

Judicial Department - Courts and Probation FY 2023-24 Supplemental Comeback Request

January 25, 2024

Department:	Judicial Department (Courts and Probation)
Title:	S03b (S11) Judicial Collection Enhancement Fund

	FY24 Appropriation	FY24 Supplemental Request	JBC Action	Comeback Request	Difference Between Action and Department Request
Total	\$7,561,958	\$2,500,000	\$0	\$2,500,000	\$2,500,000
FTE	0.0	0.0	0.0	0.0	0.0
GF	0	2,500,000	0	2,500,000	2,500,000
CF	6,664,417	0	0	0	0
RF	897,541	0	0	0	0
FF	0	0	0	0	0

Summary of Initial Request:

The Judicial Department (Courts and Probation) requests that the Joint Budget Committee consider sponsoring legislation to transfer \$2.5 million General Fund to the Judicial Collection Enhancement Fund (JCEF) in FY 2023-24 to restore pandemic-related budget balancing actions and maintain cash fund solvency through the current fiscal year.

Committee Action:

During JBC staff supplemental presentation, the Committee denied the Department's request.

Judicial Department Comeback:

Pursuant to Section 16-11-101.6, C.R.S., defendants that are unable to pay fees, fines, or other assessments are assessed an initial \$25 time payment fee and may be assessed an annual \$25 time payment fee until the assessments are paid in full. Defendants may also be assessed a \$10 late penalty fee depending on the individual circumstances. These fees were established in 1996 and all collected time payment and late payment fees are deposited into the Judicial Collection Enhancement Fund (JCEF). The JCEF was created in the State Treasury as a depository for fee revenues and is used to support the administrative and personnel costs incurred by the Judicial Department in the course of collecting restitutions, fines, fees, and other monetary assessments from defendants. Fines and fees are established by the General Assembly which makes annual appropriations from the JCEF to the Department to support these administrative responsibilities, specifically the Collections Investigator Program.

It is important to note that juvenile delinquency cases, juvenile youthful offenders, inmates in the Department of Corrections, and indigent parties are not assessed collections related fees. In addition,

Collections Investigators throughout the state work with offenders who have a balance due to victims or to the State through a variety of financial services depending on their needs. This includes financial education and tools, identifying applicable employment opportunities, and other services aimed at supporting the offender's financial stability and success. The Collections Investigators also focus on recovery of restitution for victims. Over the past several years, over \$33 million in restitution and interest was collected and paid to victims.

Pandemic-related budget balancing actions, increased expenditures, reduced revenues resulting from recent legislation, and administrative decisions have negatively impacted the JCEF's solvency and long-term sustainability.

Pandemic-related Budget Balancing Actions

As part of the pandemic-related budget balancing actions taken by the General Assembly, a one-time total of \$2.5 million General Fund in the Trial Courts line item was refinanced with JCEF in order to reduce General Fund appropriations. While the General Fund was restored to the Trial Courts line item, the refinance negatively impacted the JCEF balance diminishing the fund's sustainability. The Department's request would restore funding that was reduced as a result of budget balancing actions.

Revenue Fluctuations

Cash fund revenues have been gradually decreasing since pre-pandemic fiscal years. Concurrent with the creation of the Office of Restitution Services, prioritization of the collection of restitution payments above that of fines and fees in certain circumstances and changes in statute, including sections concerning collections in Department of Correction-involved cases and juvenile cases (H.B. 21-1315) and the removal of the enforcement tool concerning outstanding judgments eliminating the requirement that individuals must pay to reinstate their driver's license (H.B. 21-1314), have contributed to revenue reductions. In addition, Section 16-11-101.6, C.R.S., allows the court to waive or suspend the time payment or late payment fee if the court determines that the defendant is indigent and does not have the financial resources to pay such fees. Recent economic conditions have resulted in increased waivers for indigency. While waivers will have an immediate impact on revenue, the impact of enacted legislation tends to lag the actual enactment of legislation, therefore the impact of legislation passed during pandemic years is now being realized in actual revenue. Finally, during the height of the pandemic, many collections related fees were not assessed to avoid additional hardship on defendants. The Department started assessing those fees again in the Spring of 2022. The Department believes the effects of the lower assessment rates are now being realized.

The JCEF experienced a significant increase in revenue in FY 2022-23 as a result of S.B. 22-233 (TABOR Refund Mechanism for FY 2021-22 Only). While regular TABOR refunds are not eligible for intercept, refunds made pursuant to this legislation were. The Department does not anticipate a similar opportunity occurring in the future and has therefore adjusted projections for FY 2023-24 downward.

Increased Expenditures

The Collections Investigator Program is funded out of the Office of Restitution Services line item in the Long Bill. The line item contains funding for 123.2 FTE. Generally speaking, operating costs in the Collections Investigator Program have recently increased, however a portion of the increase in expenditures results from the creation of the Office of Restitution Services in S.B. 22-043. This office

exists to assist victims who are owed court-ordered restitution. While the bill appropriated additional funding from the JCEF to the Department for 2.0 FTE to staff this office, the fiscal note of the bill indicates that no additional JCEF revenue is to be expected to offset the expenditures. In addition, expenditures related to personal services for all FTE funded through this line item have increased annually, consistent with the annual common policy salary survey adjustment.

Department:	Judicial Department Courts and Probation
Title:	S04 ARPA: Legislation Appropriation Clause Corrections and IT Infrastructure Roll Forward

	Initial Funding	Department Request	JBC Action	Comeback Request
Information Technology Projects	\$33,204,518	Roll forward spending authority through December 31, 2026, for all appropriations to ensure completion of the projects	Approval of increase in current year appropriation; denial of all roll-forward spending authority	Approval of an appropriation equal to the remaining balance in the IT Cash Fund ARPA account (approximately \$20 million), including roll-forward spending authority through December 31, 2026.
Adult Diversion	\$4,000,000	Roll forward spending authority through December 31, 2026, for the appropriations to ensure full execution of the contract with each District Attorney	Denial of roll-forward spending authority	Approval of an appropriation equal to the unspent funds appropriated in S.B. 22-196 (approximately \$2.2 million), including roll-forward spending authority through December 31, 2026.

Summary of Initial Request:

The Judicial Department (Courts and Probation) requests supplemental adjustments to ensure full utilization of funds received through the federal American Rescue Plan Act (ARPA) of 2021. The request includes:

- Supplemental adjustments to ensure implementation of the Department’s FY 2022-23 R03 Information Technology Infrastructure request, including:
 - An increased appropriation of \$7,073,628 cash funds from the Judicial Department Information Technology Cash Fund (IT Cash Fund) in FY 2023-24;
 - A FY 2024-25 decrease of \$14,147,256 cash funds (IT Cash Fund) for the annualization of FY 2023-24 spending authority; and
 - Amendments to H.B. 22-1329 (FY 2022-23 Long Bill) and S.B. 23-214 (FY 2023-24 Long Bill) to include footnotes allowing certain ARPA appropriations to remain available through the federally designated eligible expenditure date.
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- Amendments to S.B. 22-196 (Health Needs of Persons in Criminal Justice System) to extend the availability of an ARPA appropriation to the Judicial Department through the federally designated eligible expenditure date.

Committee Action:

Based on JBC staff recommendation during the supplemental presentation, the Committee denied the Department's request for all roll-forward spending authority identified above.

Judicial Department Comeback:

During the past two legislative sessions, the General Assembly has enacted law requiring the Judicial Department (Courts and Probation) to implement programs that improve the public's access to justice in the State of Colorado. This includes:

- S.B. 22-196 (Health Needs of Persons in Criminal Justice System)
 - The act appropriated \$4.0 million from the Behavioral and Mental Health Cash Fund to the Department for allocation to district attorneys for pretrial diversion programs.
 - The Department was required to allocate \$1.8 million to recipients that provide diversion for individuals with behavioral health disorders.
 - A district attorney (DA) who receives funding for a pretrial diversion program is required to report the number of people screened for and referred to behavioral health treatment.
 - All funding has been awarded across the following districts: 2nd, 5th, 7th, 8th, 9th, 11th, 12th, 14th, 15th, 16th, 20th, 21st, 22nd.
 - H.B. 22-1335 (Transfer to the Judicial Department Information Technology Cash Fund)
 - The act transferred \$24,131,390 from the Revenue Loss Restoration Cash Fund to the Judicial Department Information Technology Cash Fund.
 - The funding was appropriated across three fiscal years without roll-forward spending authority through the regular budget process.
 - The funding was provided to the Department for information technology upgrades.
 - Supply-chain issues resulted in a slower than anticipated implementation of the project designed to upgrade information technology infrastructure in courtrooms across the state in order to accommodate remote proceedings requirements.
 - The funds are on track to be fully expended by December 31, 2026.
 - H.B. 23-1186 (Remote Participation in Residential Evictions)
 - For a residential eviction action filed in county court, the act requires the court to allow either party or any witness to choose to appear in person or remotely at any return, conference, hearing, trial, or other court proceeding and to allow either party to change their designation until up to 48 hours before the proceeding.
 - The transfer of funds to the Judicial Department Information Technology Cash Fund pursuant to H.B. 22-1335 is being used to comply with the requirements of this legislation.
 - H.B. 23-1182 (Remote Access to Criminal Court Proceedings)
 - The act requires all courts in Colorado to provide remote access for the public to observe any criminal court proceeding conducted in open court, unless statutorily defined criteria are met that require otherwise.
 - The act also requires the court to post links on its website for the remote observation.
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- The also act requires the court to:
 - Take reasonable steps to ensure that no audio or visual transmission of privileged, confidential communications occurs; and
 - If a proceeding is subject to a sequestration order, take reasonable steps to ensure compliance with the sequestration order.

Ramifications of Lost Funding

Through legislation, the General Assembly has communicated that the above programs and initiatives are priorities and therefore provided funding to the Department to ensure that they are successfully implemented. The Department has implemented these programs and initiatives within the understood federal guidelines concerning the use of American Rescue Plan Act funding. If funding is not made available through December 31, 2026:

- Contracts with District Attorneys must be broken and Adult Diversion programs in the above-identified districts will end.
- Access to justice will be negatively affected as implementation of the audio/visual (A/V) program for remote proceedings will be curtailed. Specifically, **at minimum**:
 - Webex licensing will no longer be funded, eliminating the ability to provide virtual court proceedings and virtual probation appointments;
 - No new A/V installations will be performed and mid-flight installations and upgrades and replacements of equipment will cease;
 - Livestreaming capabilities across the State will be significantly reduced;
 - Strict bandwidth requirements on cloud-based case management solutions will impact updates to the system;
 - Resources will need to be shifted away from projects not funded by ARPA funds in order to finalize A/V initiatives that cannot be abandoned mid-stream, thereby negatively impacting Department operations.

The Department requests an appropriation equivalent to all unspent ARPA funds originally made to the Department, including roll forward spending authority through December 31, 2026.