

JOINT BUDGET COMMITTEE



INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2020-21

JUDICIAL BRANCH

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

PREPARED BY:
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Exonerated Persons Payout 1

INTERIM SUPPLEMENTAL REQUESTS

EXONERATED PERSONS PAYOUT

	REQUEST	RECOMMENDATION
TOTAL	\$64,940	\$64,940
FTE	0.0	0.0
General Fund	64,940	64,940

I. Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.] **YES**

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

Explanation: JBC staff believes the Branch’s request satisfies interim supplemental criteria (2). Section 24-75-111 (1)(b), C.R.S., requires that “the overexpenditure is necessary due to unforeseen circumstances arising while the general assembly is not meeting in regular or special session during which such overexpenditure can be legislatively addressed.”

DEPARTMENT REQUEST: The Judicial Branch requests a FY 2020-21 appropriation of \$64,940 General Fund for an exonerated persons payout. On August 11, 2020, the Sixth District Court issued an order directing the State Court Administrator to compensate Anthony Israel Fitts, an exonerated person, within 14 days. Mr. Fitts was incarcerated from September 28, 2018 through May 14, 2019 (about 7.5 months). The Court ordered compensation to Mr. Fitts in the amount of \$46,220 and compensation to his attorney in the amount of \$18,720. The State Court Administrator made these payments on August 14, 2020.

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

STAFF ANALYSIS:

BACKGROUND: House Bill 13-1230 (Compensation for Persons Who Are Exonerated) created a state compensation program for persons who are found to be actually innocent of felony crimes after serving time in jail, prison, or juvenile placement. If found actually innocent, the exonerated person is eligible to receive the following benefits:

- monetary compensation in the amount of \$70,000 for each year incarcerated, plus an additional \$25,000 for each year he or she served on parole and \$50,000 for each year he or she was incarcerated and awaited execution;
- tuition waivers at state institutions of higher education, if the exonerated person was incarcerated for at least three years;
- compensation for child support payments and associated interest owed by the exonerated person that were incurred during his or her incarceration;

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- reasonable attorney fees; and
 - the amount of any fine, penalty, court costs, or restitution imposed as a result of the exonerated person's wrongful conviction.

Statute requires the State Court Administrator to make an annual payment of \$100,000 to an exonerated person, which shall be adjusted annually for inflation, until the total amount owed by the State is paid. The first payment is required within 14 days after receiving direction from the district court to compensate an exonerated person.

PREVIOUS PAYMENTS

The State has provided compensation to two other exonerated persons since enactment of the program. These annual payments were included in a *Compensation for Exonerated Persons* line item prior to 2018, when the line item was removed due to the administration of lump sum payouts (authorized by S.B. 17-125), which eliminated annual payments. No exonerated persons are currently receiving annual payments.

This request differs slightly from the prior payouts, as the dollar amount is lower. In previous interim supplemental requests, the Judicial Branch was requesting funding to administer a lump sum payment. The most recent case involved a one-time payout of \$658,844. Statute requires the State Court Administrator to administer a lump sum payment not later than one year after receiving a request (and the fulfillment of other requirements). At that time, there was timing discussion related to the need for an interim supplemental versus a regular supplemental, given the one year window allowed for payment. Ultimately, the Committee chose to approve the interim supplemental to allow for more immediate payout of the lump sum payment.

While this request addresses the total payment required to the exonerated person, it is not technically a “lump sum” payment. Because the total payment required in this case is under the annual payment amount of \$100,000, statute requires the full amount to be made within 14 days of the court order.

ANALYSIS:

While staff does not believe this is an urgent budget request, it is due to an unforeseen circumstance occurring while the General Assembly is not in session. Given the low dollar amount, it is reasonable to believe the Judicial Branch could absorb the cost of the payment until the regular supplemental process in January. However, statute requires the State Court Administrator to make the payment within 14 days of the court order and that payment has already been made. Despite the fact that the request seems manageable within the existing budget until the General Assembly is back in session, staff believes it is appropriate to approve the funding as an interim supplemental, as statute requires the Judicial Branch to make an immediate and unexpected payment that it couldn't have budgeted for.

The Judicial Branch request indicates that the state would be out of compliance with statute if this request is not funded. Staff disagrees with this assessment, as the payment has, in fact, already been made to the exonerated person. Instead, not funding the request at this time would impact the Courts Administration budget, as the payment amount would have to be absorbed by a program within the existing appropriation.