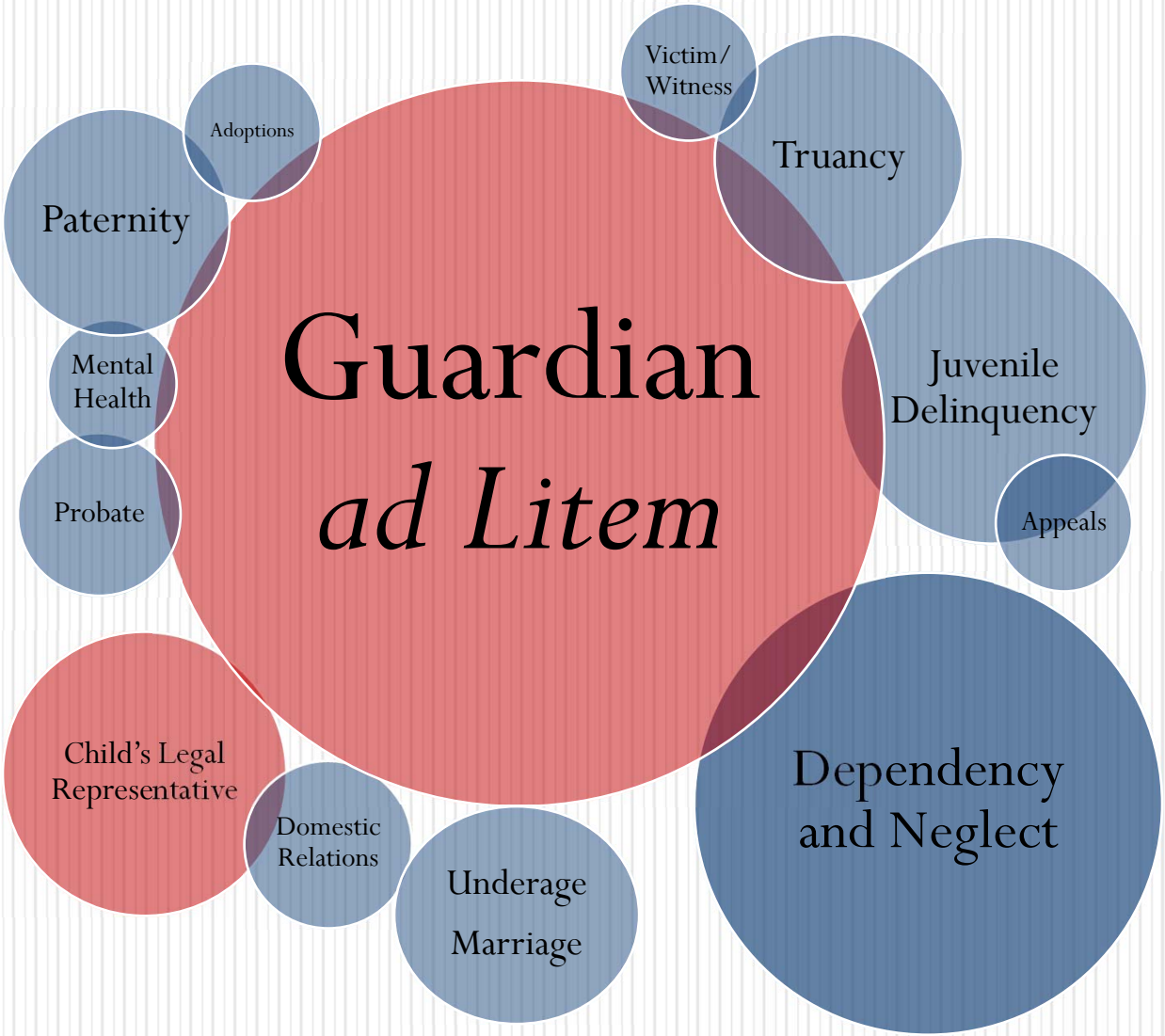
The mission of the Office of the Child's Representative (OCR) is to provide effective legal representation to Colorado's children involved in the court system because they have been abused and neglected, impacted by high-conflict parenting time disputes, or charged with delinquent acts and without a parent able to provide relevant information to the court or protect their best interests during the proceedings. As a state agency, the OCR is accountable to the State of Colorado to achieve this mission in the most cost-efficient manner without compromising the integrity of services or the safety and well-being of children. The OCR is committed to ensuring that its attorneys provide these children, Colorado's most vulnerable and marginalized population in the courts, the best legal services available to protect and promote their safety and well-being and to have their voice heard throughout all aspects of a case.

OCR Values

Accountability: Colorado's children, attorneys, and taxpayers can count on OCR to ensure that each decision we make and action we take advances our mission in a fair and transparent manner.

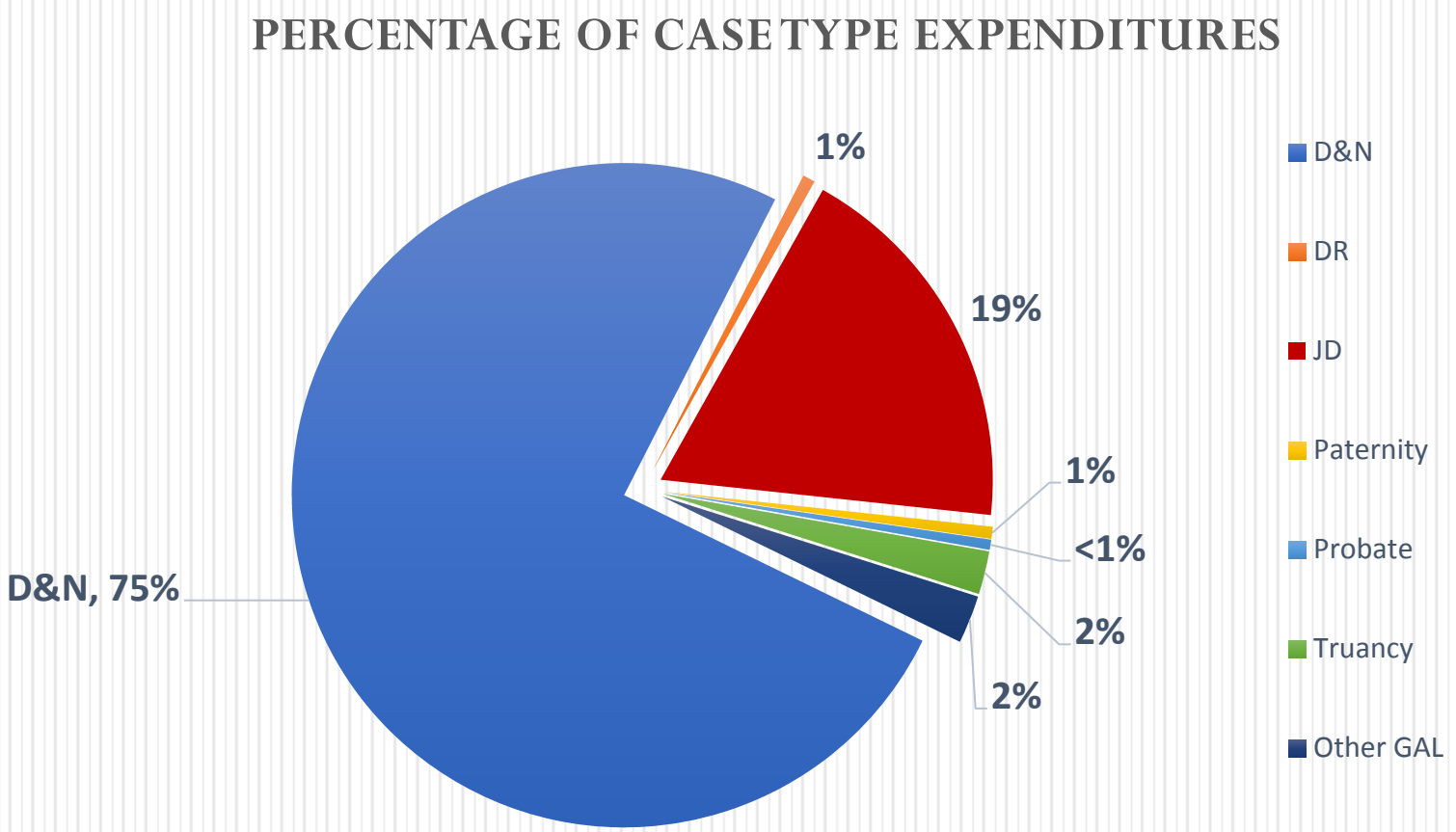
Efficiency: OCR strives to accomplish its mission and conserve resources by streamlining efforts, adhering to deadlines, resolving conflict constructively, and honoring well-defined projects, processes, and roles. We balance our drive to achieve with thoughtful planning and implementation.

Empowerment: OCR cultivates an environment of respect and honesty. We value the experience and expertise of the children we serve, our contract attorneys, and our staff. We invest time to connect, focus on strengths, value feedback, and recognize success. We support each other in our mission to empower children.



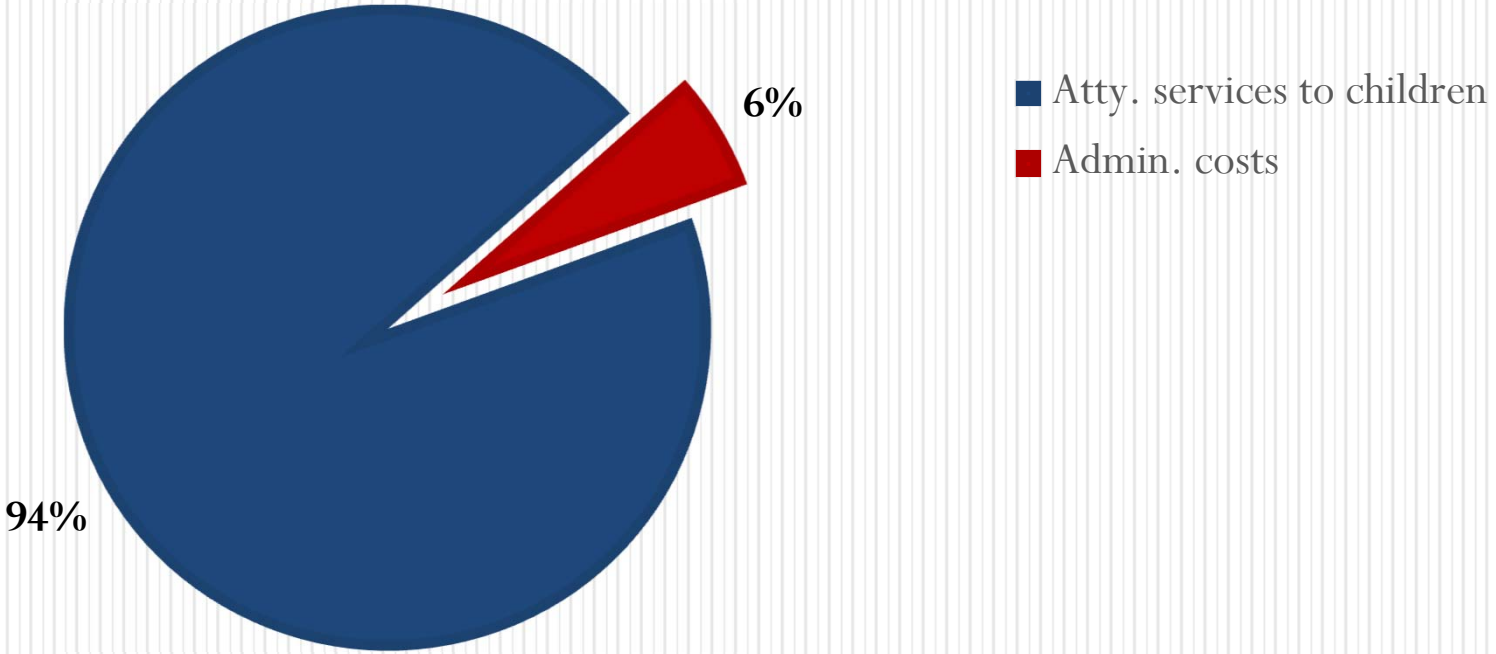
OCR contracts with approximately 275 attorneys, spanning all 22 judicial districts, who act as Guardians ad Litem (attorneys who advocate for the best interests of a child) for every child involved in a dependency and neglect case and each minor applying for a marriage application, as well as these other case types, at the discretion of the court.

OCR Expenses



OCR Expenses

FY 19 ADMINISTRATIVE EXPENDITURES



FY2021 Budget Request – General Fund

Total:
$728,805

Total:
$306,864

Total:
$1,145,367

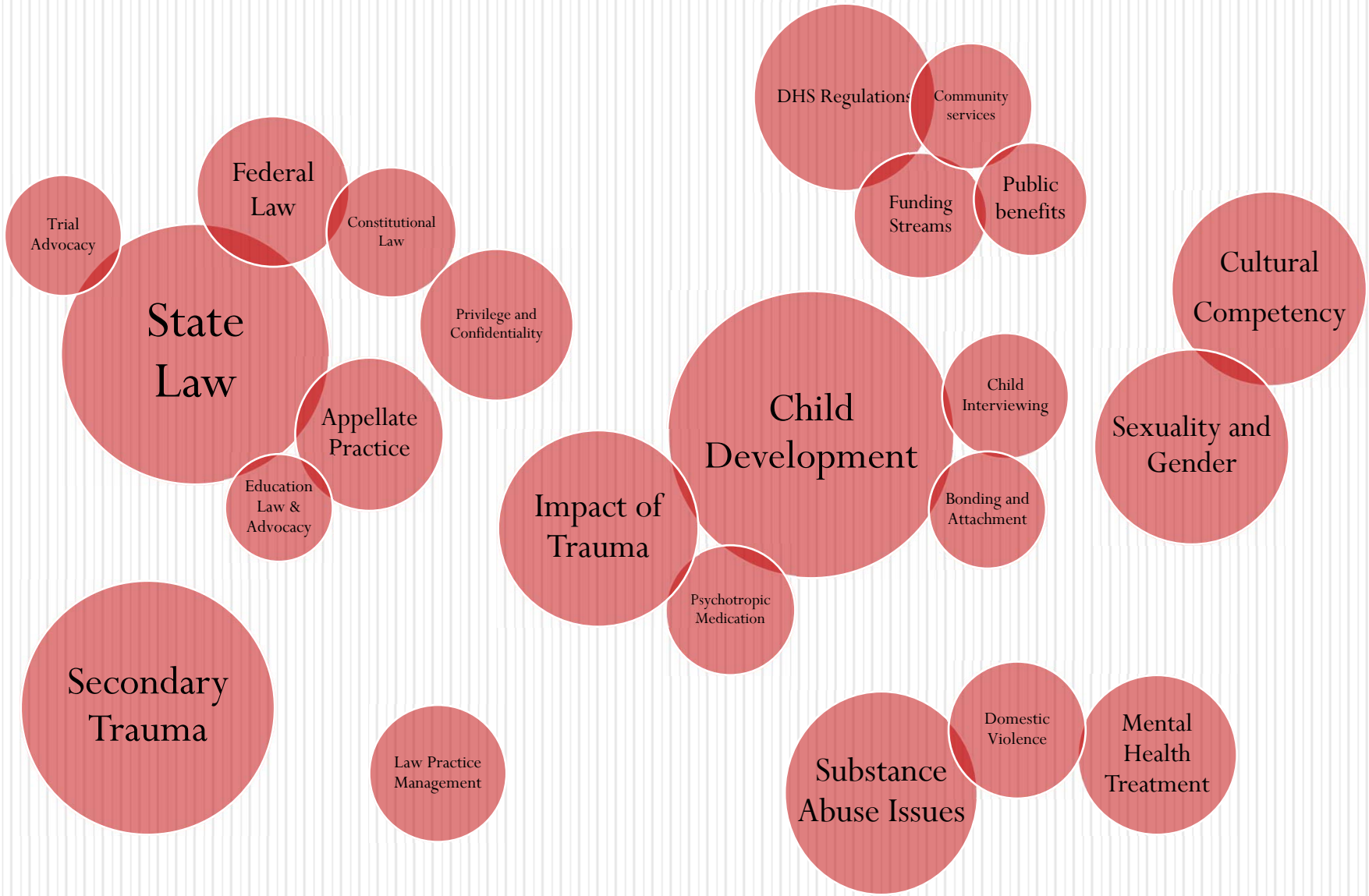
FY2021 Budget Request - Reappropriated

Title IV-E Spending Authority

- Litigation Support
  - Education
  - Siblings
  - Adoption subsidies
- Social Services Professionals (SSPs) with expertise in:
  - Social work
  - Education
  - Disabilities
  - Mental health

No additional state General Fund dollars required*

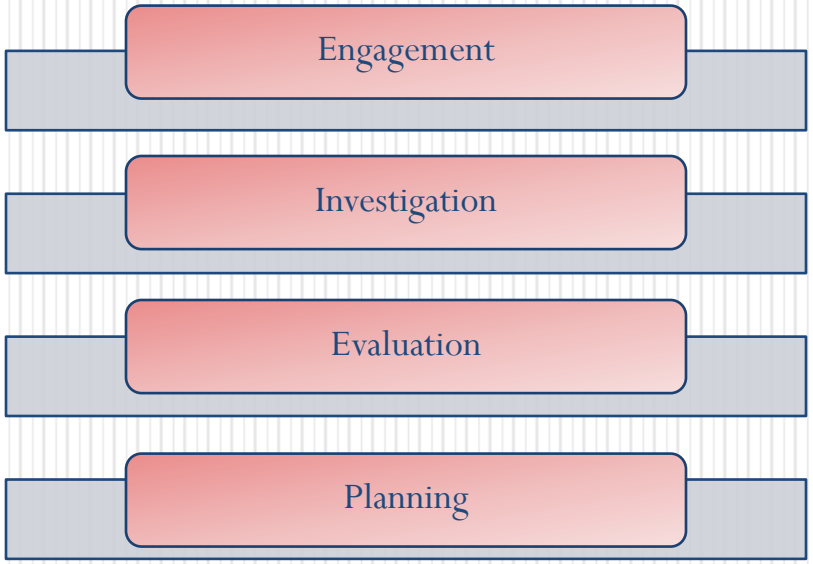
It's difficult work:



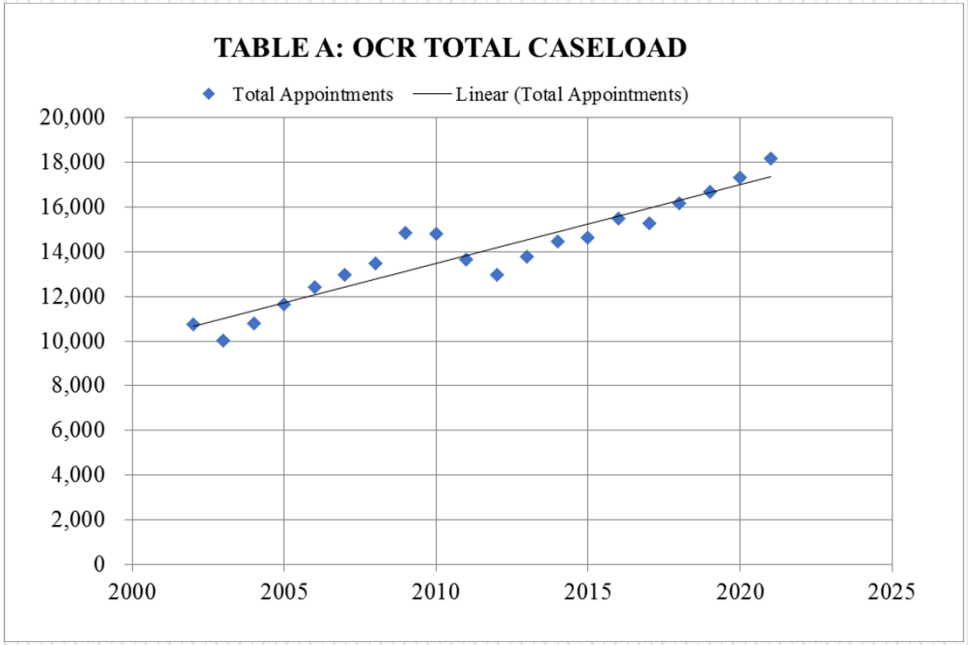
Enhancement of GAL Advocacy through Social Service Professionals (SSP)

- Enhance GAL independent investigation and legal advocacy
- Child focused role
- Part of the legal team
- Research supported

SSPs provide valuable support in four main areas



Caseload & Mandated Costs Adjustment



- The Colorado's Children's Code mandates the appointment of a GAL for each child subject to a D&N proceeding.
- OCR projects an increase in its juvenile delinquency caseload for FY 2021.
- Mandated costs for OCR include discovery, expert witnesses, interpreters, process servers, and transcripts. The costs have increased due to the complexity of cases. These costs are critical to a GAL so that they can conduct an independent investigation.

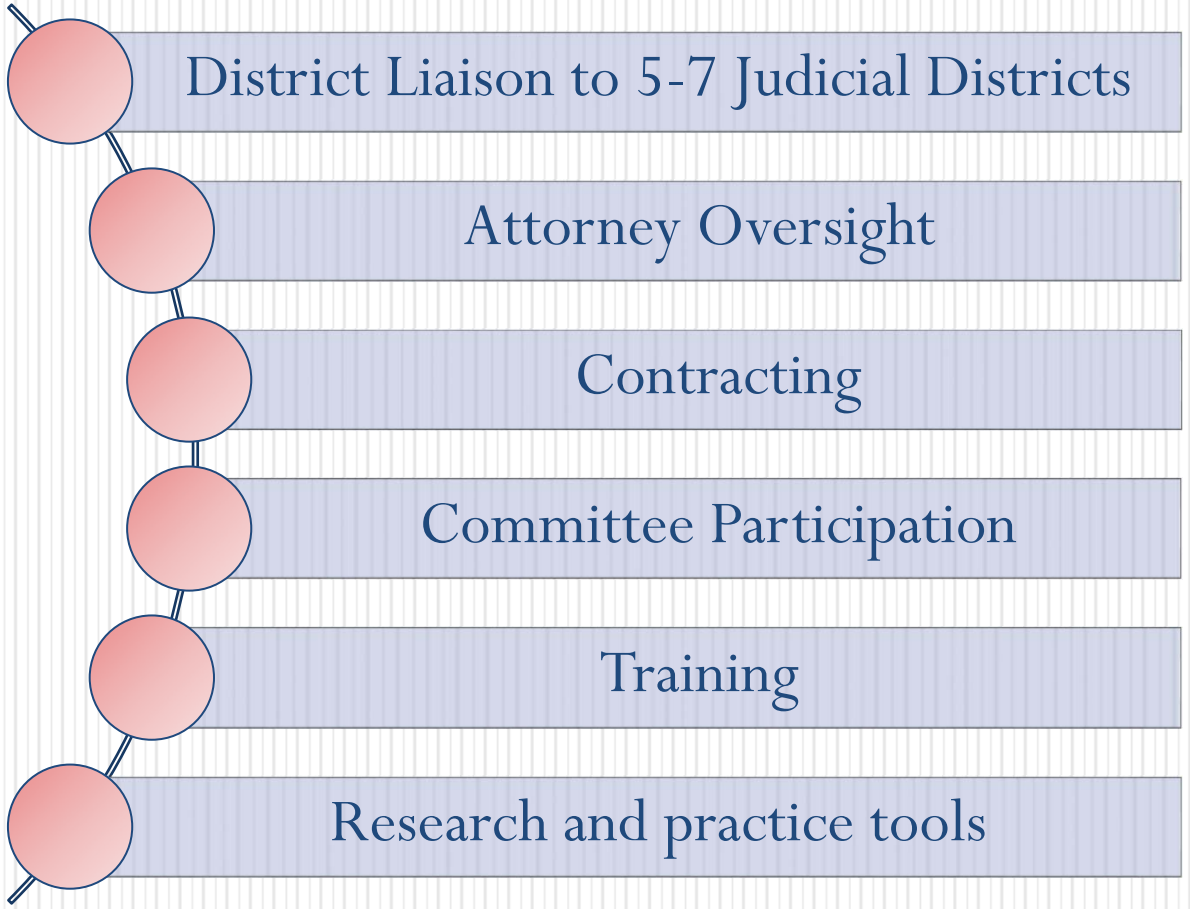
Staffing Requests

The OCR currently has 4 attorney staff members:

- Executive Director
- Deputy Director
- Staff Attorney
- Staff Attorney/ Legislative Liaison

The Executive Director and Deputy Director are responsible for:

+ Office management
+ Agency programming
+ Staff attorney responsibilities



Contact Us:

Chris Henderson, Executive Director

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chrishenderson@coloradochildrep.org

Ashley Chase, Legislative Liaison

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ashleychase@coloradochildrep.org

" I don't know what the requirements are for him (like his pay or hours) but whenever I had a need he was there… That's one of the biggest things, having conversations about parental difficulties and him reassuring and giving advice".

"My GAL and [SSP] are the best. They always make sure I'm happy and safe, give me the resources to succeed, and are very understanding".

- Quotes from youth about their GAL and SSP

OFFICE OF RESPONDENT PARENTS' COUNSEL

JUDICIAL BRANCH

FY 2019-20 JOINT BUDGET COMMITTEE HEARING

Friday, December 13, 2019
11:05 am – 11:20 am

Main Presenters:

- Melissa Thompson, Executive Director
- Becky Briggs, ORPC Commission Chairperson
- Diane Smith, ORPC Commission Vice Chair & Parent Advocate

Supporting Presenters:

- Linda Edwards, Chief Financial Officer
- Jill Cohen, Social Worker – Director of Programs

INTRODUCTIONS AND OPENING COMMENTS

QUESTIONS FOR THE OFFICE OF RESPONDENT PARENTS' COUNSEL

ORPC Question 1. (A question on ORPC Request R-4, IV-E Legal Representation): Does the Department of Human Services agree with this request?

Yes, the Colorado Department of Human Services (CDHS) is in support of this reqeust. CDHS approached the ORPC initially to begin discussions regarding an inter-agency collaboration for Colorado to access newely available Title IV-E federal dollars under this change to the Child Welfare Policy Manual. CDHS has submitted a complementary budget request.

ORPC Question 2. (A question on ORPC Request R-4, IV-E Legal Representation): What is the appropriate time for attorneys to become involved in the D&N process, both in terms of representing parents and children/youth? What would be the benefits of earlier intervention by attorneys?

When the state intervenes in the life of a family and removes a child from his or her home, the Fourteenth Amendment of the United States Constitution mandates that parents have access to fundamentally fair procedures.[1] The ORPC is guided by a statutory mandate and Chief Justice Directive to ensure parents have access to effective representation *as early as possible* in the judicial process and that indigent parents have access to justice. Indigent parents should be appointed attorneys, where possible, when the court issues emergency orders removing a child or requiring a parent to comply with protective orders. Parents should also have access to counsel to address civil legal issues that may lead to a removal of their children including domestic violence, public benefits, and housing issues. While access to counsel is fundamental to ensuring fairness, earlier access to counsel and to interdisciplinary teams often leads to children returning to their families sooner or not being

[1] *See, e.g.*, *Lassiter v. Dep't of Soc. Svcs.*, 452 U.S. 18 (1981).

removed from home at all, reducing the number of children in out of home foster placements and reducing overall costs.

Emergency Hearing Process

When the department believes that a child remaining in the home of a parent or legal custodian "would present a danger to that child's life or health in the reasonably foreseeable future," the department may request an order granting custody of the child to the department from the on-call judge.[2] The call is *ex parte*, meaning that sometimes the caseworker calls with the county attorney or sometimes on their own, but the conversation between the judge and caseworker or county attorney providing information to substantiate the need for removal always occurs without a parent, counsel for a parent, or a GAL present.[3] The court does not always make a record of the exact information shared supporting the request for protective custody and often grants the order authorizing the Department to remove a child without sworn testimony or even an affidavit.

Once the court provides a verbal or written order permitting removal of children, the caseworker removes the children and provides a notice of rights and remedies as well as a notice of hearing. The parent is not provided with any information to allow them to access an attorney before the emergency hearing. Often, parents are encouraged to participate in meetings where they are asked to agree to safety plans or voluntary placements out of the home without attorneys present and prior to the appointment of attorneys. The parent is usually not afforded a visit or any contact with their child between the removal and the hearing, and the parent often knows nothing of where their child has been placed except that the child has been placed in foster care.

The court must hold a hearing within 72 hours of the order placing custody of the child with the department.[4] At the hearing, in an explicit exception to the rules of evidence that apply at other hearings, the court can consider "written or oral reports, affidavits, testimony, or other relevant information that the court may wish to receive. Any information having probative value may be received by the court."[5] At this hearing, the county need only show that it is more likely than not that the welfare of the child or community requires that the child remain out of the home.[6]

In most jurisdictions, respondent parent counsel (RPCs) have less than an hour to speak to their client prior to the hearing that will determine whether or not the department maintains custody of their child. Counsel will often be handed a lengthy document that contains multiple allegations that may not be attributed to any particular witness or person or contain other unverified information. Counsel will not have access to any discovery or information other than the petition or report prepared by the department and county attorney in advance of the hearing. Counsel may not have time to even read the petition before meeting their new client, whose child has been removed from their home less than three days before.

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[2] C.R.S. § 19-3-405(2), 2019.
[3] Colo. R. Juv. P. 2.3(a)
[4] C.R.S. § 19-3-403, 2019.
[5] C.R.S. § 19-3-403(3.6)(a)(II), 2019.
[6] C.R.S. § 19-3-503(5), *People in Interest of M.M.*, 520 P.2d 128, 131 (Colo. 1974); *P.F.M. v. Dist. Ct.*, 520 P.2d 742, 744 (Colo. 1974).

When meeting their new client, RPC must obtain an application for counsel from the parent to ensure they qualify for a court appointed attorney. The RPC must advise a parent as to their rights in the proceeding and the purpose of the emergency hearing. In most jurisdictions, the RPC will need to assist the parent in completing an Indian Child Welfare Act affidavit and relative affidavit. The RPC must then review the lengthy petition that has been filed with the court. In addition, the RPC must check to make sure that there is not a conflict of interest in being appointed to the case, obtain contact information for the client, discuss the roles of other professionals involved in the case, determine necessary services and protective orders for the client, explore possible safety plans or relative placement options that would permit the child to return home safely, screen the client for disabilities, discuss religious and cultural practices and any medical needs of the children, discuss jurisdictional issues including whether there are any out-of-state custody orders, and discuss paternity.[7]

RPCs must then make time to confer with the other parties to determine whether agreement may be reached and, if it is not reached, must prepare for a hearing at which they have no access to witnesses or information that might test the accuracy of the government's case. By contrast, the caseworker is likely prepared to testify and able to present evidence with the assistance of a county attorney who has the ability to prepare for the hearing. The GAL is asked to take a position about the best interests of the child often based solely on the report of the department without having met the child or interviewed any family members of the child.

Current Appointment of Counsel Proceedings

In current practice, caseworkers through the county departments have much earlier access to attorneys and legal guidance than children or parents. When the Department becomes involved with the family through a referral and subsequent investigation, a caseworker may seek guidance from a county attorney regarding whether sufficient evidence exists to file a dependency and neglect case or whether there is sufficient evidence to contact a judge and request a court order to remove a child from a parent's home. Whenever a dependency and neglect case is filed, the Department must be represented by a county attorney.[8]

A Guardian ad Litem (GAL) representing the best interests of the child must be appointed in all dependency and neglect cases pursuant to statute.[9] GALs are generally appointed at the first appearance in the case, at an emergency hearing that must occur within 72 hours of the court placing custody of a child with the county.[10] However, as noted in the Guided Reference in Dependency, or GRID, which is compiled by the Office of the Child's Representative (OCR), the Office of the Respondent Parents' Counsel (ORPC), and the Court Improvement Program of the Office of the State Court Administrator (SCAO), some jurisdictions appoint GALs on the date the order of protective custody is obtained, which "allow the GAL to begin an independent investigation of the child's safety and needs, as well

[7] The *Guided Reference in Dependency*, pp H6-8, available here: http://www.coloradogrid.org/helperFiles/GRID%20ebook%202019.pdf
[8] See C.R.S. § 19-3-206, 2019.
[9] C.R.S. § 19-1-111(1), 2019.
[10] C.R.S. § 19-3-403, 2019. These hearings are called different things in different jurisdictions including emergency hearings, preliminary protective proceedings (PPPs), temporary protective custody hearings (TPCs), and shelter hearings.

as any potential relative placements prior to the preliminary protective hearing."[11] The GRID further urges GALs to speak with their court's best practices team to explore earlier appointment of GALs.

Similarly, appointment of counsel for parents who are indigent often occurs at the emergency hearing.[12] The U.S. Supreme Court has recognized that appointment of counsel to parents facing termination of their parental rights may be constitutionally required.[13] As a result of this ruling, many states, including Colorado, created statutory rights to counsel for indigent parents at all stages of a dependency and neglect proceeding. No similar caselaw finds that there is a constitutional right to the appointment of counsel for children or for the Department, though the ORPC believes that a fundamentally fair system should provide equal access to legal counsel for all parties, and the Children's Code guarantees appointment of counsel to represent the best interests of children and the Department as well as to indigent parents.

In some jurisdictions, RPCs are not appointed until after the emergency hearing or may be appointed during the hearing, on the record, with no opportunity to consult with their client prior to the hearing. While the Chief Justice Directive governing RPC appointments, CJD 16-02, mandates that courts appoint an RPC no later than the first hearing in the case, this does not always occur, particularly in rural jurisdictions.

The Chief Justice Directive permits counsel to be appointed tentatively or provisionally if it is in the interests of justice, subject to subsequent review of an application for counsel demonstrating indigency. When there is good cause, current law permits courts to appoint counsel for parents prior to the emergency hearing.[14] The law permits courts to appoint counsel to parents who are believed to be indigent prior to the emergency hearing currently, and appointment of counsel at the time the court becomes aware of the case is appropriate and necessary to ensure fundamental fairness for parents and families. In addition, access to legal counsel on ancillary civil legal issues such as housing, public benefits assistance, and protection orders at a time where counsel can effectively address these issues would be appropriate.[15]

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[11] The *Guided Reference in Dependency*, p H18, TIP 1, available here: http://www.coloradogrid.org/helperFiles/GRID%20ebook%202019.pdf

[12] Attachment B to Chief Justice Directive 16-02, which was revised in March 2019, sets forth indigency guidelines for appointment of counsel. For example, if a parent is single and has two children, the parent could earn up to $2,777 per month, or $33,328 annually and would qualify for counsel.

[13] *Lassiter v. Dep't of Soc. Svcs.,* 452 U.S. 18 (1981). No case has considered whether the Colorado Constitution would require appointment of counsel to parents, but several other states with identical state constitutional due process guarantees have so held. See, e.g., *Matter of D.D.F.*, 801 P.2d 703 (1990) (Oklahoma case finding constitutional right of counsel); *In re Welfare of J.M.*, 125 P.3d 245 (Wash. App.); *M.E.K. v. R.L.K.*, 921 So. 2d 787, 790 (Fla. Dist. Ct. App. 2006); *In re T.M.*, 319 P.3d 338 (Haw. 2014).

[14] C.R.S. § 19-3-202(1), 2019.

[15] Legal scholars have expressed appropriate concern that changes in federal funding for foster care may incentivize states to further invest in what is sometimes referred to as the "hidden foster care system" without appropriate legal protections or access to counsel. See Josh Gupta-Kagan, *America's Hidden Foster Care System,* 72 Stan. L. Rev. (forthcoming 2020), available at: https://ssrn.com/abstract=3437849. When the state intervenes and either formally or informally seeks to remove a child from a parent's custody, indigent parents should have access to counsel, even if the state is not initiating legal proceedings to effectuate the change in custody. For example, a caseworker may tell a parent that they will open a case and place a child in foster care if the parent does not agree to sign guardianship of a child over to a relative. In this situation, it would be appropriate for indigent parents to have access to counsel as they risk deprivation of their custodial relationship with their child though formal legal

Earlier Access to Counsel is Fair

No attorney, even the most competent and experienced, could complete all of the actions recommended in the GRID for representing a parent at an emergency hearing when given less than an hour before the hearing to meet the client, advise the client, learn about the bare allegations in the case, and attempt to reach a resolution or prepare a litigation strategy if necessary. More importantly, there is no way that an attorney can effectively advise a client or determine their wishes in such a short period of time, particularly when the client is likely experiencing trauma from the recent removal of their children and the stress of being in a courtroom.

Judges recognize that RPCs having sufficient time to meet with their clients is essential to better case outcomes. The ORPC Case Strategy Director just this week heard a judge in a metro area jurisdiction opine that she was giving an RPC "grace and space to build rapport and relationship" to allow him to "work miracles," and that a parent having a good relationship with their attorney will ultimately save the court time. Rapport building at the beginning of an attorney-client relationship is essential, and yet attorneys appointed with so little time to prepare or even appointed while a hearing is occurring presents a set up for a poor attorney-client relationship. The parent experiences the attorney as not being on their side and not being interested in their goals and needs. The parent's very first interaction with the legal system seems fundamentally unfair under such circumstances. This short timeframe also does not permit attorneys to help develop a collaborative relationship between a client and the department or GAL. It does not allow a GAL time to sit down with a parent or family member to learn more about the child and the child's needs, or to attempt to visit the child prior to taking a position on the child's best interests.

Opportunity for Earlier Access to Counsel

It does not have to be this way. When a court issues an *ex parte* order for the removal of a child or protective orders, the court could appoint counsel to a parent and could also appoint a GAL to represent the best interests of the child. The court could order that the caseworker provide contact information for the parent to the appointed attorney and provide the attorney with notice of any meetings or visits that had already been set. Earlier appointment of counsel, even if it only occurred 24 to 48 hours earlier in a case, could make a huge difference in the fairness of the emergency hearings and in the parent's perception of the system. If the parent can meet with their attorney prior to a hearing or speak with them and get some questions answered outside of the high stress environment of a courtroom, the parent is much more likely to be in a space to best determine how to move forward in the case and to feel that the court system will treat them fairly and hear their voice.

Appointing counsel at the time the court becomes aware of the case would provide the parties more parity in their ability to prepare for a hearing. More importantly, it would also result in better information being provided to the court. Parents are presumed to be fit parents prior to adjudication,[16] and parents often have information that is crucial to the well-being of their children. Ensuring that RPCs have time to talk to their client in order to obtain

proceedings have not been filed. Counsel's role in such a circumstance is not to be an obstructionist but to ensure that parents understand their rights and are able to make knowing and voluntary agreements.

[16] See *People ex rel. N.G.*, 303 P.3d 1207 (Colo. App. 2012); *Troxel v. Granville*, 530 U.S. 57 (2000).

information that is necessary for the court to make such a crucial decision in the life of a family.

Earlier Access to Counsel is in the Best Interests of Families and Children

When a parent feels that they are being heard and treated fairly, they are much more likely to engage in the case and to stay engaged. If a parent is engaged, they are much more likely to participate in the kind of services and supports necessary to reunify their families or keep their families together. When parents receive services at the beginning of a case, they are more successful and feel more supported. Indeed, both the state approach of DANSR (Dependency and Neglect System Reform) and recent federal legislation, the Families First Prevention Services Act, or FFPSA, emphasize the efficacy of earlier provision of services to families.

In the DANSR approach, all involved parties, including RPCs, are encouraged to "engage families immediately and universally identify substance use and other needs." The approach also encourages multidisciplinary staffing and improved communication and collaboration. Earlier appointment of counsel would aid in this approach by allowing attorneys to build rapport prior to an emergency hearing and to identify whether access to treatment early in the case would be helpful to the client, and by allowing communication and collaboration among the parties to occur in a less high pressure and more productive environment.

If a GAL and RPC were appointed when the court becomes aware of the case, at the time of the order of removal or protective orders, they could be collaborating to determine whether a family member might be available to care for the children or to supervise a parent's time or check in with a parent as part of a safety plan. The RPC could be gathering information that might supplement the information obtained by the Department and mitigate some of the safety or risk concerns. For example, the Department often receives information from family members that it relies on in determining a parent's mental health or substance abuse history. The RPC may be able to assist the parent in providing records demonstrating a parent's compliance with therapy or medication that would mitigate the safety concerns if provided sufficient time prior to the emergency hearing.

Earlier access to counsel could also avoid disrupted safety plan compliance and ultimate removals of children. Often, parents agree, without the benefit of counsel, to a safety plan that might be very restrictive. The safety plan could include a requirement, for example, that a relative or friend supervise all of their time with their children. If following the plan becomes costly or burdensome, a parent may be forced to or decide to violate the safety plan, resulting in a removal of the children and filing of a dependency and neglect action. If parents had access to counsel earlier on in the case, counsel may be able to confer and collaborate on changes to the safety plan that would still allow children to remain at home but would be tailored to the needs of the family.

For example, in a case where the Department is concerned about domestic violence, the Department might request protective orders from a court requiring the parents to not have contact with one another and for the parent's time with the children to be supervised by a family member or friend approved by the Department. A parent might agree to the plan because they are desperate to do whatever it takes to keep their children with them. But, perhaps the parent does not trust one of the people the Department has approved to supervise them, or perhaps the person supervising the parent does not have a vehicle large

enough to hold the parent and children. As a result, the designated supervisor cannot take all of the children to school and leaves the youngest child at home with the parent while they run to the school. Or, a mother might be following the order for no contact, but the father is stalking the mother, and the police will not intervene because there is not a valid protection order. The parent might be afraid to share this information for fear their children might be removed. A parent may not provide information about a safety plan not being possible because they are fearful that their children will be taken away. But, when they are discovered to not be following the safety plan the next day, the Department may request the children be removed for failure to follow the safety plan.

If the parent had an attorney appointed at the time the protective orders are entered, the attorney could make sure the parent 1) understands the orders; 2) is able to follow them; and 3) advocate for modifications to a safety plan as an alternative to removal. In this example, the attorney could represent the parent in obtaining a protection order. Such assistance with ancillary civil legal issues early on in cases has been shown to aid in preventing children from entering foster care or allowing them to return home safely sooner.[17] The attorney could identify the unworkability in the plan and advocate for changes to the plan or services in order for it to be successful. The attorney's confidentiality with the client allows the attorney to assess the barriers without the client being fearful that sharing information will result in a removal of her children. The attorney can then collaborate with the other professionals to come up with a workable plan to keep children at home rather than just ending up with a removal because the parent did not follow the first safety plan.

Earlier Access to Counsel May Ultimately Result in Cost Savings to the System

When a child returns home or is able to remain home, the huge expense of foster care is avoided or reduced for the child. When RPCs get to know their clients earlier and become familiar with their needs earlier, they will advocate for more effective and swift delivery of services to parents. Earlier service delivery or targeting of the right services can also result in families staying together or reuniting more quickly. RPCs are also required to speak regularly with their clients about possible family or kin placements. Often, RPCs are able to provide information about possible family placements that also reduce the cost for foster placements and congregate care settings.

Finally, if RPCs have sufficient time to do an investigation, advise their client, and consider their strategy, RPCs may often be able to avoid the costs of litigation at an emergency hearing. In the emergency hearing setting, an RPC may be forced to go to a hearing that is not what is best for the client because there is not sufficient time to advise the client or to investigate. If the RPC had more time to understand the allegations against the client, the position of the county, and the GAL, and to be able to advise the client, RPCs may be able to assist in avoiding or streamlining unnecessary and traumatic litigation.

ORPC Question 3. (A question on ORPC Request R-4, IV-E Legal Representation): Detail your plans for how the requested funding will be used in FY 2020-21 and future fiscal years.

[17] ACF – Children's Bureau, High Quality Legal Representation for All Parties in Child Welfare Proceedings, ACYF-CB-IM-17-02 (January 17, 2017), available at https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf; see also Vivek Sankaran, *Redesigning the Delivery of Legal Services to Prevent Children from Entering Foster Care*, available at http://rethinkingfostercare.blogspot.com/2018/07/redesigning-delivery-of-legal-services.html.

In light of the newly available federal funding and the priorities of the Children's Bureau,[18] the ORPC has developed an initial plan for use of reimbursement funds that include the following new initiatives and expansions of existing programming to support high quality legal representation of parents. There are four main priorities that the ORPC will explore for implementation in FY 2020-21 and future fiscal years. The agency anticipates ongoing annual expenses regarding program implementation that would be paid for with IV-E Legal Representation funds.

1. Increasing parent attorney access to an interdisciplinary team which may include social workers, parent advocates, parent partners, experts, and other professionals that are not currently available in the state.

One component of effective parental legal services in the child welfare system is access to an interdisciplinary team that incorporates a social worker or similarly qualified professional, which is a practice the Children's Bureau encourages all jurisdictions to consider for both parents and children.[19] As the ORPC's Social Worker Pilot Program (SWPP) evaluation and other recent studies have demonstrated, an interdisciplinary legal team that includes a social worker can reduce the time that children are placed in out of home care and increase a parent and child's likelihood of being reunified safely at case closure. For cases in the Colorado SWPP, reunification rates were nearly 22% higher than the county average for children whose parents had interdisciplinary representation.[20] Respondent parent attorneys also support increased access to social workers to be assigned to their legal teams. In FY 2018-19, the ORPC social work program received an unprecedented number of RPC requests for social work services, which the ORPC could not meet based on the current pool of available contractors, particularly in counties outside of the metro-Denver area.

In FY 2020-21, the ORPC plans to utilize Title IV-E funds to recruit, train, and provide oversight to additional qualified contract social workers, with a focus on recruitment in rural and non-metro Denver regions. The ORPC also has a longer-term plan of contracting with parent advocates, parents who successfully navigated the child welfare system and are poised to assist respondent parents' attorneys in engaging parents who struggle with overwhelming challenges like substance abuse, mental illness and trauma. The parent voice is part of the interdisciplinary model that has demonstrated quantitative success in New York , Washington, Oregon and California. The IV-E funds will help establish needed infrastructure to recruit, train, supervise, and process payments for additional independent contractors who support parents on legal teams in the future.

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[18] ACF – Children's Bureau, High Quality Legal Representation for All Parties in Child Welfare Proceedings, ACYF-CB-IM-17-02 (January 17, 2017), available at https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf; ACF – Children's Bureau, Reshaping child welfare in the United States to focus on strengthening families through primary prevention of child maltreatment and unnecessary parent-child separation, ACYF-CB-IM-18-05 (November 16, 2018), available at https://www.acf.hhs.gov/sites/default/files/cb/im1805.pdf; and ACF – Children's Bureau, Engaging, empowering, and utilizing family and youth voice in all aspects of child welfare to drive case planning and system improvement, ACYF-CB-IM-19-03 (August 1, 2019), available at https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf.

[19] *Id.*

[20] To read the full Social Work Pilot Program evaluation, visit https://coloradoorpc.org/wp-content/uploads/2019/11/ORPC-SWPP-Evaluation.pdf.

2. Expansion of available legal services to parents and families through:

   a. Ensuring early appointment of parent attorneys prior to initial hearings in a case and early access to an interdisciplinary team.

   b. Allowing attorneys to address ancillary civil legal issues that impact the removal of children and reunification, such as protective orders, housing issues, and other legal work during the DHS investigation and upon case filing.

   c. Exploring methods to recruit new RPC talent, incentivize work in rural communities, and provide mentoring to attorneys.

   d. Contracting with professionals to assist in providing agency supports and to conduct quality assurance, supervision, and mentoring of ORPC contractors such as attorneys, social workers, and family advocates.

The above efforts are designed to deliver evidence-based legal interventions to parents and to move the child welfare system so that removal of a child from his or her home is reserved for the most extreme circumstances.

Evidence supports that legal representation for parents contributes to or is associated with the following:

- Increases in party perception of fairness;
- Increases in party engagement in case planning, services, and court hearings;
- More personally tailored and specific case plans and services;
- Increases in visitation and parenting time;
- Expedited permanency; and
- Cost savings to state government due to reductions in the time children and youth spend in care.[21]

Moreover, when a parent experiences a sense of fairness, or procedural justice, they are more likely to comply with court orders, appear for hearings, trust the system, and are less likely to repeat offenses.[22]

Regarding initiative (2)(a), the ORPC plans to ensure uniformity regarding when a lawyer is appointed in court. In some jurisdictions, parents appear without a lawyer and make decisions about their case without the benefit of counsel. In discussions with courts where this occurs, simple process changes could ensure that a lawyer is notified, has necessary information, and can advise the parent prior to a shelter hearing. This is also a shared priority with the Court Improvement Program, which has high quality legal representation as a focus because it is a priority of the Children's Bureau.

Regarding initiative (2)(b), lawyers who can address ancillary civil issues earlier in a case can make an impact because "[s]eventy-one percent of low-income households experienced at least 1 civil legal issue in the past year. Twenty-five percent had more than 6 legal issues. But

[21] ACF – Children's Bureau, High Quality Legal Representation for All Parties in Child Welfare Proceedings, ACYF-CB-IM-17-02 (January 17, 2017).
[22] *Id.*

only 20% of low-income Americans even sought legal assistance to resolve their problems. Of those who did, most could not find help. As a result, over 80% of civil legal problems reported by low-income Americans received no or inadequate help. That equals approximately 1.1 million unresolved legal issues per year."[23] These unresolved civil legal issues can sometimes be what drives continual child welfare involvement in the lives of indigent families. Providing early help with lawyers trained to address housing, immigration, domestic violence, healthcare and public benefits issues may help "prevent children from entering foster care or help children return home sooner."[24]

In FY 2020-21, the ORPC hopes to utilize IV-E funds to pay for attorney time assisting parents with civil legal problems. At numerous Committee meetings, including via a presentation to the Delivery of Child Welfare Services Taskforce, the Director of ORPC has asked counties to partner with the ORPC to develop and pilot programming to address civil legal issues that leave families vulnerable to removal of their children and ongoing involvement in child welfare. Consistent with national practice and Children's Bureau priorities, legal services for parents is one component of the delivery of child welfare services.

Once a partnership is identified, the ORPC may use some funding to pay ORPC contracted attorneys who are assigned to represent a parent in a D&N matter to also represent that parent in a concurrent civil matter such as a domestic violence protective order case, a housing eviction proceeding, or a denial of public benefits case that would support the family in its reunification efforts and provide much needed help that DHS caseworkers are unable to provide, but that would help alleviate the parties' safety concerns. The ORPC is also in discussions with Colorado community legal services providers who have expertise in these ancillary civil legal services issues to refer cases to them and pay them for their work directly. The availability of IV-E funding will provide the ORPC an opportunity to pilot the delivery of relevant civil legal services in multiple ways, which is in line with improving the legal representation of parents.

Regarding priority (2)(c), the ORPC is considering issuing a Request for Proposals for nonprofit organizations that are willing to integrate law and social work students and law graduate fellows into the practice of Dependency & Neglect matters early in their careers with enhanced support. The ORPC struggles to find experienced lawyers willing to represent indigent parents, and/or willing to do so as an independent contractor. The nonprofit organization would recruit, supervise and mentor law and social work graduate students to represent parents and incentivize recent graduates to become fellows and to pursue ORPC contracts in rural and underserved Colorado jurisdictions with continued support and mentorship as they establish their own expertise. The IV-E funds would provide funding to a qualified nonprofit to initiate this program in FY 2020-21.

Regarding (2)(d), the ORPC attempts to match experienced RPCs with new RPCs for mentorship when they enter the field. The ORPC would like to use IV-E funds in 2020-21 to enhance and formalize a mentoring program with financial incentives for qualified attorneys to choose to mentor newer attorneys and help foster a legal community that values D&N work.

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[23] Vivek Sankaran, *Redesigning the Delivery of Legal Services to Prevent Children from Entering Foster Care*, available at http://rethinkingfostercare.blogspot.com/2018/07/redesigning-delivery-of-legal-services.html.
[24] ACF – Children's Bureau, High Quality Legal Representation for All Parties in Child Welfare Proceedings, ACYF-CB-IM-17-02 (January 17, 2017).

3. Expansion of the Respondent Parent Payment System (RPPS) to allow for efficiency in processes, tracking of IV-E eligible costs and spending on new initiatives, and robust data collection.

The ORPC contracts with a programmer who created RPPS and will utilize Title IV-E funds in FY 2020-21 to pay for relevant programming updates to support current and new initiatives. The ORPC will also assess the system to ensure the agency collects appropriate data to report on its efforts, and pay the programmer to make data collection enhancements.

4. Establishing a partnership with the Colorado Data Lab to develop a data analysis plan and to onboard the ORPC to the Linked Information Network of Colorado, which will assist the agency in obtaining individual, case-level child welfare data as opposed to aggregate data.

The ORPC strives to integrate evidence-based practices into its programming agency-wide, but it is a costly endeavor. The ORPC contracted with professors of the Department of Social Work at Metropolitan State University of Denver to evaluate the initial impact of the Social Work Pilot Program. The initial program outcomes from that evaluation are based on an analysis of aggregate data collected to date and interviews conducted with a handful of parents. However, in order to evaluate ORPC programs in a more robust way, the agency must gain access to CDHS case-level data.

The ORPC began initial discussions with the Colorado Evaluation and Action Lab at the University of Denver ("Colorado Lab") to further these research goals. In FY 2020-21, the ORPC plans to utilize IV-E funds to assess the impact of its programs on child welfare permanency outcomes, safety, cost, and length of time in out-of-home care, to build ORPC's internal capacity to routinely evaluate the effectiveness of representation models to develop, and prioritize programming that is most successful in addressing the legal representation needs of families involved in Colorado's child welfare system. This research collaboration would cost more than $70,000 and be supported by IV-E funding.

ORPC Question 4. (A question on ORPC Request R-4, IV-E Legal Representation): We spend over $400 million per year on child welfare. We are spending millions to adapt IT systems to comply with the federal Families First Act. Why does ORPC want to develop and initiate its own changes to the State's child welfare system. How would this effort integrate will all of the other efforts by counties, the Department of Human Services, and other judicial agencies?

The ORPC wants to follow the research and to continue to develop and strengthen the use of interdisciplinary teams, which have been shown to reduce the length of time children spend in foster care and result in earlier permanency for children. Interdisciplinary teams include at least an attorney and a social worker or parent advocate, who is a parent who has successfully gone through the child welfare process and can provide support and advice to parents now facing the same challenge. The ORPC's initiatives in this direction parallel federal and state initiatives, which also emphasize collaborative approaches that involve providers and professionals outside of the child welfare system in helping families stay together.

The Use of Interdisciplinary Teams is Consistent with State and Federal Reforms

The ORPC agrees that child welfare expenditures should be evidence-based. Even with all of the money the state is spending on child welfare, there are not enough foster care

placements for children,[25] and foster children still experience abuse and neglect in foster care.[26] In order to reduce the number of children removed from their homes and placed in foster care and higher level placements, the federal government recently upended federal funding for child welfare services to emphasize preventative services for children at risk of entering the foster care system. With the implementation of FFPSA expected in Colorado in 2020, counties may pay for up to twelve months of preventative in-home, substance abuse, or mental health services for children at risk of entering foster care and their parents.[27] If children are placed in a restrictive setting such as a residential treatment placement, families must be included in services and planning for the children, and after care services must be offered for six months after a transition out of this high level of care. A high percentage of services offered must be evidenced based.

Interdisciplinary teams that include a social worker and lawyer as part of a parent's team complement the approach of the FFPSA. An interdisciplinary team is likely to have more information about possible family placements and supports and possible safety plans and preventative services that would allow children to remain at home or return home more quickly. Interdisciplinary teams are designed to ensure that the families most at risk of the trauma of separation get the necessary services to ensure children can remain safely at home.

The Role of a Social Worker on a Defense Team is Fundamentally Different Than a Caseworker's Role

Why is it necessary for a parent to have a social worker on their attorney's team in addition to a caseworker? First, the role of the ORPC social worker is very different than the caseworker's role. The caseworker is essentially an agent of the county and the state, and they are tasked first and foremost with ensuring the safety of the child. Beyond that, they have requirements for what questions they must ask the child each month, how often they must see the child, how often they must see foster parents and biological parents, and how this all must be documented. They must provide referrals for services and treatment and ensure that the department is following court orders. Their role is complicated, challenging, and time-consuming.

For example, a caseworker generally will not have time to help a parent navigate a byzantine housing and public benefits system. They might hand a parent a large packet of

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[25] *Colorado has a Shortage of Foster Parents,* Oct. 24, 2017, available at https://www.colorado.gov/pacific/cdhs/2017-10-24-colorado-foster-parent-shortage. The article details the need for the addition of 1,200 foster homes in Colorado and the expenditure of over $100,000 in grant money to county departments and child placement agencies to recruit foster parents.

[26] In 2017, the year with the most recent data, Colorado found that group home and residential facility staff had abused or neglected 22 children in their care. See U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2019). Child Maltreatment 2017. Available from https://www.acf.hhs.gov/cb/research-data-technology/ statistics-research/child-maltreatment. In a study of former foster children, Casey Family Foundation found that over 20% of former foster children reported experiencing maltreatment in foster care. Data on child maltreatment in foster care is sparse, research has shown maltreatment of children in out of home placement is substantially under reported, particularly for children in higher levels of care. Of course, any instance of abuse of children in a system designed to protect them from being abused or neglected by their parents is one too many.

[27] Anne Comstock, *Impact of Family First Prevention Services Act will be Felt Far Beyond Child Welfare,* August 23, 2018, available at http://www.co4kids.org/community/impact-family-first-prevention-services-act-will-be-felt-far-beyond-child-welfare.

housing resources but not be able to provide the parent with a phone to call the housing agencies. A social worker assigned to the parent as part of the attorney team can take that time. They can spend the time necessary to formulate a plan with the parent. They can document what the parent has tried and save time in trying to navigate around insurance or other barriers to treatment. They can go back to the caseworker and let them know that 99 of the housing agencies said they had waitlists, but one said they might have an opening if the caseworker would call them. This type of focus and flexibility is necessary to meet parents where they are and engage them in order to help families reunify as quickly as possible or stay together.

Second, the ability of the social worker to act as an advocate and not as a potential witness against the client results in increased family engagement. Regardless of one's political beliefs, most would agree that many Americans are suspicious of government intervention and assistance, particularly of child welfare involvement. As President Reagan once said, "the most terrifying words in the English language are: I'm from the government and I'm here to help." Caseworkers attempting to engage parents face barriers due to their status as government employees who have the power to request custody of a parent's child. Defense team social workers do not face the same barriers to client engagement. A social worker who can serve as an advocate for a parent rather than focusing on the administrative tasks assigned to caseworkers is going to be much more able to engage a parent, and to help the parent engage with the caseworker.[28]

The Use of Interdisciplinary Teams is Cost Effective

Finally, the use of an interdisciplinary system may also ultimately reduce costs. Social workers and parent advocates are generally paid at lower rates than attorneys, and there are areas where they can be more effective than attorneys.[29] For example, a social worker generally has more expertise in observing parent-child interactions than an attorney. A defense team social worker may observe a visit and help a client understand feedback around how to improve the visits. Or, the social worker may aid the attorney to obtain the information they need to convey to the court why more visitation should occur. Often, no one sitting in the courtroom has observed a parent's visit with any frequency, and a social worker can provide information that is crucial to the attorney to be able to advocate for increased visitation and earlier reunification of families. A social worker observing a visit is both more effective and more cost effective than having an attorney do the same thing.

Attorneys attend three years of law school and learn to "think like a lawyer." Unfortunately, thinking like a lawyer often also comes with talking like a lawyer. Many indigent parents do not have high levels of education, and it can be a challenge for attorneys to effectively communicate with them. Social workers can help attorneys communicate what the client needs to know in a way that the client can understand. For example, an RPC may not be aware that a client is not able to read as clients are often embarrassed to share that, but a social worker can help identify the client's challenges and ensure that all professionals in the case are effectively communicating with the client.

[28] In cases where parents have stronger relationships with caseworkers, outcomes for families are generally better, with higher rates of reunification. Lee, C. D., & Ayón, C. (2004). Is the Client-Worker Relationship Associated with Better Outcomes in Mandated Child Abuse Cases? Research on Social Work Practice, 14(5), 351–357. https://doi.org/10.1177/1049731504265833.

[29] Currently, the ORPC pays $44 per hour for social workers and family advocates and $80 per hour for attorneys.

The Use of Interdisciplinary Teams Leads to Better Outcomes for Children

Early access to an interdisciplinary team leads to even better outcomes. A study of the New York approach that includes social work staff and parent advocates in addition to an attorney found that children spent close to four months less in foster care than the children of parents represented by attorneys who did not have an interdisciplinary approach.[30] This interdisciplinary approach resulted in 50% of families avoiding foster care placement and the length of placements for children in foster care lasting less than two months on average compared to the statewide average of two years in placement. This reduction in out of home placements resulted in a huge reduction in costs.

In Michigan, an interdisciplinary team consisting of a social worker, parent advocate, and attorney were appointed to represent parents during the investigation, before court filing. The program handled 55 cases and avoided formal cases being filed by in all but four cases, again resulting in a huge cost saving from a reduction in out of home placements and in more children staying within their families.[31] Finally, in Washington State, which has a similar structure to the Office of Respondent Parents' Counsel, the Office of Public Defense Parent Representation Program found that the use of interdisciplinary teams and well-trained attorneys increased reunification by one third and also saved money on out of home placements.[32]

These efforts do not duplicate the efforts of the state, counties, or GALs to engage parents earlier in cases. The use of interdisciplinary teams compliments the reforms taking place currently in child welfare and will increase collaboration and communication that is necessary to ensure families are receiving the services and supports needed to allow them to thrive and grow together.

The ORPC can best ensure fundamentally fair systems for parents by providing access to effective representation by well-trained and competent attorneys. Respondent parent representation can be more effective if attorneys have the assistance of an interdisciplinary team. The ORPC wants to follow that research and improve our representation of parents through increased access to interdisciplinary teams, which will lead to better outcomes in families.

ORPC Question 5. What would be the cost to the ORPC if the court reporter page rate increased by 50¢ per page?

The ORPC estimates that the cost to the ORPC would be $75,000 - $80,000 if the court reporter page rate increased by 50¢ per page.

ORPC Question 6. OSPB's FY 2020-21 budget instructions asked executive-branch agencies to search for the following budget saving opportunities:

Unspent funds

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[30] Gerber et al., *Effects of an Interdisciplinary Approach to parental Representation in Child Welfare*, Children and Youth Services Review, Volume 102, July 2019, pp 42-55.
[31] American Bar Association, *ABA National Project to Improve Representation for Parents*, retrieved from http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/At-a-glance%20final.authcheckdam.pdf (2017).
[32] *Id.*

- Positions vacant > six months--is it really needed?
- Reversions of prior year spending--is there a pattern or a one-time occurrence?

Actuals vs estimates

- Fiscal notes--did enacted program really cost what was estimated?
- Decision items--are there pilot programs still on-going? Did the Department receive permanent FTE for a function no longer needed?
- End-of-year spending--review purchases for final 8 weeks of each fiscal year -- were the purchases budgeted for in advance or end of year "spend-up"?
- Travel, meals, official functions -- review for least cost vs max allowable

Unrequested funds

- Sunset recommendations--were any sunset recommendations not adopted by the legislature?
- Appropriations--was the Department appropriated more than was requested?
- Supplemental requests--why did the Department not include these requests in regular budget cycle?

Underutilized assets

- Goods or services that could be purchased less expensively in private sector.

Using these guidelines, review your agency's budget and report the results.

ANSWER

Unspent funds

- Positions vacant > six months--is it really needed?

  Not applicable – the ORPC has not had any positions that were vacant for more than six months.

- Reversions of prior year spending--is there a pattern or a one-time occurrence?

  The ORPC has rarely reverted insignificant amounts of prior year spending. Each time, it was due to a vendor refund for an item purchased in one fiscal year and returned in the next fiscal year.

Actuals vs estimates

- Fiscal notes--did enacted program really cost what was estimated?

  No programs have been enacted for which the ORPC had estimated a fiscal impact, i.e., the ORPC has not received any spending authority via legislation other than the Agency's initial appropriation.

- Decision items--are there pilot programs still on-going? Did the Department receive permanent FTE for a function no longer needed?

  The ORPC has one pilot program, the Social Worker Pilot Program, that is currently scheduled to end on 6/30/2020. The ORPC has submitted a decision item (ORPC R-5) asking to make the program permanent based on promising program results from an independent program evaluation and nation-wide research that supports this model of representation. We did not receive any FTE for the program.

- End-of-year spending--review purchases for final 8 weeks of each fiscal year -- were the purchases budgeted for in advance or end of year "spend-up"?

Purchases made during the final 8 weeks of each fiscal year were budgeted for in advance. Because of the uncertainty about costs in the agency's two largest appropriations, Court-appointed Counsel and Mandated Costs, the ORPC has exercised great caution in making expenditures and sometimes delays budgeted purchases until the end of the fiscal year but all purchases are budgeted. The Court-appointed Counsel and Mandated Costs appropriations comprise 91% of the agency's total General Fund appropriation and are subject to fluctuations over which we have no control, including increases in case filings and costs per case. In addition, the ORPC is a new agency and has only three years of history on which to base projections for those two appropriations. In those three years, the payment structure for attorneys was profoundly changed when the JBC approved our request to pay all attorneys on an hourly basis in lieu of paying attorneys in some counties on a flat fee basis and others on an hourly basis. In short, sound fiscal management dictates that we delay some budgeted purchases until we are confident that our appropriations are sufficient to cover our expenses.

- Travel, meals, official functions -- review for least cost vs max allowable

  The ORPC Fiscal Policies and Procedures Manual specifies that "Travel for the ORPC shall be for the benefit of the ORPC, only for the time period necessary, approved by the employee's supervisor, and completed using the most economical means available." All travel expenditures are reviewed for compliance with and have met these criteria. Expenses for meals and official functions are similarly reviewed for compliance with the criteria included in the ORPC Fiscal Policies and Procedures Manual and have met all criteria.

Unrequested funds

- Sunset recommendations--were any sunset recommendations not adopted by the legislature?

  Not applicable.

- Appropriations--was the Department appropriated more than was requested?

  No.

- Supplemental requests--why did the Department not include these requests in regular budget cycle?

  Most supplemental requests are the result of receiving information that was not available at the time of the original budget request. For instance, in December 2018, after we had submitted our budget request, we learned of a recent change to Federal IV-E rules which necessitated a supplemental request for FY 2019-20. The change allows the title IV-E agency in each state to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings. This makes it possible for the ORPC to access federal funding. For the past year, the ORPC has been meeting monthly with the Colorado Department of Human Services and the Office of the Child's Representative to determine how our agencies can implement the changed rules and access the funds for Colorado, and to prepare a Memorandum of Understanding and Statement of Work acceptable to each of the agencies.

Another example of a supplemental request that is the result of receiving information that was not available at the time of the original budget request occurred this year when the ORPC was informed of a large increase in the cost of a necessary contract that renewed during the current fiscal year.

Finally, the ORPC is a new agency and doesn't have a great deal of historical expenditure data upon which to base expenditure projections. In addition, expenses in the two appropriations that comprise 91% of our General Fund appropriation vary based on factors that are entirely outside the Agency's control. These factors include the number of attorney appointments and costs per appointment.

Underutilized assets

- Goods or services that could be purchased less expensively in private sector.
  Most of the ORPC's expenditures are for services from independent contractors, e.g., attorneys and transcribers. For other purchases, the ORPC always looks for the lowest cost and/or highest value option before purchasing goods and services. We do not know of any goods or services that could be purchased less expensively in the private sector.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

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 Office of Respondent Parents' Counsel (ORPC) has implemented all legislation.

2 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, 2019 (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-30-2019

The ORPC does not have any High Priority Outstanding Audit Recommendations.

3 If the Department receives federal funds of any type, please respond to the following:

a. Are you expecting any changes in federal funding with the passage of the FFY 2020-21 federal budget? If yes, in which programs, and what is the match requirement for each program?

The ORPC does not expect any changes with the passage of the FFY 2020-21 federal budget.

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

No, the ORPC does not expect any changes.

c. 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 2019-20 or 2020-21.

The ORPC does not have and does not anticipate any federal sanctions.

d. Compared to other states, Colorado ranks low in receipt of federal dollars. How can the Department increase the amount of federal money received?

Title IV-E of the Social Security Act is the source of federal funding for foster care. The federal government matches state funds for foster care, as well as administrative costs, at 50%. The United States Department of Health and Human Services, Children's Bureau, recently made a change to the Child Welfare Policy Manual. The change allows the title IV-E agency in each state to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings.

In Colorado, the Title IV-E Agency is the Colorado Department of Human Services (CDHS). As a result of this change to the Child Welfare Policy Manual, the ORPC may now seek federal reimbursement for the allowable legal representation costs incurred by the ORPC, and those funds will pass through to the ORPC pursuant to C.R.S. § 26-2-102.5. As described in C.R.S. § 26-2-102.5, the ORPC is collaborating with CDHS on the creation of a Memorandum of Understanding (MOU) governing the process to claim title IV-E funds for legal representation. Throughout 2019, the ORPC has engaged in monthly meetings with the Office of the Child's Representative and CDHS to discuss how Colorado will access these funds.

As of October 2019, the ORPC has a proposed MOU and Statement of Work (SOW), which would control the process for submission of funding reimbursement requests. The MOU and SOW are currently going through CDHS's contracting process. The MOU is slated to expand the scope and enhance the quality of legal representation provided to parents of a candidate for title IV-E or a title IV-E eligible child—directly in line with the ORPC's mission and strategic plan. Requests for reimbursement of costs incurred by the ORPC for legal representation will be reimbursed at 50% of Colorado's penetration rate, which is a state's proportion of foster care children eligible for title IV-E.

The Children's Bureau's recognition of the crucial importance of funding legal representation directly relates to the ORPC's vision for ensuring that the child welfare system in Colorado is procedurally fair and followed, in part, through the provision of high-quality legal representation for parents. The reimbursed funds shall be used in accordance with the Children's Bureau Child Welfare Policy Manual's stated objectives. Namely, the objectives of:

- Ensuring reasonable efforts are made to prevent removal and finalize children's permanency plans;
- Ensuring that parents and youth are engaged in and complying with case plans;
- Ensuring compliance with the Manual's requirement that attorneys for parents be independent of and not overseen by the IV-E agency.

e. What state funds are currently utilized to draw down (or match) federal dollars? What state funding would be required to increase the amount of federal funding received?

Section 474 of the Social Security Act (the "Act") provided that States with plans approved under Title IV-E shall be entitled to Federal matching funds for the proper and efficient administration of the State plan at the rate of 75% for eligible short-term and long-term training and at the rate of 50% for the remainder of eligible expenditures necessary for the proper and efficient administration of the State IV-E plan.

The regulation at 45 CFR 1356.60 specifies what is considered a training cost and what is considered an administrative expense under Title IV-E. Section 474(a)(3)(B) of the Act expanded the authorization of the federal financial participation for the short-term training of additional trainees. The additional trainees may be relative' guardians, members of licensed or approved child welfare agencies providing services to children receiving assistance under Title IV-E, members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, respondent parent counsel, or other court-appointed special advocates representing children in the proceedings of such courts in ways that increase their ability to provide support and assistance to Title IV-E eligible children.

In Colorado, the Title IV-E Agency is the Colorado Department of Human Services (CDHS). In 2019, the ORPC and CDHS entered into an agreement whereby the ORPC may receive partial reimbursement for Title IV-E allowable training costs incurred by ORPC to train court personnel and respondent parent counsel pursuant to Section 474(a)(3)(B). In October 2019, the ORPC received its first draw down of federal training reimbursement dollars. In order to increase the amount of federal funding received, the ORPC would need additional General Fund appropriation for training dollars. In its FY 2020-21 budget request, the ORPC has requested such an increase to training dollars in Change Request R-10, General Fund and Cash Fund Training Increase.

4 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?

The ORPC is not spending money on public awareness campaigns.

5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate: (1) by department; (2) by division; (3) by program for programs with at least 20 FTE; and (4) by occupational class for classes that are located within a larger occupational group containing at least 20 FTE. To what does the Department attribute this turnover/vacancy experience? Do the statewide compensation policies or practices administered by the Department of Personnel help or hinder the department in addressing vacancy or turnover issues?

In FY 2018-19, the ORPC vacancy rate was 8%, which was the result of longer than normal delays between the departure of existing employees and the recruitment and hiring of new employees with the requisite skills and experience. In particular, the unexpected death of a highly experienced employee with a unique set of skills resulted in holding a position open for many months. Although the ORPC was able to fill the position, we were unable to hire a person with the same specialized expertise. In addition, one staff member was on leave without pay during FMLA leave and an attorney's start date had to be delayed so she could wind up her individual law practice, another frequent cause of hiring delays for the ORPC.

In the first 5 months of FY 2019-20, the ORPC vacancy rate was 2%, due to small delays in hiring staff for two new positions. The statewide compensation policies administered by the Department of Personnel have a minimal impact in addressing vacancy or turnover issues of

the ORPC.

6 Please identify how many rules you have promulgated in the past two years (FYs 2017-18 and 2018-19). 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.

24-4-102 (3), C.R.S., excludes the Judicial Branch from the definition of Agency. As an independent agency within the Judicial Branch, the ORPC is not subject to the requirements of 24-4, C.R.S.

7 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.

The Court-appointed Counsel and Mandated Costs appropriations equal 90% of the ORPC's total budget. The major cost drivers impacting the appropriations and therefore the ORPC is the number of appointments and the cost per appointment.

The number of appointments is a major factor in child welfare cases because attorneys are appointed for each indigent respondent parent named by the county department of social services in a petition in dependency and neglect. In practice, this means there are cases where one RPC is appointed because only one indigent parent was named in the petition and there are cases where five or six attorneys are appointed because multiple children with different parents are named as respondents to the petition. Measuring costs must take these cases with multiple appointments into account, and ORPC data measures are therefore appointment-driven instead of case-driven. In the first 4 months of FY 2019-20, the number of appointments was 6.5% greater than in the same period of FY 2018-19. This is significantly greater than the general CPI as reported in the September 2019 Economic & Revenue Forecast prepared by Colorado Legislative Council Staff, which forecasts that the 2019 Denver-Boulder-Greeley CPI-U inflation rate will be 1.8%.

In addition to the number of appointments, the cost per appointment is a major cost driver. The average cost per closed appointment increased by 2.8% in the first two months of FY 2019-20 as compared to FY 2018-19.

8 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?

As noted above, the number of appointments is the best measure of the "caseload" of the ORPC and has increased by 6.5% in the first four months of FY 2019-20. If a child named in a Dependency and Neglect petition is less than six years old, the case is subject to

Expedited Permanency Planning (EPP) requirements and must be resolved within 12 months. As a result, all case-related costs are incurred in a shorter period of time, which increases the ORPC's expense. EPP appointments, which are about 70% of total appointments, have increased 9.7% in the first four months of FY 2019-20 so the impact on expenses is even greater. It is unclear if specific population changes are affecting the increase. However, research has shown that minority parents are overrepresented in Dependency and Neglect filings so it may be that the increase in appointments the ORPC has experienced is related to the increase in minority populations.

9 Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps), the role of these technologies in the Department's interactions with the public and other state agencies, the Department's total spending on these efforts in FY 2018-19, and expected spending in FYs 2019-20 and 2020-21.

Our strategy for the use of outward facing technology is to continue to make incremental improvements to our website (the only ORPC technology that is used by both the general public and our contractors), to our attorney application system, and to our attorney payment application (RPPS) based on changing agency needs and the feedback provided by users. In addition, we have identified a need for an online database of ORPC-approved experts.

This past June, the ORPC website received an update that improved navigability and streamlined the in house update processes. Our website **(https://www.coloradoorpc.org.org/),** provides information and resources to parents, Respondent Parents' Counsel (RPCs), and the general public. The website provides complete, accurate, and useful information about our agency, which includes resources and FAQs for families, an attorney center (including a comprehensive motions bank), trainings, and events. In addition, the website provides a form for complaints and other feedback.

We strive to make the website as comprehensive and user-friendly as possible and intend to continue to do so. The motions bank in the attorney center is the most used portion of our website and the ORPC adds new motions and practice resources on a regular basis. In addition to motion, we continuously update the attorney center with case law summaries, news articles, and other information to help RPCs in their practice. The ORPC also has an online payment system which all attorneys and social workers in the Social Worker Pilot Program use to provide information about appointments and to submit payment requests. This allows ORPC to collect consistent information about cases, as well as to ensure payments comply with our billing policies.

Beyond our website, we maintain a series of technological resources the support the high quality legal representation provided by our RPCs. On Vimeo we host a series of training videos that are available to contractors 24 hours a day. We maintain listservs on SimpleLists with which RPCs can source advice and strategies from other contractors. With the program DocuSign we can monitor and track large quantities of documents to be signed, allowing us to maintain and supervise our contracts in a much less time intensive manner. Formsite allows us not only to track applications from all of our contractors and registrations for training and events, but also to solicit feedback via surveys and evaluations, which is essential to informing what training and support is needed. We mainly

interact with other state agencies via email, which is provided by our website hosting service GoDaddy, and the virtual meeting site GoToMeeting.

Moving forward, completing a database of ORPC-approved experts and making it available online for our contractors will save staff time. Currently, ORPC staff must provide contact information for ORPC experts each time an attorney needs to talk to an expert about potential retention on a case. Making this information available will decrease attorney costs as well, as they can simply obtain the information they need, rather than emailing the office. The expert list is in constant flux, as we add experts, experts stop taking cases, have caseloads that fill or open up. It is not feasible to convert our internal database to a printed resource on a daily basis.

The spending for outward facing technology in FY 2018-2019 was $58,863. Our estimate for FY 2019-2020 is $74,297. Our estimate for FY 2020-2021 is $90,615.

10 There are many ways in which the Department may interact with internal or external customers, including the public and other departments. How is the Department gathering feedback and evaluating customer experience? Please address all interactions, e.g. technology, in-person, call centers, as well as total spending on these efforts in FY 2018-19 and expected spending in FYs 2019-20 and 2020-21.

ORPC interacts with contractors, members of the judiciary, and judicial staff as internal customers. Externally, ORPC customers are the respondent parents relying on contractors to provide advocacy, legal representation, and assistance navigating the child welfare system. The agency works hard to create many conduits for feedback and interaction with both groups of customers.

In September 2019, ORPC conducted a satisfaction survey of ORPC contractors, which included attorneys appointed as Respondent Parent Counsel to represent indigent parents in Dependency and Neglect cases and social workers working as part of the parent defense team. The data ORPC was able to gather provided feedback about workloads, case management, desired resources, training needs, self-care and burnout, ways contractors feel valued and successful, and suggested strategies for practice support. This is the most comprehensive analysis of contractor satisfaction the agency has undertaken since its inception in 2016. The ORPC's Program Analyst was able to create useful, data-driven questions, and ORPC is using the data to inform the implementation strategy of its strategic plan.

The ORPC requests annual feedback from judicial officers and court staff regarding contractor performance in local courtrooms. This feedback is considered by the ORPC during the contract renewal process each year. Additionally, ORPC staff conduct year-round courtroom observations of contract attorneys. During these jurisdictional visits, the ORPC agency staff makes efforts to connect with judicial officers. Staff encourages judicial officers to reach out directly to the ORPC with contractor concerns, issues related to contractor engagement, training ideas, or compliments regarding the service of the contractors.

The ORPC agency staff also makes efforts to attend meetings and trainings within jurisdictions. A goal of these visits is to support enhanced and clear communication by contractors, judicial officers, and judicial staff with the ORPC. It also presents an opportunity for ORPC staff to identify challenges particular to specific counties and local jurisdictions. Creating opportunities for stakeholders to have personal contact with staff members encourages stronger relationships and opportunities for interaction and feedback from everyone involved in the child welfare system.

With an eye toward respondent parent experience, the ORPC website (**www.ColoradoORPC.org**) provides resources and information for parents. Each page of the website offers ways for the public, including parents and potential contractors, to contact the agency. The website offers the phone number as well as an automated message option to reach out to staff. Parent clients are the most important players in the system from the perspective of the ORPC. Their feedback is crucial. Parents are encouraged and welcome to contact staff regarding concerns with the representation they are receiving. Those calls are received or returned promptly, generally by the Deputy Director. Questions and concerns of parents are taken seriously and addressed appropriately with the contractors at issue. Of course, ORPC also encourages compliments and shares those enthusiastically with the professionals as well.

All the interactions discussed above are essential to fulfilling the ORPC's legislative mandates. Therefore, the agency's interactions are integrated with all aspects of the agency and these costs, which include personal services, operating, and training expenses, are not separately tracked. Agency staff spend significant amounts of time in meetings, trainings, and conferences; in preparing surveys and gathering and analyzing data; in preparing, promoting, and conducting trainings; and in providing information and resources to customers.

11 Please highlight the long-term financial challenges of fulfilling the mission of the Department with particular attention to any scenarios identified in the Department's Long Range Financial Plan involving an economic downturn, department-specific contingencies, emerging trends, or major anticipated expenses (Subsections 3-6 of Section 4 of the Long Range Financial Plan submitted pursuant to H.B. 18-1430).

The ORPC is a new agency which assumed its full duties on July 1, 2016. These duties include paying, training, and providing oversight of independent contractors. The ORPC's enabling legislation requires the agency to "improve the quality of legal representation for parents involved in dependency and neglect proceedings." In practice, this means that the ORPC has had to critically review all aspects of parental representation, conduct research to identify best practices in parental representation, identify and contract with professionals whose fields of expertise align with those needed for the identified best practices, and pay those professionals. As a result of the evolving agency practices and needs, the ORPC cannot rely on historical costs to project future costs.

The ORPC's review of multiple research studies have shown that most children who stay in their families of origin have better long-term outcomes. These children are less likely to have long-term mental and physical health problems, and are more likely to complete their education, avoid involvement with the criminal justice system, and avoid incarceration. All these positive outcomes result in cost savings to the State, but the cost savings are realized in agencies other than the ORPC. In effect, the ORPC makes the investment but other agencies get the dividends. This can lead to perception problems.

The ORPC is actively pursuing Federal funding made available as a result of a recent change to the Child Welfare Policy Manual as discussed in question 3, Part D. The reimbursements will make it possible for the ORPC to use Federal funding to help the agency implement best practices, which include increasing parental access to a multidisciplinary team, expansion of legal services, expansion and improvement of the current contractor payment system, and increasing coaching and mentoring of contract professionals. The benefits of Federal funding will far outweigh the challenges, which will include preparing for changes in rule interpretations, Federal government shutdowns, and potential audits.

Finally, one of the greatest challenges of the ORPC is managing a growing and changing agency with a small staff. A vacancy in a single position has repercussions throughout the Agency.

12 In some cases, the roles and duties of existing FTE may have changed over time. For all FY 2020-21 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;

The ORPC does a lot with a little. We oversee approximately 300 lawyer contractors in 64 counties and 22 judicial districts.

- While it is possible to cross-train some staff, the ORPC cannot train non-legal staff to do what lawyers and social workers do because of licensing;
- The ORPC cannot train existing staff on the roles and duties for which subject matter expertise does not exist on staff;
- Nor can the ORPC train staff who do not have capacity due to workload to take on additional duties.

b. Specify why additional FTE are necessary; and

The ORPC currently has 13 staff, and requests to add 2 additional staff:

- Carrie Ann Lucas Fellowship
- Social Worker Outreach Coordinator

The Fellowship position is necessary because of the death of Carrie Ann Lucas, a nationally known ADA and parent representation expert who worked at the ORPC.

The dilemma the ORPC faced with Ms. Lucas' passing is that she filled two roles – a parent representation expert and an ADA expert. The ORPC was able to hire to replace the portion of her parent-representation position with another attorney who is at capacity supporting lawyers and doing committee work. We currently out-source complicated questions and issues regarding the ADA to an out-of-state lawyer who has a full-time job and is working on her PhD. Thus, to ensure that parents with disabilities and parents who have children with disabilities receive informed representation and advocacy, the ORPC requests an appropriation for this position.

The Coordinator position is necessary because the increased demand for social workers across the state requires additional dedicated training, quality assurance, and support that the Program Director does not have capacity to perform alone. The demand for social workers is greater than the ORPC's current recruiting capacity, so having a dedicated social worker coordinator to recruit and support social workers, especially in rural areas, is necessary.

c. Describe the evaluation process you used to determine the number of FTE requested.

The ORPC evaluates staffing needs throughout the fiscal year through tracking certain tasks, discussing and evaluating workload, and assessing whether the agency can fulfill its mission and strategic plan at current staffing levels. For example, we know how many case consults the Case Strategy Director completes, which is a task we track. We know how many appeals are assigned by the Appellate Director. We also check in with the ORPC's employees, and the Case Strategy Director and Program Director work a full day and then work at night in order to complete tasks and respond to contractor needs.

13 Please describe the impact of Colorado's low unemployment rate on the Department's efforts to recruit and retain employees.

The ORPC experiences the impact of Colorado's low employment rate in recruiting prospective employees. For example, we receive many applications for non-lawyer openings. To hire the most qualified person who has skills that are in demand, we had to pay more than what we planned because we were competing for talent who had multiple job offers.

14 ***NOTE: An example template for providing data for this question will be provided by the JBC Staff.***

State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of General Fund for taxpayer refunds. Please:

a. List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds $100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.

This is not applicable to the ORPC because the agency does not collect revenue that exceeds $100,000 annually.

b. For each source, list actual revenues collected in FY 2018-19, and projected revenue collections for FY 2019-20 and FY 2020-21.

This is not applicable to the ORPC because the agency does not collect revenue that exceeds $100,000 annually.

c. List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2020-21.

This is not applicable to the ORPC because the agency does not collect revenue that exceeds $100,000 annually.

15 Please describe the Department's current practice regarding employee parking and other transportation options (i.e. EcoPass). Please address the following:

a. Does the Department have adequate parking for all employees at all locations?

The ORPC does not have adequate parking. The ORPC's office is in the Ralph L. Carr Judicial Building in downtown Denver and the agency has no assigned parking in the garage which serves all residents of the building, including the State Court Administrator's Office, the Office of the Public Defender, the Department of Law, the Office of the Alternate Defense Counsel, the Office of the Child's Representative, the Statewide Internet Portal Authority, and others. Currently, only 3 ORPC staff members have been allowed to use parking spaces in the parking garage of the Carr Judicial Building.

b. If parking is limited, how are available spaces allocated?

Ralph L. Carr Judicial Building management maintains a list of employees who have requested a parking space. As spaces become vacant, they are supposed to be assigned in the same order as the requests were received.

c. If free parking is not available, how is parking paid for, and who pays (employee or Department)? (e.g. stipends, subsidized parking, eco passes)

Employees pay for their own parking at private lots, on the streets, or in the Judicial building parking garage. The ORPC does not provide free parking, subsidized parking, or parking stipends. The ORPC provides employees with EcoPasses, a cost-efficient, popular and environmentally responsible approach to transportation. Many of our employees use the EcoPass for all their commuting needs.

d. If employees pay fees for parking, where is the revenue credited and how is it spent, and is it subject to TABOR?

Employees who have been assigned a space in the Judicial building parking garage pay a monthly fee, which is withheld from their paychecks and credited to the Judicial Department. The Judicial Department manages the fee revenue.

e. Do parking and/or transportation benefits factor into Department compensation and/or retention efforts?

The lack of paid or subsidized parking is an ongoing challenge for the ORPC in its recruitment and retention efforts. Potential employees often ask about parking during the interview process and are disappointed with the lack of paid or subsidized. The EcoPass program helps us to offset that perceived shortcoming and is very popular.

16 Please identify all continuously appropriated funds within the Department's purview with a fund balance or annual revenue of $5.0 million or more. Please indicate if these funds are reflected in the FY 2019-20 Long Bill.

This is not applicable to the ORPC because the agency does not have any continuously appropriated funds.

Office of Respondent Parents' Counsel Social Work Program

For pilot cases, reunification rates were nearly **22% higher** than the county average.

Interdisciplinary representation of parents by attorneys and social workers is a best practice supported by nonprofits, government agencies, and evidence -based research. The ORPC contracts with master's level social workers and family advocates, who are professionals with commensurate education and experience in the field of child welfare.

The ORPC provides early access to social workers on legal teams through a Pilot Program in the 4th, 17th and 21st Judicial Districts on high risk D&N cases. The pilot program has been independently evaluated with promising results that are consistent with the national data on interdisciplinary representation.

ASSESS

- Assess a parent's current functioning, intellectual capacity, parenting skills, and limitations.
- Assess service needs and collaborate with other professionals towards a comprehensive treatment plan.
- Identify obstacles and solutions to promote success for parents and families.
- Review records, reports, and relevant case documents.

EDUCATE

- Educate parents on the child welfare and juvenile court process.
- Provide clinical support to attorneys regarding mental illness, domestic violence, substance abuse, and trauma.
- Inform attorney's advocacy regarding reasonable efforts, visits and placement.

ENGAGE

- Support parents at family engagement meetings and other critical case related meetings.
- Provide crisis intervention.
- Encourage parents to engage in treatment to address the underlying safety concerns.
- Identify family supports and community resources to ensure long term success for families.

COMMUNICATE

- Help parents communicate effectively with their attorney, the caseworker, GAL and treatment professionals.
- Provide timely information to attorneys on a parent's progress and unmet needs.
- Ensure relevant information is shared among professionals and with the court to inform decision making.

ADVOCATE

- Empower parents to develop self-advocacy skills for themselves and their children.
- Explore family supports and alternative placements throughout the case.
- Collaborate with DHS & GALs to identify ways to expand visits whenever possible.
- Strategize with RPCs on motion practice and preparing parents to participate in courtroom advocacy.

"The [ORPC] social worker helps clients to understand the circumstances of the case and the reasons for the treatment plan in a way that helps most clients get over their personal barriers to engage in the case."
-RPC in Pilot case

"I felt like I could talk to the [ORPC] social worker when I couldn't' talk to anyone else. I felt like CPS was hard and judgmental, but I was able to tell the [ORPC] social worker about my struggles."
-Parent

OFFICE OF COLORADO'S CHILD PROTECTION OMBUDSMAN
JUDICIAL BRANCH
FY 2020-21 JOINT BUDGET COMMITTEE HEARING

Friday, December 13, 2019
Time: 11:20-11:35 a.m.

Main Presenter

- Stephanie Villafuerte, Executive Director

INTRODUCTIONS AND OPENING COMMENTS

OFFICE OF STATE PLANNING AND BUDGETING COST SAVING QUESTIONS

OSPB Question 1. Unspent funds:

- Positions vacant > six months – is it really necessary?

  None of the CPO's vacancies have extended beyond six months.

- Reversions of prior year spending – is there a pattern or a one-time occurrence?

  FY 2017-18 Reversion: $42,063

  In June 2018, the CPO reverted $42,063 to the General Fund from its program line. This represents approximately 5% of the overall program budget. The most significant factors that contributed to this were changes in staffing levels and personnel. The CPO realized savings in salaries and benefits that were associated with two specific positions.

  During Fiscal Year 2017-18, one full-time staff member worked part-time for nearly ten months because of medical reasons. This staff member resumed full-time employment in September 2018. Additionally, in March 2018, the CPO's Deputy Ombudsman resigned. Given the significance of this leadership position in the organization, the CPO did not fill this position for nearly five months. The position is now filled. The CPO incurred significant savings from this resignation given that the deputy position is one of the highest salaried positions in the organization.

  FY 2018-19 Reversion: $68,940

  In June 2019, the CPO reverted $68,940 to the General Fund from its program line. The factors that contributed to this were changes in staffing levels throughout the year which created vacancy savings. Specifically, the CPO was unable to fill two Child

Protection System's Analyst positions for three months, July through September 2018. This is the amount of time that it took to recruit, post and hire for these positions. Additionally, once the agency was fully staffed, two additional analysts left the agency in early 2019 — each of these positions took nearly three months to fill. This resulted in several months of vacancy savings for these positions.

The CPO does not believe that the reversions in Fiscal Year 2017-18 and Fiscal Year 2018-19 represent a pattern. Increased salaries for CPO staff – Request 1 in the CPO's Fiscal Year 2020-21 Budget Request – will improve recruitment and retention of future employees and, as such, reversions will be uncommon in the future.

OSPB Question 2. Actuals v. estimates:

- Fiscal notes – did enacted program really cost what was estimated?

  Not applicable.

- Decision items – are there pilot programs still on-going? Did the Department receive permanent FTE for a function no longer needed?

  Not applicable.

- End-of-year spending – review purchases for final 8 weeks of each fiscal year – were the purchases budgeted for in advance or end of year "spend-up"?

  In FY 2018-19, the CPO purchased three laptop computers to replace aging equipment for three staff members. The CPO also purchased ergonomic assessments for its employees as well as dedicated some resources to the improvement of its internal database. These costs were not budgeted expenses and did not exceed $15k.

- Travel, meals, official functions – review for least cost vs. max allowable.

  Not applicable.

OSPB Question 3. Unrequested funds:

- Sunset recommendations – were any sunset recommendations not adopted by the legislature?

  Not applicable.

- Appropriations – was the Department appropriated more than was requested?

  Not applicable.

- Supplemental request – why did the Department not include these requests in regular budget cycle?

Not applicable.

OSPB Question 4. Underutilized assets:

- Goods or services that could be purchased less expensively in private sector.

Given the relatively small size of the CPO, the agency does not have salaried employees who provide in-house services such as information technology services. Rather the CPO secures services from the private sector through a competitive process.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

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.

Not applicable.

2 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, 2019 (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-30-2019

Not applicable.

3 If the Department receives federal funds of any type, please respond to the following:

a. Are you expecting any changes in federal funding with the passage of the FFY 2020-21 federal budget? If yes, in which programs, and what is the match requirement for each program?
b. Does the Department have a contingency plan if federal funds are eliminated?
c. 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 2019-20 or 2020-21.
d. Compared to other states, Colorado ranks low in receipt of federal dollars. How can the Department increase the amount of federal money received?

e. What state funds are currently utilized to draw down (or match) federal dollars? What state funding would be required to increase the amount of federal funding received?

Not applicable.

4 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?

The CPO is not currently engaged in a public awareness campaign. The CPO did secure the services of a local communications firm in the third quarter of Fiscal Year 2018-19. That firm created a strategic plan to help the CPO create statewide awareness of the agency's services. The CPO has requested additional funds for Fiscal Year 2020-21 to implement the plan.

5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate: (1) by department; (2) by division; (3) by program for programs with at least 20 FTE; and (4) by occupational class for classes that are located within a larger occupational group containing at least 20 FTE. To what does the Department attribute this turnover/vacancy experience? Do the statewide compensation policies or practices administered by the Department of Personnel help or hinder the department in addressing vacancy or turnover issues?

In June 2019, the CPO reverted $68,940 to the General Fund from its program line. The factors that contributed to this were changes in staffing levels throughout the year which created vacancy savings. Specifically, the CPO was unable to fill two Child Protection Systems Analyst (CPSA) positions for three months, July through September 2018. This is the amount of time that it took to post, recruit and hire for these positions. Additionally, once the agency was fully staffed, two analysts left the office in early 2019. Each of these positions took nearly three months during 2019 to fill. This resulted in several months of vacancy savings for these positions.

The CPO has struggled to hire individuals at the current salary level of $65k – finding that while applicants have five years of social work experience in the child protection arena, they do not have the higher-level skill set required to investigate cases, analyze law and rule violations and write reports. In just the past three years, this disconnect in applicants' skill sets has resulted in five vacancies within the CPSA position category. The CPO is requesting salary adjustments for these positions in its Fiscal Year 2020-21 Budget Request. These adjustments will improve the agency's ability to recruit and retain qualified employees.

Sub-questions (2), (3) and (4) are not applicable to the CPO.

6 Please identify how many rules you have promulgated in the past two years (FYs 2017-18 and 2018-19). 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.

Not applicable.

7 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.

Not applicable.

8 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?

The CPO's caseload has continued to increase – both in the number of calls received and the complexity of the cases. As the CPO implements its strategic outreach plan, the agency anticipates that it will begin to receive calls from populations which are currently unfamiliar with the agency's services. The CPO anticipates a 20% increase in the number of calls it receives by the end of Fiscal Year 2024-25.

Additionally, as the CPO emphasizes outreach to stakeholders outside child welfare, the agency anticipates that an increasing number of calls will involve systems the CPO has not yet reviewed.

9 Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps), the role of these technologies in the Department's interactions with the public and other state agencies, the Department's total spending on these efforts in FY 2018-19, and expected spending in FYs 2019-20 and 2020-21.

The CPO's website has been a key tool in communicating with citizens and stakeholders. The agency posts bi-weekly updates regarding the CPO's ongoing cases, as well as reports and briefs detailing issues impacting the child protection system. To ensure the website continues serving as a meaningful communication tool, the CPO – in coordination with a local communications firm – will initiate efforts to update the website prior to the end of Fiscal year 2019-20. For example, the updates will improve the organization of the website making it easier for citizens to find materials and information about the CPO's services. Additionally, during the first quarter of Fiscal Year 2019-20, the CPO launched its first quarterly newsletter. Future newsletters will be sent to citizens, stakeholder and legislators

to inform them of issues the CPO is currently studying, stories from child protection stakeholders and other pertinent CPO work.

10 There are many ways in which the Department may interact with internal or external customers, including the public and other departments. How is the Department gathering feedback and evaluating customer experience? Please address all interactions, e.g. technology, in-person, call centers, as well as total spending on these efforts in FY 2018-19 and expected spending in FYs 2019-20 and 2020-21.

Currently, the CPO does not have a mechanism for gathering feedback and evaluating customer experience. In Fiscal Year 2018-19 the CPO received 575 inquiries from citizens. In an effort to better engage citizens and improve services, the CPO obtained the services of a local communications firm in the third quarter of Fiscal Year 2018-19. One of the priorities identified by the firm was obtaining and utilizing feedback from stakeholders and citizens. The firm completed a survey of key stakeholder partners, which inquired about the CPO's work and how the agency could improve education, communication and outreach. The results of that survey were used to create a strategic communications plan. The effective implementation of that plan – which includes processes for collecting citizen feedback – is dependent on the approval of the CPO's Fiscal Year 2020-21 Budget Request.

11 Please highlight the long-term financial challenges of fulfilling the mission of the Department with particular attention to any scenarios identified in the Department's Long Range Financial Plan involving an economic downturn, department-specific contingencies, emerging trends, or major anticipated expenses (Subsections 3-6 of Section 4 of the Long Range Financial Plan submitted pursuant to H.B. 18-1430).

The CPO's future financial challenges will be contingent on its growing caseload. As the CPO continues to undertake complex issues – involving multiple agencies and systems – the CPO will be required to retain additional staff and diverse skill sets. To remain competitive, the CPO must continue its efforts to retain its current staff and recruit qualified staff. Whether the CPO is able to do so will depend largely on whether the salaries for such positions are appropriate and competitive. Currently, the salaries for these positions are neither appropriate nor competitive with similar positions. As such, the CPO is seeking salary adjustments for its analyst positions in its Fiscal Year 2020-21 Budget Request.

Additionally, to ensure the CPO is fulfilling its statutory charge to educate citizens and stakeholders about issues impacting the child protection system, the CPO will need to continue dedicating resources toward its communication efforts. As the CPO's work diversifies, so must its outreach and education strategies.

12 In some cases, the roles and duties of existing FTE may have changed over time. For all FY 2020-21 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.

The CPO is not requesting an increase in FTE.

13 Please describe the impact of Colorado's low unemployment rate on the Department's efforts to recruit and retain employees.

Not applicable.

14 ***NOTE: An example template for providing data for this question will be provided by the JBC Staff.***

State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of General Fund for taxpayer refunds. Please:

a. List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds $100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.
b. For each source, list actual revenues collected in FY 2018-19, and projected revenue collections for FY 2019-20 and FY 2020-21.
c. List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2020-21.

Not applicable.

15 Please describe the Department's current practice regarding employee parking and other transportation options (i.e. EcoPass). Please address the following:

a. Does the Department have adequate parking for all employees at all locations?

No. The CPO is located at the Ralph L. Carr Judicial Center, in downtown Denver. Currently, building management has provided the CPO three spots in building's garage, located a block south of the Carr center. One of those spots is designated for the Child Protection Ombudsman, and the other two are assigned to staff on a first-come-first served basis. Other members may place their name on a waitlist, but it may take as long as 18 months for a space to become available.

b. If parking is limited, how are available spaces allocated?

Of the three spaces allotted to the CPO, one is designated to the Child Protection Ombudsman. The other two are assigned to staff on a first-come-first-serve basis.

c. If free parking is not available, how is parking paid for, and who pays (employee or Department)? (e.g. stipends, subsidized parking, eco passes)

All employees are required to pay for their own parking, whether they are parking in the building's garage or elsewhere.

d. If employees pay fees for parking, where is the revenue credited and how is it spent, and is it subject to TABOR?

Not applicable.

e. Do parking and/or transportation benefits factor into Department compensation and/or retention efforts?

Parking/transportation benefits do not factor into CPO compensation and/or retention efforts.

16 Please identify all continuously appropriated funds within the Department's purview with a fund balance or annual revenue of $5.0 million or more. Please indicate if these funds are reflected in the FY 2019-20 Long Bill.

Not applicable.

CHILD PROTECTION OMBUDSMAN of COLORADO

Joint Budget Committee
Fiscal Year 2020-21
December 13, 2019

Stephanie Villafuerte

Child Protection Ombudsman

Office of Colorado's Child Protection Ombudsman(CPO)

- **SENATE BILL 10-171**– Created a *Child Protection Ombudsman Program in the Colorado Department of Human Services*

- **SENATE BILL 15-204** – Creation of an Independent Child Protection Ombudsman Office (State agency/Ralph Carr Building)

History of the CPO

PRIOR TO INDEPENDENCE

- Response to the deaths of 12 Colorado children in 2007 who were known to child welfare services
- Public wanted more accountability and oversight
- Established in June 2010
- Existed as a "program" through a contract with a local non-profit.
- Program was issued and managed by the Colorado Department of Education

GAINING INDEPENDENCE

- Legislators determined CPO needed independence from the agencies it was designed to review
- Legislation was signed into law in June 2015
- Original "program" was transformed into independent state agency
- Created CPO Board
- CPO housed in Judicial Branch
- Current Ombudsman took office in January 2016

Our Statutory Charge

- Well-publicized, easily accessible, transparent grievance process
- Investigate public complaints regarding the child protection system
- Improve accountability and transparency in the child protection system by providing information for system improvement

Jurisdiction

- CPO has an extremely broad jurisdiction
- Charged studying systems and the gaps between systems
- Entities that fall under the CPO's purview include:
  - Human services agencies
  - Division of Youth Services
  - Law enforcement
  - Medical and mental health providers

Jurisdiction

- CPO does **NOT** have authority to:
  - Investigate allegations of abuse and/or neglect.
  - Interfere with or intervene in any civil or criminal proceeding.
  - Investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
  - Mandate the reversal of decisions made by agencies, providers, judges or attorneys.
  - Offer legal advice.

Functions of an Ombudsman

- An Ombudsman creates system change by:
  - Driving reform through impartial collaboration,
  - Providing data driven analysis, and
  - Creating public awareness

- The Ombudsman Office was not designed to enforce mandatory compliance with its recommendations or serve as a punitive measure to agencies.

Unique Services

The Ombudsman Office offers services and a complaint process that are not otherwise provided by any other governmental or private agencies:

- Confidential Complaint Process
- Impartial/Independent Review
- Child Protection Focus
- Recommendations for System Change

Quick CPO Facts

- CPO handled 595 calls in FY 2018-2019
- Current staff = 8 FTEs
- Decades of experience serving children and families
- Areas of expertise include
  - Child Welfare/ Human Services
  - Division of Youth Services
  - Juvenile Justice System
  - Dependency and Neglect System

FY 2020-21 Budget Request

Total Request: $77,749 General Fund

Request 1

Salary Increases

TOTAL: $35,749 General Fund

Goal: To improve recruitment of qualified candidates and improve retention of agency employees.

Request 2

Communications Assistance

TOTAL: $42,000 General Fund

Goal: To promote the CPO's services statewide to citizens and stakeholders.

Request 1: Salary Increases

- The CPO has struggled to recruit and retain analysts with necessary writing and analysis skills. This resulted in five vacancies within the past three years.
- The CPO is requesting additional funds to increase salaries for six of the agency's 8 positions.
- Increased salaries will:
  - Reflect salary ranges designated in the correlating job classifications provided by the State Court Administrator's Office.
  - Reflect additional responsibilities taken on by staff.
  - Improve the CPO's ability to recruit qualified staff.

Request 1: Salary Increases

Total Increase: $35,749 annually

- **Child Protection Systems Analyst (CPSA)**
  - CPSA 1: Current base salary $66,936 → Increase base to $70,000
  - CPSA 2: Current base salary $66,942 → Increase base to $70,000
  - CPSA 3: Current base salary $63,648 → Increase base to $70,000
- **Chief Analyst – Child Welfare Services**
  - CA: Current base salary $75,705 → Increase base to $83,000
- **CPSA – Division of Youth Services**
  - CPSA-DYS: Current base salary $75,708 → Increase base to $80,376
- **Director of Administrative Services**
  - DAS: Current base salary $66,467 → Increase base to $72,275

Request 2: Communication Assistance

- **The CPO's authorizing statute requires the agency to:**

  (1) Ensure citizens have, "a well-publicized, easily accessible, and transparent grievance process for voiding their concerns to the child protection system as well as being responsible for responding to those concerns in a timely and appropriate manner." C.R.S. 19-3.3-101(1)(e)

  (2) Educate the public regarding child maltreatment and the role of the community in strengthening families and keeping children safe.

  (3) Promote best practices and effective programs relating to publicly funded child protection systems. C.R.S. 19-3.3-103(III)(2)(c)(d)

Request 2: Communication Assistance

Total Increase: $42,000 annually

- The CPO obtained the services of a local communications firm during the third quarter of Fiscal Year 2018-19. The firm completed the following:
  - Surveyed stakeholders to determine the most effective method for improving communication
  - Created a messaging platform to describe the CPO's complex services
  - Developed a strategic plan
- Effective implementation of the strategic plan is contingent on approval of the CPO's request for additional funds.
- Cost-effective way of fulfilling CPO's communication needs
  - Full-time Public Information Manger → $83,664 to $112,044

Thank You

Stephanie Villafuerte- Ombudsman

svillafuerte@coloradocpo.org

INDEPENDENT ETHICS COMMISSION
JUDICIAL BRANCH
FY 2020-21 JOINT BUDGET COMMITTEE HEARING

Friday, December 13, 2019
Time: 11:35-11:45 a.m.

Main Presenters:
- Elizabeth Espinosa Krupa, Chair, Independent Ethics Commission
- Dino Ioannides, Executive Director, Independent Ethics Commission

1. OSPB's FY 2020-21 budget instructions asked executive-branch agencies to search for the following budget saving opportunities:

Unspent funds
- Positions vacant > six months--is it really needed?
- Reversions of prior year spending--is there a pattern or a one-time occurrence?

Actuals vs estimates
- Fiscal notes--did enacted program really cost what was estimated?
- Decision items--are there pilot programs still on-going? Did the Department receive permanent FTE for a function no longer needed?
- End-of-year spending--review purchases for final 8 weeks of each fiscal year -- were the purchases budgeted for in advance or end of year "spend-up"?
- Travel, meals, official functions -- review for least cost vs max allowable

Unrequested funds
- Sunset recommendations--were any sunset recommendations not adopted by the legislature?
- Appropriations--was the Department appropriated more than was requested?
- Supplemental requests--why did the Department not include these requests in regular budget cycle?

Underutilized assets
- Goods or services that could be purchased less expensively in private sector

Using these guidelines, review your agency's budget and report the results.

Unspent Funds:

- The Commission has no vacancies (it has only one appropriated FTE).
- After consideration of the program cost reversions in FYs 2017 – 2019, the Commission can request a budget reduction of $10,000 in the program costs line. This should provide sufficient room for both anticipated and unanticipated expenses.

Actuals vs. Estimates:

- Not applicable. For the Commission, there have been no applicable fiscal notes in enacted legislation through at least the last four legislative sessions.

- Not applicable. The Commission has not implemented any pilot programs, nor been allocated FTE for functions no longer needed.
- The only significant end-of-year spending included replacement of one aging laptop and one printer (both in FY 2017), and six iPads (in FY 2016). The laptop and printer were budgeted for in advance. The iPads were not budgeted for in advance, but were not an end-of-year "spend-up"; rather, the Commission made the determination to transition from paper-intensive meeting packets to electronic meeting packets.
- The Commission's only official functions are its meetings, which are typically held monthly. Meals are purchased in connection with meetings or travel and are well within approved per diems. Travel reimbursements are made to commissioners for attendance at meetings, as applicable; to the executive director for outreach and training programming; and to one traveler—either a commissioner or the executive director—for attendance at the annual conference for the Council on Governmental Ethics Laws (COGEL). All travel has been reimbursed per established policy.

Unrequested Funds:

- Not applicable. As a constitutionally created commission, the Independent Ethics Commission is not subject to Colorado's sunset law.
- The Commission has not been appropriated more than what was requested (through at least the last three budget cycles).
- Not applicable. The Commission has made no recent supplemental requests.

Underutilized Assets:

- For the Commission, the goods or services that could be considered for this question include only one main category: the professional services provided by the Department of Law. Through the services provided by the Department of Law, the Commission has access to the expertise of a wide array of legal disciplines (*e.g.*, ethics law, labor law, constitutional law, trial and appellate practice, etc.). Access to a similar breadth of expertise through the private sector would require retaining a mid- to large-size firm at a substantial premium.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

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.

None.

2 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, 2019 (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-30-2019

None.

3 If the Department receives federal funds of any type, please respond to the following:

a. Are you expecting any changes in federal funding with the passage of the FFY 2020-21 federal budget? If yes, in which programs, and what is the match requirement for each program?
b. Does the Department have a contingency plan if federal funds are eliminated?
c. 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 2019-20 or 2020-21.
d. Compared to other states, Colorado ranks low in receipt of federal dollars. How can the Department increase the amount of federal money received?
e. What state funds are currently utilized to draw down (or match) federal dollars? What state funding would be required to increase the amount of federal funding received?

The Independent Ethics Commission receives no federal funding.

4 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?

Although the Independent Ethics Commission conducts outreach and training, these efforts are almost exclusively aimed at covered individuals within state or local government, not at members of the public, as such. Therefore, the Commission spends no money on public awareness campaigns of the type that are contemplated by this question (i.e., broadcast media).

5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate: (1) by department; (2) by division; (3) by program for programs with at least 20 FTE; and (4) by occupational class for classes that are located within a larger occupational group containing at least 20 FTE. To what does the Department attribute this turnover/vacancy experience? Do the statewide compensation policies or practices administered by the Department of Personnel help or hinder the department in addressing vacancy or turnover issues?

The Independent Ethics Commission has only one FTE and no vacancies. The attrition rate over the last three years has been zero. Because there is only one data point (one FTE) for the Commission, it is difficult to attribute a zero-attrition rate to any one factor. The statewide compensation policies of DPA do not appear to have any direct effect on the Commission's employee attrition rate.

6 Please identify how many rules you have promulgated in the past two years (FYs 2017-18 and 2018-19). 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 Independent Ethics Commission promulgated eleven rules in the past two years (mostly representing amendments of already existing rules). No cost-benefit analysis was required or completed. No cost-benefit analysis of the Commission's rules as a whole has been required or completed.

7 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.

There are two primary cost drivers for the Commission: personnel and legal expenses. The general CPI for all urban consumers increased 1.8% from October 2018 to October 2019. The Commission's total expenditures during roughly that same period (comparing expenditures from FY 18 to expenditures from FY 19) decreased by approximately 3.2%. Legal costs over that period decreased approximately 8.9%. Total personal services increased by approximately 3.4%.

8 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?

Caseload is driven by two major Commission functions: complaints and opinion requests. The Commission's overall caseload can vary significantly from year to year, especially with respect to complaints. Complaints are also a large driver of legal expenses, particularly when the Commission's complaint decisions are appealed in the courts. This fluctuation has largely been mitigated for the Commission by the change to the Department of Law's funding model (i.e., through the elimination of the so-called "Oregon plan"). As such, the Commission's budget is now more manageable in the face of changing annual caseloads. Both complaints and opinion requests are largely driven by outside factors and, as such, caseloads are difficult to predict. Demographic changes and general population growth have little, if any, impact on the Commission's caseload.

9 Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps), the role of these technologies in the Department's interactions with the public and other state agencies, the Department's total spending on these efforts in FY 2018-19, and expected spending in FYs 2019-20 and 2020-21.

The Commission's outward facing technology needs are simple and the Commission's website continues to meet most of those needs. The Commission has addressed the public access issue in its strategic plan and budget request, as follows:

> Increase access to the Commission proceedings for covered individuals and citizens outside the Denver metro area.
>
> This remains an ongoing area of concern for the Commission, to ensure access to its proceedings to all those who may be interested. The IEC has experimented with video live-streaming and audio transmission of its meetings to the public and archiving the recordings. However, audio-visual transmission to promote public participation remains an ongoing challenge: professional production is cost-prohibitive; and one staff member is insufficient to assist with meetings while operating audio-visual equipment and preserving the Constitutional requirement to maintain as confidential select portions of the proceedings.
>
> Additionally, the Commission has made appearance by telephone a possibility for complainants, respondents, witnesses, opinion requesters, attorneys, and other members of the public. Allowing telephone appearances has worked well and has provided meaningful options for participants.

10 There are many ways in which the Department may interact with internal or external customers, including the public and other departments. How is the Department gathering feedback and evaluating customer experience? Please address all interactions, e.g. technology, in-person, call centers, as well as total spending on these efforts in FY 2018-19 and expected spending in FYs 2019-20 and 2020-21.

The Independent Ethics Commission's core functions are to process complaints and to provide ethics advice. For the complaints function, the term "customers" is not truly applicable: the Commission interacts with complainants, respondents, attorneys, and witnesses. In this regard, the feedback to evaluate the "customer experience" is exclusively obtained through the pleadings and hearings participation of the parties, including through the appeals process in the courts. To obtain feedback from the parties in other ways could risk tainting the fairness of the complaint process.

For the advisory function, the Commission interacts with those persons requesting opinions from the Commission. Feedback is obtained through face-to-face interaction with the Commissioners, in which the requester dialogues with the commissioners about the ethics inquiry and, as appropriate, about the advisory process.

Additional avenues for receiving feedback include a public comment portion of each Commission meeting; the Commission's training sessions provided to state and local governments; and, for those desiring a less public setting, the ability to directly interact by phone or email with the Commission's executive director.

Because all the above-described customer feedback sources are an integral part of the Commission's already existing functions, the Commission does not dedicate specific funding to such efforts. Total spending for training provided to state and local

governments is limited to the executive director's in-state travel done outside the downtown Denver area. As such, total spending is and is expected to remain de minimis (under $1,000 annually).

11 Please highlight the long-term financial challenges of fulfilling the mission of the Department with particular attention to any scenarios identified in the Department's Long Range Financial Plan involving an economic downturn, department-specific contingencies, emerging trends, or major anticipated expenses (Subsections 3-6 of Section 4 of the Long Range Financial Plan submitted pursuant to H.B. 18-1430).

This question is only partially applicable to the Independent Ethics Commission, inasmuch as the question appears to be tailored to the Long Range Financial Plan submitted by the Judicial Department rather than the Commission. The Commission responded to the requirements of HB 18-1430 in its strategic plan and budget request, as follows:

> HB 18-1430 Long-Range Financial Plan. At this time, the Commission does not anticipate any significant changes in, or potential contingencies affecting, its future financial planning. As such, the Commission requests a continuation budget, plus any common policy adjustments for FY 2021, and anticipates no significant increases or decreases to its budget in future years as shown in the table below.

FY2021		FY2022		FY2023		FY2024		FY2025	
Appropriation		Appropriation		Appropriation		Appropriation		Appropriation	
FTE	Total	FTE	Total	FTE	Total	FTE	Total	FTE	Total
1.0	$208,736	1.0	$212,667	1.0	$216,691	1.0	$220,812	1.0	$225,034
1.0	**$208,736**	**1.0**	**$212,667**	**1.0**	**$216,691**	**1.0**	**$220,812**	**1.0**	**$225,034**

Assumptions for Calculations:
All years assume a continuation budget plus 2% salary increase and 4% HLD increase.

Because (1) the Commission's budget is small compared to the Department's, (2) its funding source is exclusively from the general fund, (3) it has reverted funds in each of the last three years, and (4) it does not anticipate any major anticipated expenses, the Commission does not therefore anticipate being significantly impacted by an economic downturn.

12 In some cases, the roles and duties of existing FTE may have changed over time. For all FY 2020-21 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.

The Commission has only one employee and has not requested an increase in FTE.

13 Please describe the impact of Colorado's low unemployment rate on the Department's efforts to recruit and retain employees.

Not applicable. The Commission has only one employee and has not had the recruitment and retention challenges that may be faced by large Departments.

14 ***NOTE: An example template for providing data for this question will be provided by the JBC Staff.***

State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of General Fund for taxpayer refunds. Please:

a. List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds $100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.
b. For each source, list actual revenues collected in FY 2018-19, and projected revenue collections for FY 2019-20 and FY 2020-21.
c. List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2020-21.

Not applicable. The Commission has no non-tax revenue sources exceeding $100,000 annually.

15 Please describe the Department's current practice regarding employee parking and other transportation options (i.e. EcoPass). Please address the following:

a. Does the Department have adequate parking for all employees at all locations?
b. If parking is limited, how are available spaces allocated?
c. If free parking is not available, how is parking paid for, and who pays (employee or Department)? (e.g. stipends, subsidized parking, eco passes)
d. If employees pay fees for parking, where is the revenue credited and how is it spent, and is it subject to TABOR?
e. Do parking and/or transportation benefits factor into Department compensation and/or retention efforts?

Not applicable. The Commission has one location in downtown Denver and only one employee. The employee uses an RTD EcoPass and parking available at RTD facilities at no additional charge. Parking and transportation benefits do not factor in compensation or retention efforts, inasmuch as the Commission has had no employee attrition in the past three years.

16 Please identify all continuously appropriated funds within the Department's purview with a fund balance or annual revenue of $5.0 million or more. Please indicate if these funds are reflected in the FY 2019-20 Long Bill.

Not applicable. The Commission has no such funds.

COLORADO DISTRICT ATTORNEY'S COUNCIL
JUDICIAL BRANCH
FY 2020-21 JOINT BUDGET COMMITTEE HEARING

Friday, December 13, 2019

JBC staff submitted a single question to the CDAC from the JBC and told the staff of the CDAC that they could submit a written answer if they wished. The CDAD submitted the following response and will not appear today.

CDAC Response to JBC Inquiry:

Question: What is driving the felony caseload increase (e.g., types of crimes, types and number of charges filed, etc.?

Response:

The number of felonies filed in Colorado for FY 2019 was 54,479. This number reflects a modest increase in felony filing rates (and lowest yearly percentage increase in five years) of 3.3% statewide. A review of the first five months of FY 2020 (7/1/19 – 11/30/19) indicates a rate under 3% (an extrapolation of the five months data suggests a rate of 2.3% for FY 2020) if the current trends hold. These rates continue to drop from the FY 2018 rate of a 5.2% felony filing rate increase over prior years and indicate a promising leveling off in overall felony conduct even in the face of five years of steady increases in violent crime in Colorado to include Denver being cited (Denver Post June 19th, 2019) as having a violent crime rate growing faster than any other large city in the country. In addition to an unprecedented increase of +25% in first degree assaults since 2015, sex offenses have increased 16% and auto theft has jumped more than 40% in the same time period. The number of drug felony filings has also increased significantly in that time period. Drug felonies in 2015 accounted for approximately 26% of all felony filings. In FY 2019, they accounted for 31% of all felony filings.

A result of SB 13-250, the drug reform bill, was that the legislature re-defined felony and misdemeanor drug offenses and "levels". Taking away some former threshold cutoffs for misdemeanor vs felony level possession offenses was intended to create a pathway for low level users and possessors, who would have likely received felony convictions for their conduct, a way to end up with a misdemeanor instead if they took accountability for their drug use and followed through on treatment options in lieu of incarceration. As a result of the bill, low level drug felonies are converted to misdemeanors upon a defendant's successful completion of probation and treatment. So, while many are now charged with felonies for possessing, all charged under these new provisions have a pathway toward a reduction to a misdemeanor as final outcome. By its very structure, the policy of the legislation favors the filing of a felony with the intended outcome of treatment and charge reduction. Candidly, it seems that this well intended policy may be failing users and addicts and that many either fail to participate in or complete the treatment offered or otherwise violate the terms of probation on these cases multiple times with the result being a

felony conviction. In a one week snapshot of new felony filings done by district attorneys across the state in September of 2018, the results showed that more than 50% of all new felony filings in that one week period involved individuals who were already on probation, on parole, or under some other type of court supervision. In other words, a huge percentage of those getting new felonies are already in the system. Such a trend suggests a few possibilities to include: the treatment options provided are inadequate both in terms of availability and quality, state funding to counties for the creation of impactful treatment programs is sadly lacking, the inability to force addicts into treatment is counter-productive and leads to a cycle of offending and addiction, and that violating the probation of an addict who tests positive for further use may not be the best course of action in the pursuit of harm reduction when considering the slow arc of rehabilitation and departure from drug addiction.