

**JUDICIAL DEPARTMENT  
FY 2016-17 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, December 2, 2015  
9:00 am – 12:00 pm**

**JUDICIAL DEPARTMENT (including the Supreme Court, Court of Appeals, Courts  
Administration, Trial Courts, and Probation)**

**9:00-9:10 INTRODUCTIONS AND OPENING COMMENTS**

**9:10-9:30 QUESTIONS RELATED TO FY 2015-16 BUDGET PRIORITIES**

(JUD R1) IT and Security

1. Please provide an overview of the Judicial Department Information Technology Fund, including:
  - a. Actual and projected annual revenues, by source; and
  - b. Actual and projected annual expenditures, by purpose (including all the various amounts requested for various purposes for FY 2016-17).

Judicial Department Information Technology Cash Fund				
Actual and Projected Revenues and Expenditures				
Fiscal Years 2014-15 through Fiscal Year 2017-18				
Revenue	FY2014-15	FY2015-16	FY2016-17	FY2017-18
Interest Income - Nonexempt	\$ 50,938	\$ 37,000	\$ 37,000	\$ 37,000
Reimbursement of Prior Year Expense	1,810	-	-	-
Service Charges from External Sources				
ICCES CASE HISTORY	692,000	690,000	690,000	690,000
ICCES E-FILING	4,544,430	4,600,000	4,700,000	4,700,000
ICCES E-SERVICE	3,192,675	3,200,000	3,200,000	3,200,000
ICCES MAIL	338,343	300,000	300,000	300,000
ICCES NOTIFICATION	403	1,000	1,000	1,000
ICCES PRO SE SEARCH	1,060	1,000	1,000	1,000
Misc	1,390	1,000	1,000	1,000
Private Probation	600,078	600,000	600,000	600,000
Data Search	5,197,154	5,220,000	5,300,000	5,300,000
Subtotal, Service Charges from External Sources	14,567,533	14,613,000	14,793,000	14,793,000
<b>Total Revenue</b>	<b>\$ 14,620,281</b>	<b>\$ 14,650,000</b>	<b>\$ 14,830,000</b>	<b>\$ 14,830,000</b>
Expense				
Indirect	\$ 236,958	\$ 250,419	\$ 423,323	\$ 423,323
COGNOS Development	4,364	-	-	-
Courthouse Capital	-	1,826,000	1,824,731	
Operating/ICCES Development	3,154,458	3,179,009	2,996,435	2,996,435
JPOD Development	6,862	5,000		
Personal Services	2,536,978	2,546,710	2,510,632	2,510,632
IT Infrastructure	4,897,484	8,228,227	15,476,117	8,853,174
<b>Total Expense</b>	<b>\$ 10,837,105</b>	<b>\$ 16,035,365</b>	<b>\$ 23,231,238</b>	<b>\$ 14,783,564</b>
<b>Change in Fund Balance</b>	<b>\$ 3,783,177</b>	<b>\$ (1,385,365)</b>	<b>\$ (8,401,238)</b>	<b>\$ 46,436</b>
Beginning Fund Balance	\$ 6,038,639	\$ 9,821,816	\$ 8,436,451	\$ 35,213
Ending Fund Balance	\$ 9,821,816	\$ 8,436,451	\$ 35,213	\$ 81,649

2. Please describe each of the four components of the IT and Security request (R1). Please include information concerning the following:

The Judicial Department requests \$7,967,203 total funds, including \$711,933 General Fund and \$7,255,270 cash funds spending authority from the Information Technology Cash Fund, and 6.0 FTE to establish an information security team, create two IT Analyst Supervisor positions, replace primary database servers, and develop a disaster recovery site. Specifically, the request includes the following:

- \$490,652 total funds, including \$485,732 General Fund and \$4,920 cash funds, and 4.0 FTE to establish an information security team;

- \$228,661 total funds, including \$226,201 General Fund and \$2,460 cash funds, and 2.0 FTE to create IT analyst supervisor positions;
- \$3,184,864 cash funds to replace two iSeries servers; and
- \$4,063,026 cash funds to develop a disaster recovery site.

The Department's IT systems provide the Department, the public, attorneys, collection agencies, and many other state and local agencies with increasingly sophisticated and user-friendly applications. These complex systems ensure the proper and secure storage and exchange of information between all Judicial Department employees, state agencies, vendors, and the public, and they must be continuously supported and maintained. The Department's IT infrastructure and systems are critical to the ongoing operations of both the trial courts and the probation offices. Therefore, it is essential for the Department to provide adequate information security staff to protect and ensure the confidentiality, integrity, and availability of these increasingly vital and sophisticated IT systems.

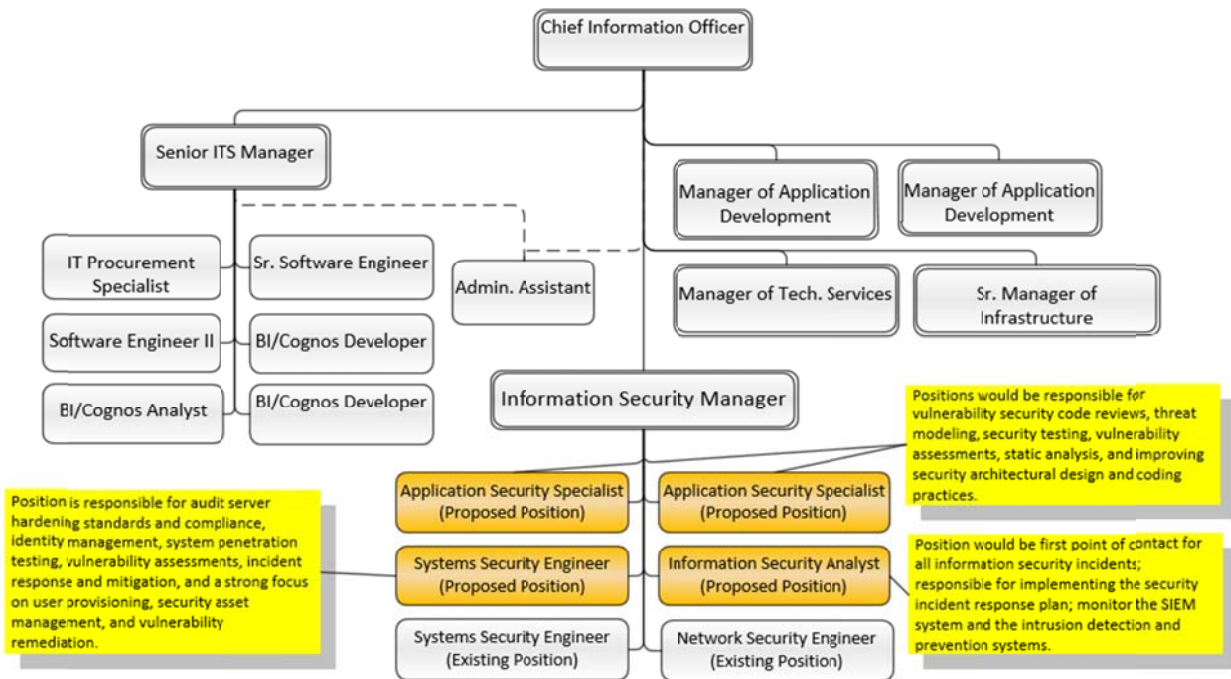
Although the Department's IT systems have grown, the information security staff that secures, strengthens, protects, and provides risk mitigation for these systems has not increased by the same proportion. As a result, additional information security staff is necessary to ensure the confidentiality, integrity, availability, and security of the Department's network, systems, applications, and IT data to conform to industry standards. The creation of an information security team will ensure the Department is able to meet current and future audit requirements, while also maintaining an appropriate level of information security risk mitigation to support the business initiatives of the Department.

Currently, the percentage of information security FTE within the Department who are capable of supporting the IT infrastructure is .071 percent (3.0 FTE), which is significantly below the 2011 industry average for state and local governments of .289 percent as reported in the 2011 Security Privacy Staffing Survey. To have an effective information security program, as well as provide a more appropriate level of risk mitigation, the Judicial Department seeks to increase the number of FTE supporting this initiative to 7.0 FTE, which would increase the percentage of information security FTE to .17 percent. Specifically, the request includes funding for information security staff in the following positions:

- Application Security Specialists (2.0 FTE);
- Systems Security Engineer (1.0 FTE); and
- Information Security Analyst (1.0 FTE).

The four orange shaded positions in Figure 1.1 represent the structure of the 4.0 IT security FTE, as well as the responsibilities of each position.

**Figure 1.1**



Application Security Specialists

A robust and effective security program employs the concept of defense in depth. This means security is implemented at multiple levels to ensure cyber-criminals must break through many layers to get to the gems of an organization. Implementing vulnerability security reviews, architecture design, and security testing during application development is an efficient and effective way to reduce vulnerabilities that can be exploited by cyber criminals.

The Judicial Department has a software development lifecycle based on a methodology called SCRUM. This allows for an agile approach to development with more frequent changes, as well as frequent involvement from stakeholders. To ensure the confidentiality, integrity, and availability of the data being processed, frequent security reviews must be integrated into the software development lifecycle with security code reviews, threat

modeling, security testing, and vulnerability assessments as part of the development lifecycle. Currently, security reviews are inadequate due to staffing limitations.

To provide proper and adequate application security through secure coding practices, as well as frequent security and testing reviews, 2.0 FTE Application Security Specialists are required to support the established SCRUM application development teams. The 2.0 FTE will perform code reviews, static analysis, security testing, and threat modeling. The Application Security Specialists will consult with all SCRUM teams to ensure security is built into each project during the initiating phase, rather than after a product has been delivered. By working closely with the Department's application development teams to perform frequent penetration tests, vulnerability assessments, and code reviews, the Application Security Specialists will perform a key role in improving information security architectural design and coding practices.

#### Information Security Analyst

Incident Response is an essential requirement to ensuring the protection of the Department's infrastructure, networks, and data. The 1.0 FTE Information Security Analyst would be the first point of contact for all information security related incidents, including investigation of all security related incidents. The Department is in dire need of implementing and properly configuring its IT Security Information and Event Management (SIEM) system, as well as its intrusion protection and detection systems. These systems require immediate and constant attention to the alerts they produce to ensure that the Department's information security team is providing effective and adequate security.

The 1.0 FTE Information Security Analyst would support the information security team in handling the implementation of the Security Incident Response Plan, as well as monitoring the SIEM and intrusion detection systems. This includes working with the Department's facilities and physical security staff to ensure effective risk mitigation controls are in place for all incidents, both logical and physical. Logical controls include all IT-related controls such as firewalls, intrusion detection and prevention systems, anti-virus and malware prevention, encryption, web filtering, email SPAM filtering systems, and server backups. Physical controls include properly securing all IT assets at each court and probation facility, as well as data centers, so cyber criminals cannot easily breach the Department's physical or wireless network.

### Systems Security Engineer

An effective information security program requires the establishment of a solid security foundation. This foundation includes identifying all assets (hardware, software, network, wireless, peripherals, and internal applications), as well as who has access to those assets. Currently, user provisioning for the Department's assets is managed amongst multiple teams and is not properly audited. The 1.0 FTE Security Systems Engineer would support all information security functions (i.e., establish and audit server hardening standards, identity management, system penetration testing, vulnerability assessments, incident response, and incident mitigation) with a focus on user provisioning, asset management, and vulnerability remediation.

### IT Analyst Supervisor

In addition to the information security team staff, the request includes funding for 2.0 FTE to create IT Analyst Supervisor positions, which will better align the IT Analyst staff to supervisor ratio with industry standards of 8:1.

IT Analysts serve as the bridge between the Judicial Department and the users it serves. Members of the public, Judicial Department employees, and other government agencies depend on applications created by the Department to perform many of their daily functions. The IT Analysts are a crucial part of the application development process by designing and testing all Department enterprise applications, as well as providing excellent customer service to those that utilize these enterprise applications, most notably the public. The Department currently has two application development teams that contain a combined total of 19 IT Analysts who are responsible for working with customers to gather business requirements, designing and testing the application, and providing customer support once the product is deployed.

The IT Analysts are currently supervised by two Managers of Application Development who are responsible for project management, product development, and staff development. These managers each have approximately 14 direct reports. According to InfoTech Research Group, the right-size span of control ratio for the number of direct reports to a supervisor or manager is traditionally 8:1. The current reporting structure for the Managers of Application Development creates an unfavorable situation for coaching, guidance, and support of this critical role in the Department. Additionally, there are six different specialized roles among the 14 direct reports that the Managers of Application Development supervise. The number

of specialized coaching plans along with the number of staff creates a situation where the IT Analysts do not get the attention they deserve.

The request is designed to balance these staffing levels by providing the IT Analysts with a direct supervisor who can focus on improved communication through more one-on-one interactions, increased productivity through clear expectations and clarity, and fully utilizing the strengths of all IT Analysts so the Department can improve upon the quality of service it provides to the public, attorneys, collection agencies, and vendors. If this requested is funded, the IT Analyst to supervisor ratio would be reduced from 14:1 to 8:1 for both application development teams. This decrease also creates a more favorable span of control for the Managers of Application Development with an employee to manager ratio of 5:1, increasing their ability to provide better coaching and mentoring to those in other specialized roles.

Figures 1.2 and 1.3 represent the structure of the 2.0 IT Analyst Supervisor FTE, as well as the responsibilities of each position.

**Figure 1.2**

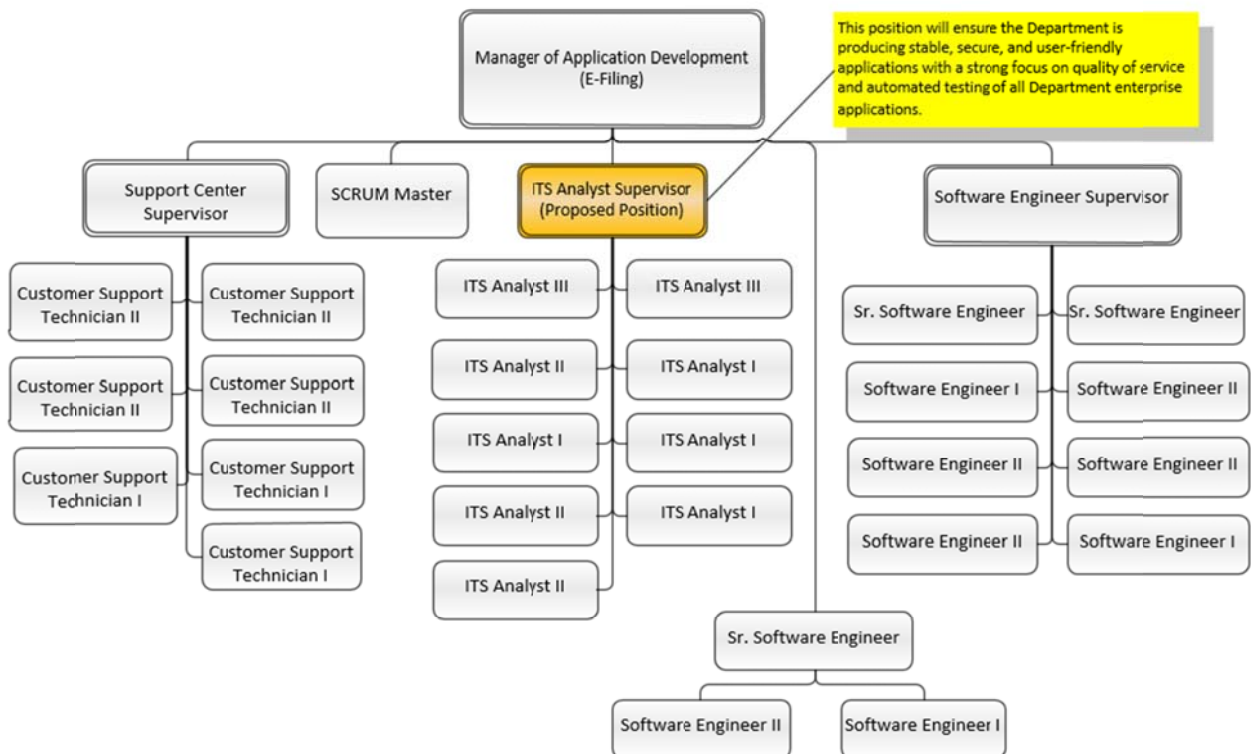
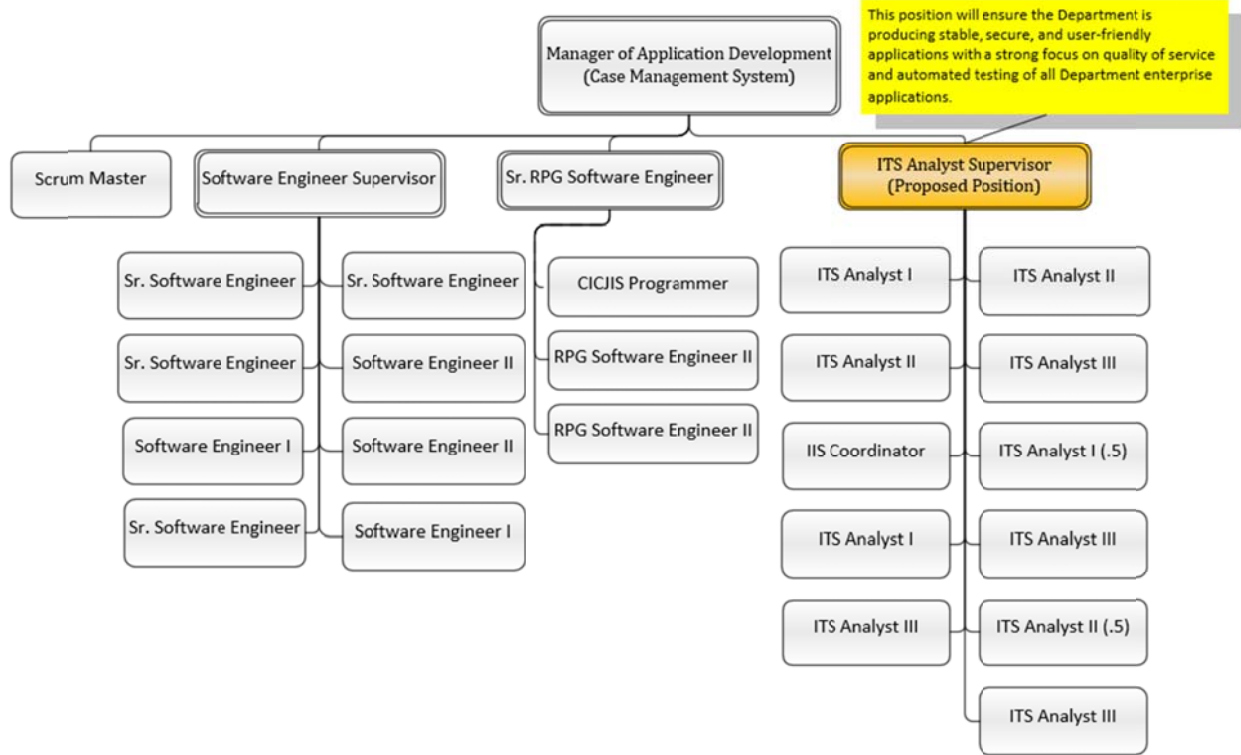


Figure 1.3



Server Replacement

The request also includes \$3,184,864 in cash funds spending authority from the Information Technology Cash Fund in order to replace two primary midrange iSeries servers, which serve as the foundation for the Department’s IT infrastructure. The iSeries servers are the primary database servers that store information for all Judicial Department case management and e-filing systems, as well as the Colorado Integrated Criminal Justice Information System (CICJIS), public access system, and interagency data exchange systems. Without these servers, the Department’s critical enterprise systems would not be able to function. One iSeries server will serve as the Department’s primary production server and the secondary iSeries server will function as a disaster recovery system. The Department’s current mid-range iSeries servers were purchased in 2011 with a five-year maintenance agreement and must be replaced in FY 2016-17.

Disaster Recovery Site

In conjunction with the mid-range iSeries server upgrade, the Department is requesting \$4,063,026 in cash funds spending authority from the Information Technology Cash fund in

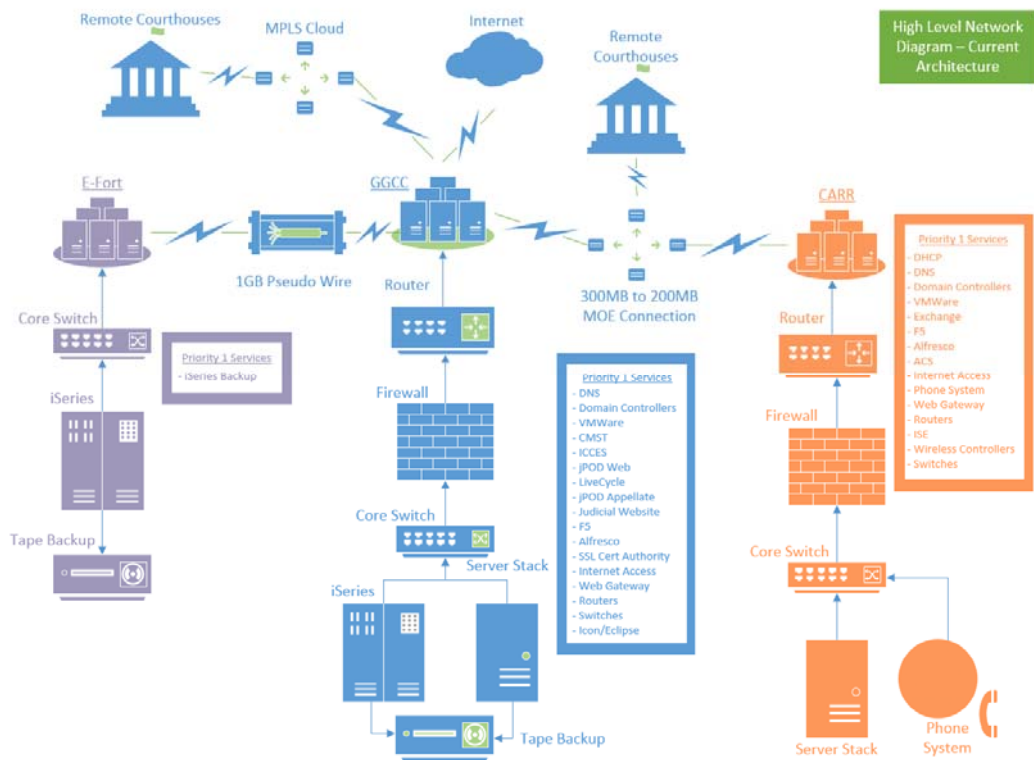


order to purchase the necessary IT equipment needed to equip, implement, and configure a fully functional disaster recovery (DR) site, which will support all critical Judicial Department IT systems. In FY 2014-15, the Office of the State Auditor (OSA) conducted an information security assessment audit. They recommended the Judicial Department develop a comprehensive DR plan for each of its IT critical systems, develop comprehensive DR testing strategies, perform recovery testing on a regular basis, and update the DR plan based on the analysis and feedback of the testing performed. In order to complete this recommendation made by the OSA, the Department must have an IT DR plan fully tested by December 2017. The Department fully understands and supports the need to establish a redundant and testable disaster recovery plan in order to provide the Department with the highest level of system availability, while also ensuring little to no interruption to the public. It is important to note as part of implementing the Department's DR plan, the Department must begin with the purchase of the two mid-range iSeries servers in order to avoid duplicative work and avoid extended downtime of IT critical systems.

- a. Describe the Department's existing and planned disaster recovery capabilities. Would the requested funds support a physical disaster recovery site or cloud-based technology for a distributed backup site?

The Department's current Disaster Recovery (DR) capabilities are limited only to offsite tape backup and recovery strategies. In the event of a large scale disruption or disaster to the Department's current production facility, critical Department applications and systems would not be able to resume operation without experiencing excessive downtime. The Department's current IT infrastructure is spread out between three data center facilities: GGCC (General Government Computer Center), e-Fort, and Ralph Carr. Currently, GGCC is primarily used for the Department's production applications; e-Fort is used for backup and recovery capabilities; and Ralph Carr is being used for some Department production applications, as well as test and staging environments. Figure 1.4 shows, at a very high-level, how the three data centers are being used and some of the systems and applications they support. The three data centers are separated by color: E-Fort (purple), GGCC (blue), and Ralph Carr (orange).

**Figure 1.4**

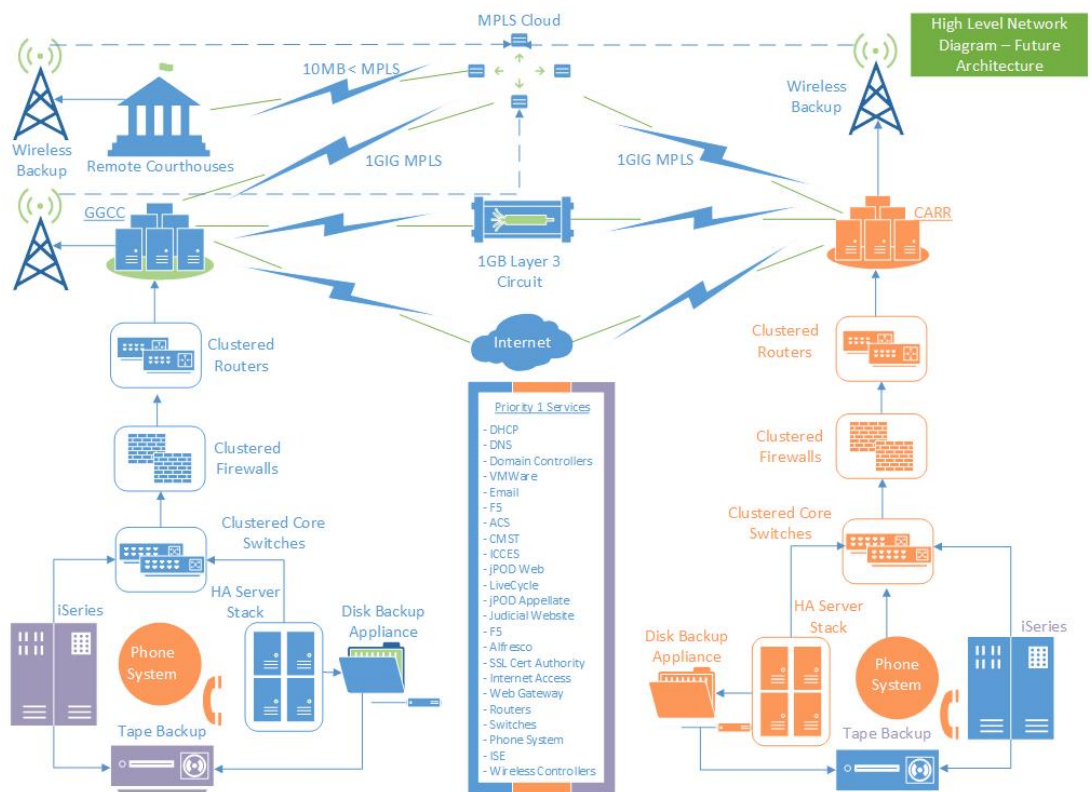


The Department’s IT and Security request (R1) will allow the Department to consolidate and correct some of the functional design issues in Figure 1.4. The Department’s future DR plan is to consolidate three data centers into two data centers (see Figure 1.5). The Ralph Carr data center will become the Department’s primary data center. Either GGCC, e-Fort, or a new DR facility, depending on the outcome of OIT’s DR RFP process, will be used as the Department’s physical DR site. The Department also plans to combine equipment currently located at e-Fort and GGCC, while also adding additional systems and equipment to create a one-for-one DR site as shown in Figure 1.5.

Figure 1.5 demonstrates the Department’s plan to consolidate data centers using color coding from Figure 1.4. If the IT and Security request (R1) is funded, the Ralph Carr datacenter (in orange) would receive additional network equipment, servers, phone system, and backup appliances that would be designed around a high availability (HA) architecture. High availability is a combination of technologies and processes that work together to ensure systems and critical applications are always up and running. Referring to Figure 1.5, the iSeries server (shaded in purple) currently at e-Fort would be replaced and moved to GGCC (blue) to support the Department’s critical enterprise applications in

the event of a disaster or disruption of service. Prior to the move, the DR iSeries server will be upgraded and sized according to the production iSeries server (shaded in blue) at the Ralph Carr data center (in orange). Additionally, the Department's future DR plan includes a one-for-one methodology. The one-for-one methodology will be used to provide HA and DR capabilities of the Department's critical enterprise applications. The consolidated enterprise applications are shown in the center of Figure 1.5 within the blue, orange, and purple bordered rectangle and represent the Department's DR design with the end goal of ensuring critical Department applications, as well as the systems that support these applications, are able to resume operations in the event of a disaster or disruption of services at the production data center facility.

**Figure 1.5**

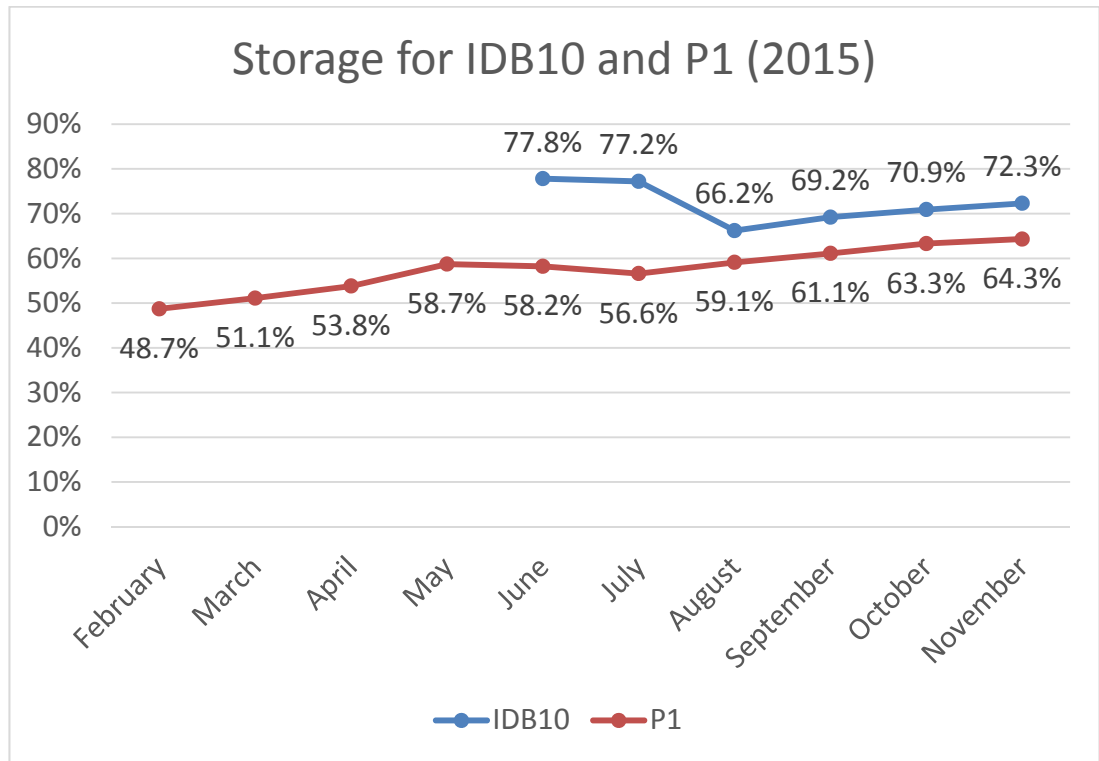


The Department has no intentions of using third-party cloud services for a distributed backup site due to security, configuration, and availability concerns. However, the Department does plan to use similar cloud-based technologies, such as virtualization, within the physical DR site.

Several systems that support the Department's critical enterprise applications, such as the iSeries servers at e-Fort and GGCC, have reached the end of their normal 5-year maintenance life span and are no longer able to keep up with the growing demands necessary to support the Department and the citizens of Colorado. Additional issues with the Department's current iSeries servers include:

- The backup iSeries server located at e-Fort is not identical to the production iSeries server currently located at GGCC, making restoration of services unlikely in the event of disaster or large scale disruption of services.
- The production iSeries server has seen a combined increase of 25 percent on CPU usage resulting in several statewide outages directly linked to insufficient CPU and/or memory.
- The production iSeries server has two partitioned/virtualized database instances (iDB10 & P1) that support all Department critical enterprise applications. One production database instance (iDB10) is utilizing 72.3 percent of available disk space and the second instance (P1) is utilizing 64.3 percent of available disk space. See Figure 1.6. The slight decline in June to August of 2015 was a proactive measure of removing any unnecessary data in order to buy some time until the iSeries servers are replaced with additional resource capacity.

Figure 1.6



As the Department continues to move towards complete electronic records and electronic filings, it is crucial that the Department have the necessary IT infrastructure to support this business demand today and into the future.

- b. How does the proposed disaster recovery site relate to eFort?

The Department is following the outcome of the Governor's Office of Information Technology (OIT) data center RFP process and collaborating with OIT's Director of Infrastructure Services to determine the best location for the Department's disaster recovery site. Once the RFP process closes, which is projected to be before the end of this year (2015), the Department will evaluate the data center that is chosen, as well as consider the Department's and OIT's current production presence at GGCC (General Government Computer Center), and evaluate the ability to leverage that presence into the Department's disaster recovery off-site location.

- c. Are the components of the request consistent with standards established by the Chief Information Security Officer at the Governor's Office of Information Technology (OIT)?

The Department is collaborating with the Chief Information Security Officer (CISO) at the Governor's Office of Information Technology (OIT) to align and comply with the same security standards and frameworks as the CISO's office. The Department follows the National Institute of Standards and Technology's (NIST) security standard 800-53r4, which consists of the same framework and IT security controls standards currently being used by OIT.

- d. Has the Department discussed with OIT its plan to replace two servers to determine if excess server capacity exists within the Executive Branch?

The Department has been in contact with OIT but has not discussed whether or not they have iSeries servers that may have excess capacity due to the critical nature of these systems, as well as the Department's dependency on them to conduct its core business. The Department has determined that sharing valuable system resources with two of its most critical systems that house all court and probation case related information is not prudent. Comingling system resources could pose security risks to the Department's critical systems and data by violating confidentiality, integrity, and availability if the entire system is not managed and controlled according to the Department's change management procedures and business needs. Additionally, the Department is in need of the latest technology found in the newer iSeries models to achieve high availability, disaster recovery, and continuous deployment of its highly customized applications.

3. Does the Joint Technology Committee<sup>1</sup> review or receive information concerning Judicial Department IT projects or purchases?

The Joint Technology Committee (JTC) or its members do receive and review information from the Judicial Department concerning large IT projects and purchases. Representative Max Tyler, the Vice-chair of the Joint Technology Committee, has specifically reviewed the Department's Disaster Recovery (DR) plan and is very supportive of it. After the Department received its DR and iSeries server quotes from vendors in October 2015, a meeting was scheduled on October 23<sup>rd</sup>, 2015 with Representative Tyler. During this meeting, the Department provided Representative Tyler with the Department's technical DR plan, which included the high-level design diagrams in Figures 1.4 and 1.5. Representative Tyler indicated support for the plan and suggested the Department schedule a time on the JTC's

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<sup>1</sup> The Joint Technology Committee is established in Section 2-3-1701 *et seq.*, C.R.S.

agenda. Because the next JTC meetings are not scheduled until December 16, 2015, and January 11, 2016, the Department is unable to meet with the entire Committee prior to the Joint Budget Committee briefing and hearing.

(JUD R3) Offender Treatment and Services CF Spending Authority (and other Probation-related questions)

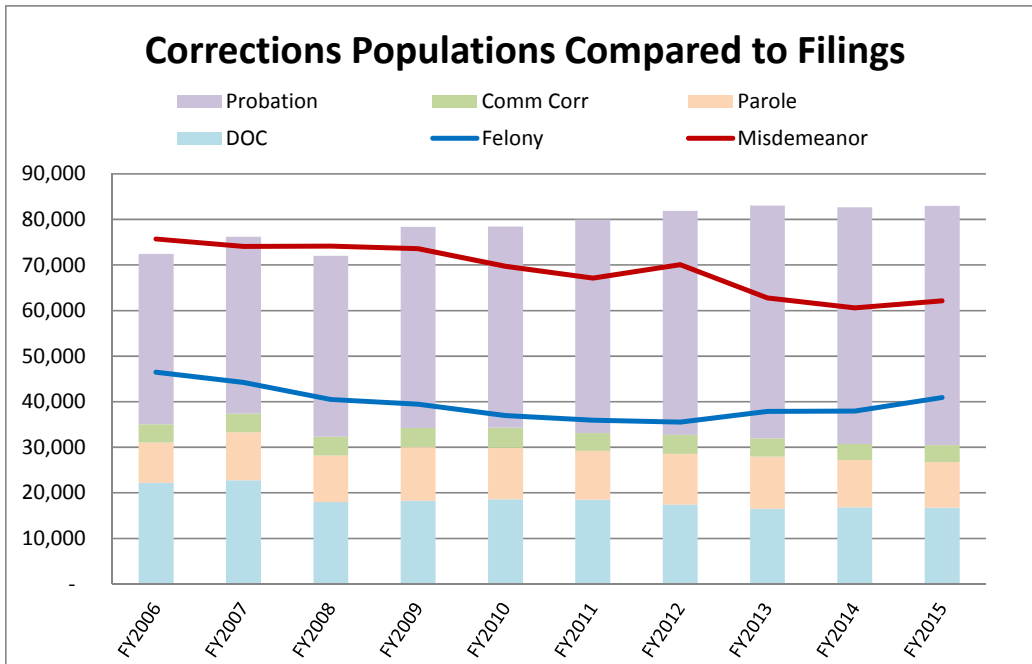
4. Provide an overview of the number of offenders supervised on probation in relation to the overall numbers of offenders and relevant case filings. What changes have occurred in recent years?

In the last five years, several law changes impacted probation's population. Increased eligibility for probation, mandatory sentences to probation and reclassification of offenses from felony to misdemeanors has shifted a portion of the criminal population from DOC, Parole and Community Corrections to Probation. Since FY 2010, the percent and number of high-risk probationers has increased from 10 percent of probationers (n=4,166) to 14 percent (n=7,113) in FY 2015.

The following are recent law changes impacting sentences to probation:

- Effective 5/25/10: H.B. 10-1338 changed the two-felony rule. Some offenders previously ineligible for probation may be eligible as a result of adjustments to the list of excluding offenses.
- Effective 7/1/10: H.B. 10-1347 made probation mandatory for second and subsequent DUI convictions.
- Effective 8/11/10: H.B. 10-1352 adjusted penalties for controlled substances, amounts for possession of drugs, and changed weight and penalties for possession, dispensing, selling, cultivating marijuana
- Effective 6/5/13: H.B. 13-1160 reclassified theft, section 18-4-401, C.R.S. Offenses previously classified as felonies, were declassified to misdemeanor offenses, depending on value. Additionally, some felonies were lowered in seriousness.
- Effective 7/1/13: H.B. 13-1242 repealed mandatory DOC sentencing on violation of bail bond conditions, which made probation available as a sentencing option in some cases.
- Effective 10/1/13: S.B. 13-250 reclassified drug offenses and changed several marijuana-related offenses, which included legal use for adults 21 and older.

- Effective 8/6/14: H.B. 14-1266 reclassified enumerated offenses based on the value of the property or instrument involved. Some previous felonies were declassified to misdemeanors. Also some felonies were lowered in seriousness.



Note: the red and blue lines indicate the total number of criminal filings, while the bars indicate the various corrections populations.

5. Please describe the Department's role with respect to private probation providers. Why has the proportion of offenders supervised by private probation providers (versus state staff) declined?

Pursuant to section 18-1.3-202 (2), C.R.S. (2015), "The probation department in each judicial district may enter into agreements with any state agency or other public agency, any corporation, and any private agency or person to provide supervision or other services for defendants placed on probation by the court. The agreements shall not include management of any intensive supervision probation programs." Additionally, Chief Justice Directive 04-03 allows for contracting with agencies to provide supervision of low risk probationers except that, with the approval of the sentencing court, cases involving an offender convicted of DUI/DWAI and an offender meeting the statutory definition of Persistent Drunk Driver or any other case deemed appropriate by the sentencing court, may also be supervised by private probation. These probationers are responsible to pay an amount equal to the monthly required probation supervision fee of \$50.00 for supervision directly to the private probation



agency. No state funds are used for the supervision of these probationers. Several, but not all, probation departments contract with a private probation vendor to provide supervision services to these low risk probationers. Each probation department that contracts with private probation retains primary legal authority for all probationers assigned to private probation and is responsible to monitor the private probation vendor's performance. Private probation providers are required to follow the Standards for Probation regarding required activities for low risk probationers.

The decline in private probation numbers has been steady over the past five years, averaging 5.4 percent decrease annually. The percentage of higher risk offenders sentenced to probation has increased approximately 4 percent since FY 2010. As a result, there have been fewer low risk offenders to transfer to private probation. There is a large volume of research that indicates that over-supervising low risk offenders actually increases the odds of being rearrested. As a result, probation departments have found less intrusive, and equally effective, ways of managing the low risk population. Some alternative programs in use include: restorative justice, tele-reporting, low risk caseloads, and mail-in reporting. We anticipate the number of probationers transferred to private probation will continue to decrease, as alternative supervision programs prove successful and cost effective, without compromising public safety.

6. The Department has indicated that FY 2015-16 appropriations support only 91 percent of the full need for probation staff. Please describe the impacts of this level of staffing.

The current levels of probation staffing have an impact on the degree with which effective programs and practices are implemented and integrated by staff. Specifically, probation supervisors and probation officers experience the brunt of the impact of less than full staffing.

Probation supervisors have a span of management control for 6-8 probation officers and in some instances administrative staff, as well. For a presentence unit the supervisor is responsible for managing the completion, review and approval of approximately 84-115 presentence investigation reports per month. In a supervision unit the supervisor is responsible for overseeing the delivery of supervision services to 180-900 probationers, depending on the risk classification of the offenders. In addition to duties related to personnel management, supervisors also perform case audits, manage contracts and

participate in departmental, state level and community-based committees. Currently probation supervisors have insufficient amounts of time to:

- Oversee and guide staff in making difficult case-related decisions to ensure that their interactions with probationers adhere to the practices that are connected to effective interventions.
- Provide coaching following training to help officers develop and transfer complex skills into everyday use (e.g. motivational interviewing, cognitive behavioral interactions).

Similarly, probation officers have insufficient amounts of time to fully meet standards aimed at evidence-based and best practices, including less time discussing and enforcing the rules of probation and more time working on decreasing anti-social thinking and behavior and increasing pro-social thoughts, behaviors and skills.

7. Will approval of this request (R3) mitigate any negative impacts of existing probation staffing levels?

No. The request to increase the spending authority from the Offender Services Cash Fund will allow the Department to provide an increased level of financial support to probationers, including those in the problem-solving courts, who would otherwise be unable to pay for court ordered treatment and other services that help stabilize the probationer in the community. These funds are not intended for nor will be used to pay for personal services.

8. Describe the background checks that are required for state probation staff and those that are required for staff employed by private probation providers.

All state probation staff and contracted private probation staff are required to undergo a criminal history background check prior to starting their respective positions. The only exception for contract private probation employees are for those individuals who have no contact with adult or juvenile probationers, do not have unsupervised access to court or probationer records or have contact with victims. These are generally administrative staff working in a central office. Below are the differences in the frequency of subsequent records checks and the process.

### State Probation Employees – Colorado Judicial Department

A new criminal history check will be completed if a probation employee is promoted, demoted, or transferred to another probation department or office and a criminal history check hasn't been completed with the last five years.

### Private Probation Provider – Criminal History Checks Required

By contract, private probation employees are required to have a new criminal history background check completed every two years.

### Process

This process applies to all criminal history records checks. Criminal history checks are run through:

- CBI- Colorado (CCIC) and national (NCIC) criminal records check
- Accurant to verify social security numbers –to verify the record belongs to the person, check for AKA's.
- Denver County Court- these records are not part of the state court system
- Eclipse- check for compliance with court orders on state court conviction

9. To what extent are expenditures for sex offender polygraphs driven by standards established by the Sex Offender Management Board?

Probation adheres to the SOMB guidelines for adult sex offender polygraphs for probationers under supervision in Sex Offender Intensive Supervision Probation (SOISP) and adheres to the SOMB guidelines for juvenile probationers who have committed a sexual offense. On June 30, 2015 there were 1,124 adult probationers under supervision in SOISP and 377 juveniles who committed a sexual offense under probation supervision. Section 16-11.7-105 C.R.S, (2015) requires each adult and juvenile who committed a sex offense and is sentenced to probation to undergo treatment to the extent appropriate to such offender and pay for that treatment to extent the offender is financially able to do so. The majority of polygraphs are conducted while the probationer is involved in treatment, a period of approximately two years for adults and 18-24 months for juveniles. Funds are expended for adult and juvenile polygraphs when it has been determined the probationer is unable to pay for the polygraph. This action avoids incidents of non-compliance with court orders for treatment and reduces the number of potential revocations.

## Judicial Department Request for Salary Increases

10. Please describe the basis for the \$4.8 million request for judicial employee salary increases for FY 2016-17, including the \$3.2 million requested to increase judicial officer salaries by 5.0 percent.

A. Salary increases for Judicial Department employees:

The Judicial Department has requested \$1.6 million for salary adjustments to job classifications that are 3 percent or more below Executive Branch and other comparable midpoint salaries. The Judicial Department Salary Survey, submitted as part of our budget request, relies heavily on the Executive Branch compensation ranges as benchmarks when appropriate. Judicial relies heavily on Executive Branch salary data in order to comply with Colorado Revised Statute 13-3-105 which states, "To the end that all state employees are treated generally in a similar manner, the supreme court, in promulgating rules as set forth in this section, shall take into consideration the compensation and classification plans, vacation and sick leave provisions, and other conditions of employment applicable to employees of the executive and legislative departments."

Both Executive Branch Department of Personnel Administration (DPA) and Judicial use a market 50<sup>th</sup> percentile (median) salary to measure the base salary value relative to public and private sector organizations. As mandated in C.R.S. 13-3-105, the Judicial Department used actual Executive Branch compensation plan data as benchmark data as appropriate for positions within Judicial. External data sources are also used when it has been determined that there are no corresponding Executive Branch positions to benchmark against. Internal benchmarks are used for similarly situated positions or positions that are linked via statute or rule. The Judicial Department salaries that are recommended for increase and that have established links to the Executive Branch are on average 7.7 percent out of market due to a one-year lag. However, the Judicial Department is only seeking a 3 percent increase for the positions that are out of alignment.

Judicial Department salaries lag behind those of the Executive Branch primarily because the Executive Branch does not publish specific increases on salary ranges until a month prior to the start of the new fiscal year. For FY 2016, the new salary ranges for Executive Branch classifications that were approved from the Colorado Legislature were not published until June of 2015.

B. Salary increases for Judicial Officers:

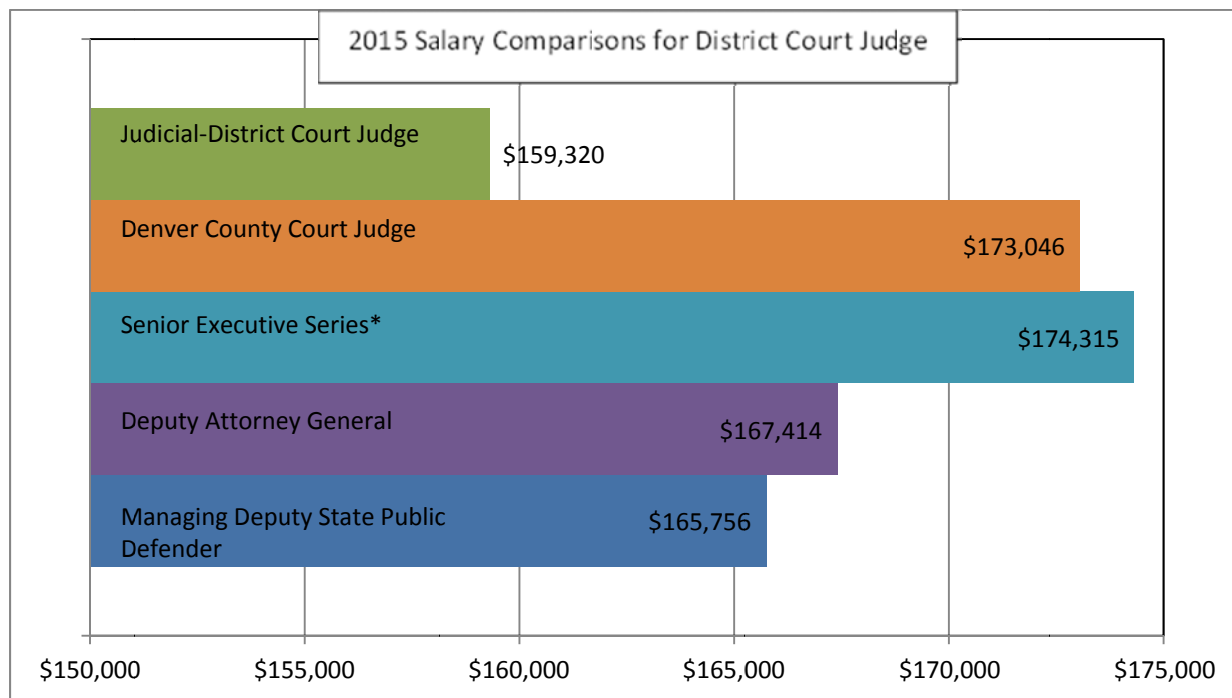
The Judicial Department has requested \$3.2 million as the final step of a multi-year plan to close the gap between district court judge salaries and the salaries of comparable attorneys in the state trial courts. It is the position of the Judicial Department that the trial judge should be paid as well as other highly skilled attorneys in the courtroom. Using recent high profile cases, the Judge was lowest state-paid attorney in the courtroom.

Judicial Officer Salary – James Holmes Trial Comparison		
Agency	Title/Name	August 2015 Salary
Judicial Department	Chief Judge Carlos Samour	\$159,320
Public Defender	Chief Trial Deputy, Daniel King	\$170,724*
Judicial Officer Salary – Dexter Lewis Trial Comparison		
Agency	Title/Name	August 2015 Salary
Judicial Department	District Court Judge John Madden	\$159,320
Public Defender	Managing Deputy Public Defender, Chris Baumann	\$165,756**

\*The Judicial Department has access to payroll data that does not provide incumbent name but does provide incumbent title. Per a report from August 14<sup>th</sup>, the only Chief Trial Deputy included in Public Defender payroll data shows a salary of \$170,724.

\*\*Available data for the Managing Deputy PD salary is not provided by incumbent with multiple incumbents listed. The highest incumbent salary noted was used here.

The Judicial Department request highlights the difference between District Court Judge salaries and 1) the maximum of the Deputy Attorney General salaries; and 2) the maximum of the Managing Deputy State Public Defender salaries. Both agencies have current incumbents that are compensated at the range maximum. In addition, a broader, statewide review of comparable executive level attorneys and comparable executive level positions demonstrates that the district court trial judge is not comparably paid. This is demonstrated in the table below.



\* Executive Branch Senior Executive Series average actual salary of the 30 top earning individuals (excluding outliers).

With respect to judicial salary increases, the JBC analyst raised two specific questions in the JBC briefing.

- 1) Can the Judicial Department meet its targeted comparable positions with a 3 percent raise rather than the 5 percent requested? Of course, judicial salaries would be much closer to the targeted comparable positions with a 3 percent raise. A 3 percent increase would bring the District Court Judge to \$164,100, slightly below that of the Managing State Public Defender range maximum and 2 percent below that of the Deputy Attorney General range maximum. While a 3 percent increase would not fully meet the goal to increase judicial officer salaries to the same level of compensation as those who are arguing cases in front of them, a 3 percent increase to judicial officers would correlate with the 3% increase request made for general employee classifications.
  
- 2) Why are we calling this a “two-year” plan in light of the raises given to the judges in the last two fiscal years? The FY15 request for market adjustments was made in response to bringing judicial officer salaries into alignment after four years of wage freezes. For FY 2016, the job market demonstrated a need for a more substantial increase for Judicial Officers given the movement of comparable positions within the state of Colorado since the last study was completed for the FY 2016 budget.

Should the judicial salary request be approved, the twelve (12) job classifications that are linked to judicial officer positions would also receive a salary increase.

11. How do the various salary range adjustments proposed by the Judicial Department relate to those proposed by the Department of Personnel (DPA) for Executive Branch employee classifications (*i.e.*, do the Judicial Department's method and market pay gap threshold correspond with those used by DPA)?

Both DPA and the Judicial Department use a market 50th percentile (median) salary to measure the base salary value relative to public and private sector organizations. As mandated in C.R.S. 13-3-105, the Judicial Department used actual Executive Branch compensation plan data as benchmark data as appropriate for positions within Judicial. External data sources are also used when it has been determined that there are no corresponding Executive Branch positions to benchmark against. Internal benchmarks are used for similarly situated positions or positions that are linked via statute or rule.

Given that the Executive Branch data used is for the current fiscal year to determine the next fiscal year increases, the data used by the Judicial Department is a year old and not current with actual market data. In their Annual Compensation Report, DPA suggests that the FY16 salaries for the Executive Branch are on average 3% below the prevailing market.

**9:30-9:50 COURT-ORDERED COMPETENCY EVALUATIONS AND SERVICES**

12. The JBC Staff Budget Briefing document dated November 18, 2015, lists a number of options to potentially improve the process of handling mental competency issues in criminal cases (see pages 25 and 26). Please discuss whether the Department would support any of the options, and offer any other suggestions that should be considered.

**SUMMARY OF CONCLUSION**

The Judicial Department supports the suggested statutory change to modify or eliminate Judicial Officer discretion when determining the appropriate location for competency evaluation. As discussed below, competency evaluations are required because judges lack the education, training, experience, skill, and expertise to assess competency. Moreover, judges often do not have enough information about the defendant or the defendant's behavior at the time of the competency motion to assess competency. Judicial trusts the

experts at CMHIP to evaluate competency. Judicial does not mandate or otherwise determine what competency tests should be administered, how many tests to administer, how long the evaluation should last, whether the evaluation should include monitoring, what medications may be used, etc. Since Judicial trusts CMHIP to conduct a competency evaluation as it deems fit in its professional medical judgment, it also trusts CMHIP to determine where the evaluation should take place. In making this change to the court's authority, it is important that the court retain the ability to move these cases in a timely manner. It may be appropriate to consider adding conditions that the Office of Behavioral Health must meet in complying with the order.

Due to the complex nature of this matter and the unknown factors and data bearing on this issue, it may also be appropriate to establish a study group consisting at a minimum of the Office of Behavioral Health, District Attorney's Council, Defense Bar and Judicial to make recommendations about viable solutions. This group could evaluate data from all of the organizations involved in competency determinations to better understand the extent and nature of problems related to competency evaluations.

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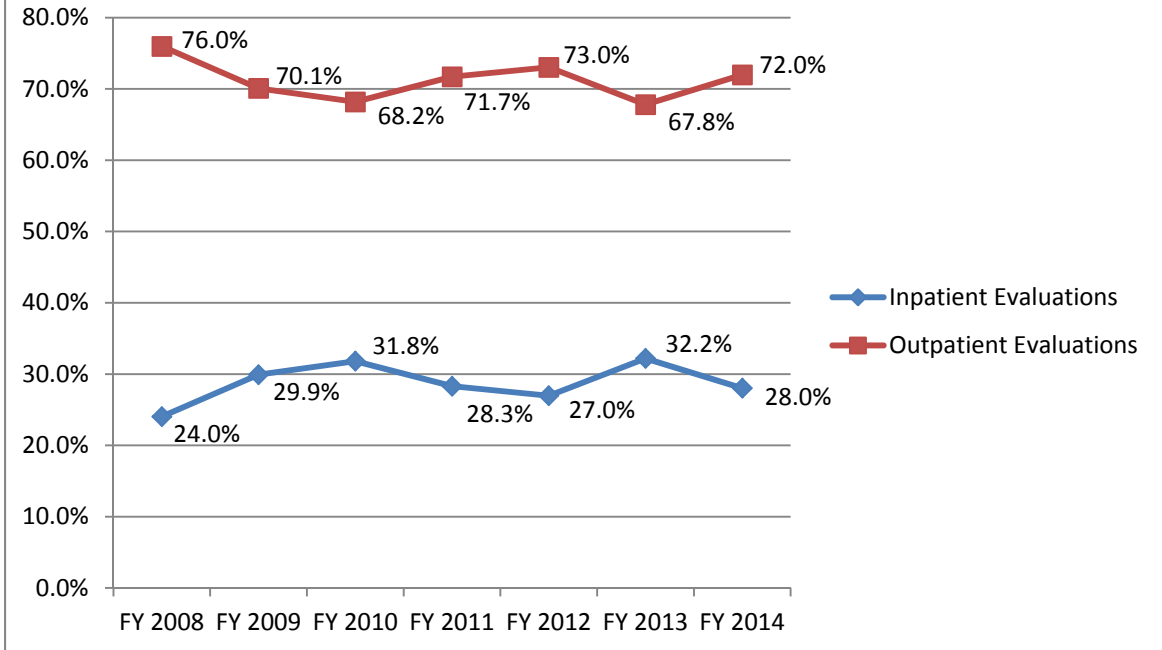
## **BACKGROUND**

### **The Judicial Department's Role in Competency Evaluations**

Motions for both inpatient and outpatient competency evaluations have increased over the past decade. In examining competency orders over time, it is clear that the increase in inpatient orders is simply a result of increased evaluations requested overall. The chart below demonstrates that judges have not changed the rate at which they order inpatient versus outpatient exams. Inpatient evaluations have been ordered at a rate between 24 and 32 percent every year since 2008. Attributing the increase in inpatient evaluations to judicial decisions is unsupported by the data.



## Inpatient vs. Outpatient Evaluations FY 2008 through FY 2014



Note: Data was provided by the Office of Behavioral Health to the State Court Administrator in May and August of 2015.

Pursuant to statute, the court has very little discretion in granting or denying the motion for evaluation. Motions regarding competency to proceed are made by the defense, prosecution or jointly between both parties. The court has the authority to raise the issue of competency to proceed on its own motion; however, this is a rare occurrence. Once the question of a defendant’s competency to proceed has been raised (either by a party or by the court), the court has two options: (1) it may make a preliminary finding of competency or incompetency, which becomes a final determination if neither party objects to it within 14 days; or (2) it may determine that it has insufficient information to make such a preliminary finding. Under section 16-8.5-103 (2), C.R.S. (2015), “If either party [timely] objects to the court’s preliminary finding, or if the court determines that it has insufficient information to make a preliminary finding, the court shall order that the defendant be evaluated for competency by the department . . . .”

Thus, as a practical matter, the court cannot simply refuse to grant a competency motion. In addition, since competency primarily arises at the beginning of a case, the interaction

between the defendant and the court at the time of the motion is very limited. In many cases, the court will have only seen the defendant in person for a period of 5 minutes or less. If a defendant's attorney represents that he or she has reason to believe the defendant is not competent, the court has little basis to dispute the allegation without a professional evaluation.

### **Current Legal Authority to Order the Location for Competency Evaluations**

The statutes currently give the court full discretion to order the location of the evaluation. Section 16-8.5-105 (1) (a), C.R.S. (2015) states: "The location for competency evaluations shall be determined by the court. The defendant may be released on bond, if otherwise eligible for bond, or referred or committed for a court-ordered competency evaluation to the department, or the court may direct that the evaluation be done at the place where the defendant is residing or is in custody. In determining the place where the evaluation is to be conducted, the court shall give priority to the place where the defendant is in custody, unless the nature and circumstances of the evaluation require designation of a different facility."

In making the decision about location of the evaluation, the court again relies on information presented by the attorneys. The attorneys will make representations to the court about the behavior of the defendant in their interactions. In some cases, both prosecution and defense will stipulate to the location of the evaluation. Some of the questions posed by the JBC suggest that the court should have more sophisticated abilities to discern a location for the evaluation. However, these questions: (1) incorrectly assume that attorneys who seek competency evaluations usually possess ample information about the defendant's mental status; (2) ignore legal concerns that often make such attorneys reluctant to share with the court all of the information available; and (3) overlook the fact that when the court determines the location of an evaluation, it generally has had very limited interaction with the defendant and access only to scarce information about the defendant's mental health needs.

The statutory standard for competency is set forth in Section 16-8.5-101 (11), C.R.S. (2015), which provides that a defendant is incompetent to proceed if, "as a result of a mental disability or developmental disability, the defendant does not have sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding in order to assist in the defense, or that, as a result of a mental disability or developmental disability, the defendant does not have a rational and factual understanding of the criminal proceedings."

This is a much lower standard than the standard imposed for a sanity evaluation, in part because it only measures the defendant’s “present” ability, not the defendant’s mental status at the time of the crime. In addition, the competency status of a defendant can change at any given time. For example, a mentally ill defendant who is not taking his or her medicine may be unable to understand the nature of court proceedings. Providing appropriate care may be enough to fully restore the defendant to present competency.

Finally, the Department of Human Services has stated that inpatient evaluation constitutes a “massive curtailment of liberty.” The courts strongly disagree with this statement. Typically, defendants are not ordered to inpatient evaluation unless they are already being held in jail because they are unable to post the bond previously set by the court.

The majority of outpatient evaluations are held in jails where defendants are being confined. Bond decisions are discussed further below, but it should be clear that bond decisions are made independently of decisions regarding location of evaluation.

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**RESPONSE TO THE POTENTIAL STATUTORY AND OTHER CHANGES TO CONSIDER IN  
BRIEFING DOCUMENT**

**Require the court to apply an involuntary civil commitment standard in order to determine the location of the examination:**

Applying the legal standard for involuntary civil commitment or another standard will, in itself, require the defendant to be evaluated. The court would not have enough information at the initial hearing to determine if the criteria applied and would need expert input (i.e. an evaluation) to make this determination.

**Allowing DHS to choose the location of the evaluation:**

The Judicial Department believes this is an appropriate solution. Judges generally are not equipped to determine the most appropriate location for a competency evaluation under the current statutory standard. Judges lack training, education, experience, skill, and expertise in psychology and psychiatry. Perhaps more importantly, judges generally have very little information about the defendant to determine whether “the nature and

circumstances of the evaluation require designation of a facility” other than the place where the defendant is in custody. When a judge orders a competency evaluation following a party’s request for such an evaluation, the judge typically has “insufficient information” to make even “a preliminary finding” of competency. See § 16-8.5-103(1), C.R.S. (2015). The statutory standard appears to assume judges know more about the defendant and the reasons that have triggered a request for a competency evaluation. In reality, judges seldom know if what is involved is a “mental disability,” a “developmental disability,” or both. Without this information, judges have no way to assess “the nature and circumstances” of the competency evaluation being requested.

**Increasing the fee for inpatient evaluations:**

Since the judge’s primary obligation is to ensure that the defendant is provided due process, it is inappropriate for daily cost of evaluation to weigh into the legal decision regarding evaluation. Imposition of a fee will not result in decreased orders to inpatient evaluation but might only result in changing the allocation and accounting of state funds for CMHIP from the DHS budget to Judicial.

**Providing resources for DHS to complete outpatient evaluations:**

Judges, and in particular judges in rural areas, have expressed concern about DHS’s inability to consistently complete outpatient evaluations on a timely basis. Judicial would support increases in both inpatient and outpatient resources for DHS. Resources to improve the provision of restoration services are also needed and would aid in moving cases faster.

**Education for Judicial Officers:**

If it is determined that the judge should retain the discretion over the place of the examination, the Judicial Department would welcome information from the Department of Behavioral Health on how to make a decision to order inpatient evaluations or outpatient evaluations. At this time, Judicial is unaware of the availability of training that could be provided on this topic. It should be noted however, that judges are not professionally trained mental health evaluators and have very limited knowledge of defendants at the time competency motions are made.

### **Changing judicial discretion to order location of competency examination:**

The Judicial Department agrees with changing judicial discretion in this area. However, a risk assessment tool would not be helpful for this purpose. This option recommends that judges use a risk assessment tool to determine bond and determine the most appropriate place for evaluation. It implies that the outpatient evaluation would be offered if the defendant were eligible for bond. Judges note that inpatient evaluations are ordered primarily, if not exclusively, for persons who have not bonded out. The decision to offer bond is made prior to, and independent of, the mental health evaluation decision. Changes in bond decisions will not impact the decision to use inpatient or outpatient evaluations. Colorado law already requires courts to use an empirically developed risk assessment instrument, if practicable and available, to make better bond decision. If the county has a pretrial services program, the program is required to make every reasonable effort to use an empirically developed risk assessment tool to provide information for judges when considering initial bond decisions. See sections 16-4-103 (3) (b) and 16-4-106 (4) (c), C.R.S. (2015).

13. With regard to judicial discretion to order an inpatient or outpatient competency evaluation, would the Department support a statutory change to only allow an inpatient competency evaluation to occur after a mental health professional has completed or attempted to complete an outpatient competency evaluation and has determined that an inpatient setting is necessary?

Judicial would support a statutory change that allows the DHS to determine the most suitable location for evaluation. Additionally, Judicial is willing to participate in a study group if necessary to develop a comprehensive plan to address this matter.

14. It is the Committee's understanding that the Department of Human Services recently provided data to the Judicial Department concerning competency evaluation orders for the last three fiscal years by judicial district, by judge, by charge class, and by resulting opinion.
  - a. Did the Department analyze the data to evaluate the court's role in ordering competency evaluations?

The Department did analyze the data to evaluate the court's role. As noted above, the court's role and discretion are prescribed by law. The data did not indicate any trend of note. Please see the chart in the Background section above, which shows a comparison of inpatient and outpatient evaluations from fiscal 2008 to fiscal 2014 and demonstrates

that the percentage of inpatient versus outpatient evaluations has remained relatively the same.

During the briefing, the question was posed as to why inpatient orders resulted in more competency findings, calling into question judges' decisions requiring inpatient evaluations. As noted above, a judge has virtually no discretion over whether to order a competency exam, as most orders for competency exams are triggered by an attorney's motion. It is not surprising, however, that many of the defendants who are referred for a competency exam to the state hospital are determined to be competent. First, as noted above, a competency exam measures the defendant's "present" ability, not the defendant's mental status at the time of the crime, or even at the time the request for a competence exam was made. The competency status of a defendant can change at any given time. For example, a defendant who is not taking his or her medicine may be unable to understand the nature of court proceedings; however, once the defendant is given access to the appropriate medication or otherwise treated, he or she may be found competent.

Second, Judicial believes that the higher rate of competency findings arising when the defendant is in inpatient care is generally a result of better care while in the facility. CMHIP provides more appropriate medication than is available in jails and has more ability to maintain compliance with medication orders. CMHIP is a more appropriate setting for evaluations and is better equipped to address the mental health needs of defendants than jails.

Third, the professionals at CMHIP are better trained in mental health, are more apt at detecting malingering, and have more opportunity to observe and monitor defendants undergoing competency evaluations than the staff at jails.

Finally, the data do not show whether the order and evaluation are for a first or second competency evaluation. Any party can request a second competency evaluation, and it must be ordered by the court. It is possible second requests for evaluation are less common after the first evaluation is conducted in an inpatient setting. This is something a study group could evaluate.

- b. Did the Department share this data with judges or discuss it at the most recent annual judge conference?

The summary data was provided to Chief Judges in May, 2015. The topic has been discussed in two Chief Judges' meetings. This topic was not discussed at the Judicial Conference. The Department of Behavioral Health and their attorneys indicated an interest in training on the topic. However, at the time of their request, the deadline for submitting training proposals for the 2015 Judicial Conference had expired and the agenda for the conference had been finalized.

15. What training, information, or tools are available to judges who make decisions concerning a defendant's competency?

Decisions about whether to grant the motion for evaluation are controlled by statute. Please see the response to question 12. Judges have not been provided tools for assessing the appropriateness of inpatient versus outpatient competency evaluations. After receiving the competency evaluation(s), the judge will consider evidence presented by the parties and can hold a hearing to determine whether the defendant is competent to proceed.

16. What documentation do the courts retain and share related to the results of a competency evaluation? For example, would a judge be aware that a defendant has previously been evaluated for competency? If a defendant receives competency restoration services and is subsequently convicted and sentenced to the Department of Corrections (DOC), do the courts share any information related to the court-ordered competency evaluation or restoration services with DOC to facilitate treatment planning?

Upon completion of a competency evaluation, a report is submitted to the court and the court provides copies of the report to the defense and prosecution. The report is otherwise sealed and is not released without a court order. If a defendant has been previously evaluated in another case, the judge would only know of the previous evaluation if that information is included in the current evaluation or presented by one of the parties. This information is not provided to DOC after sentencing.

17. Please clarify the court process(es) that may occur when a defendant has been received court-ordered restoration services and competence has not been restored (*i.e.*, they are determined to be "permanently incompetent to proceed"). What happens to the pending criminal charge(s)?

Pursuant to section 16-8.5-116 (2), C.R.S. (2015), when the court finds that there is a substantial probability that the defendant will not be restored to competency within the

foreseeable future, the court may order the release of the defendant from commitment through one or more of the following four options: 1) upon motion of the district attorney or the defense, the court may terminate the proceeding; 2) the court may release the defendant on bond with conditions; 3) the court or a party may commence a civil proceeding for involuntary commitment if the defendant meets the requirements for such commitment; and/or 4) the court or a party may initiate an action under article 10.5 of title 27 to restrict the rights of an individual with developmental disabilities who is eligible for services.

**9:50-10:05 RATES PAID FOR MENTAL HEALTH EVALUATIONS**

18. Should the party requesting a second competency evaluation or a second sanity evaluation be required to pay the costs of such an evaluation, regardless of whether it is conducted by the Department of Human Services or by a private professional?

Yes, the party requesting the second evaluation should pay the cost. The request for a second evaluation may be used as a delay tactic. If the second evaluation is free to the requestor, there will be no disincentive for asking for a second evaluation in every case.

19. If either the prosecution or the defense requests a second competency or a second sanity evaluation, should that party be required to provide the resulting report to the court?

All court ordered competency exams are returned to the court directly and are distributed to the parties by the court clerk. Section 16-8.5-103 (4), C.R.S. (2015) states: "If a party requests a second evaluation, any pending requests for a hearing shall be continued until the receipt of the second evaluation report. The report of the expert conducting the second evaluation shall be completed and filed with the court within sixty-three days after the court order allowing the second evaluation, unless the time period is extended by the court for good cause. If the second evaluation is requested by the court, it shall be paid for by the court."

As to sanity evaluations, section 16-8-108 (2), C.R.S. (2015) provides: "a copy of any report of examination of the defendant made at the instance of the defense shall be furnished to the prosecution a reasonable time in advance of trial." The statute is silent on whether the examination must be provided to *the court*.



20. Should the Department of Human Services consider taking actions to improve the quality and consistency of competency evaluations to reduce the number of requests for a second competency evaluation?

The Department of Human Services is in the best position to assess the quality of its mental health evaluators. The court relies upon the Department's expertise to provide quality evaluators. Judges have not noted a lack of confidence in the initial evaluation. It should be noted that the request for a second competency evaluation may be part of a larger legal strategy in the case. Parties may have incentive to use a motion such as this to slow the progress of a case. The quality of the initial assessment may not always be a driving factor in requests for second evaluations.

21. Should CJD 12-03 differentiate the maximum hourly rates paid for sanity, competency, and other types of mental health evaluations?

The CJD differentiates a maximum hourly rate for sanity and competency evaluations (\$150 per hour) versus other types of mental health evaluations (\$100 per hour). It does not differentiate between sanity and competency evaluations. The Department would support allowing the higher fee only for sanity evaluation since it requires a higher level of certification than does competency. Colorado Revised Statutes sets the credentials required for sanity and competency evaluators. Sanity evaluations must be conducted by Board Certified Forensic Psychologists or Psychiatrists, while competency exams can be performed by psychologists trained in forensic evaluation.

22. Should CJD 12-03 differentiate the presumptive cap on total fees (and thus the allowable number of hours for which an hourly fee will be paid) for sanity, competency, and other types of mental health evaluations?

Advocates for the forensic evaluators suggest that a more appropriate cap would differentiate sanity from competency evaluations. They suggest that most competency exams can be conducted in less than 8 hours while sanity almost always requires more than the allowable 10 hours, closer to 30 hours for completion. Judicial's data system does not differentiate between sanity and competency evaluations. However, the combined data show that 79 percent of all evaluations are completed within the 10 hours allowed. The trial judge is allowed to waive the cap for more complex evaluations.

23. Should the maximum number of paid hours for travel be increased for certain geographic areas of the state?

The CJD allows for 6 hours round trip which should be sufficient in the vast majority of cases. Judges in more remote areas can waive the limitation to account for longer travel times.

24. Should CJD 12-03 limit the number of hours that an evaluator is paid to wait when the circumstances are beyond his or her control (*i.e.*, waiting to appear in court or waiting to see a defendant in custody)?

Evaluators are paid for in court waiting time at 50 percent of the hourly fee. Staff indicate that current contractors have not raised this as an issue.

25. Should judges be required to set a hearing or to allow *ex parte* presentation of information during such hearing when the defense or the prosecution requests approval to exceed the limits established by CJD 12-03?

The decision to set a hearing is best left to the judge in the individual case. If the judge needs additional justification, he or she is free to set a hearing on the matter. If confidential information needs to be exchanged, the judge may set an in camera review.

26. The Committee requested that the Department and various agencies provide information about Judicial Branch expenditures of state funds in FY 2014-15 for compensation of expert witnesses and professionals who conduct mental health examinations or evaluations of juveniles or adults concerning either sanity or competency. Please expand upon the information summarized on page 30 of the JBC Staff Budget Briefing dated November 18, 2015, including more detail about the specific types of evaluations.

At this time, the Department accounting system does not differentiate between competency and sanity evaluations – each are paid the same rate and have the same maximums and other payment provisions. As such, it would require manually reviewing each invoice to determine whether the charge was for a competency or sanity evaluation. The Department did an invoice sampling of 125 invoices and found that 2.5 percent of the invoices were for sanity evaluations. Applying this percentage to the amount shown in the JBC Budget Briefing (\$226,502), the Department estimates \$5,663 was paid for sanity evaluations and \$220,839 was paid for competency evaluations.

**10:05-10:15 OTHER**

27. Describe how the Department counts and tracks marijuana and other drug-related case filings.

The numbers of felony and misdemeanor drug case filings are reported annually in the Department’s Annual Statistical Report. Though we do not track filings related to any particular substance as a matter of course, cases filed under statutes specific to a given substance can be reported on by request.

28. What impacts has the passage of Amendment 64 had on case filings? For example, are certain types of drug-related crimes decreasing while impaired driving cases (related to marijuana use) are increasing?

While we cannot attribute changes to any specific measure or policy change, it is clear that marijuana-related offenses have declined markedly since Amendment 64 was enacted in December of 2012. The table below represents the number of cases filed with at least one charge under the statute specific to offenses related to marijuana – section 18-18-406, C.R.S. (2015) – since FY 2010.

Fiscal Year Case Filed	Number of New Cases with a Marijuana Offense under 18-18-406, C.R.S. <sup>1</sup>
2010	10,676
2011	10,014
2012	10,843
2013	7,366
2014	4,040
2015	2,621
<i>1. Includes charges in both felony and misdemeanor case filings</i>	

The table below shows the number of filings for all felony and misdemeanor drug cases, including marijuana-related filings, as well as DUI/DWAI Cases since FY 2010.

Case Type	Fiscal Year Case Filed						% Change FY 2010 to FY 2015
	2010	2011	2012	2013	2014	2015	
Felony Drug Cases	8,176	7,472	7,439	8,685	9,394	10,835	33%
Misdemeanor Drug Cases	9,111	8,565	9,422	6,638	4,030	3,947	-57%
DUI/DWAI Cases	25,224	22,961	21,783	21,978	21,790	20,956	-17%

Note: Denver County Court filings are maintained by Denver County Court and are not represented in this data as they are not accessible in the state case management system.

Generally, misdemeanor drug cases have steadily decreased since FY 2010. This decline has occurred in the context of all misdemeanor filings decreasing.

Similarly, DUI and DWAI filings in county court have been decreasing, from 25,224 in FY 2010 to 20,956 in FY 2015. The most significant recent decline occurred in FY 2011 followed by relatively stable filing numbers for DUI offenses since FY 2012. We are unable to differentiate DUI cases that involve alcohol versus marijuana or other drugs as the charging statutes do not distinguish between these substances. This information is only maintained in the physical case file.

Unlike misdemeanor drug and DUI filings, felony drug cases have increased by 33 percent since FY 2010. This increase follows two years of declining felony drug filings. This trend is also seen in overall felony filings, which are up 15 percent since FY 2012 after multi-year declines.

29. Discuss the Department's ability and any plans to track the impact of H.B. 15-1043 (Felony offense for repeat DUI offenders). Can the Department differentiate felony DUI case filings that involve alcohol, marijuana, other drugs, or some combination?

In response to the passage of H.B. 15-1043, a new felony case type has been created for felony DUI cases in the Department's case management system (CMS). The Department plans to report the number of felony DUI filings in the Annual Statistical Report beginning with the FY 2016 report. In addition, any cases in which the felony DUI statute has been charged can be accessed via our data extraction tool for ad hoc reports and requests. According to data extracted from the CMS, there have been 225 felony DUI cases filed statewide since August 5, 2015, the effective date of the new law. Additionally, 14 convictions and 5 deferred sentences have been entered for a felony DUI violation.

However, section 42-4-1301, C.R.S. (2015), which applies to DUIs generally and felony DUIs, states: “A person who drives a motor vehicle or vehicle under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, commits driving under the influence.” Because the statute does not differentiate the substance causing the DUI, it is not possible for the Department to differentiate felony DUI case filings by substance.

30. How does the Department track case filings related to cyber-crimes? Is it possible to use court case filing data to evaluate whether recent changes in the State's cyber-crime enforcement tools and resources are causing an increase in the number of such crimes prosecuted?

The Department’s data is unable to isolate cyber-crime filings broadly as the method used to commit a criminal act is not information stored in the Department’s CMS. However, the Department is able to track case filings when the means for committing the criminal act are specifically delineated in the charging statute. We could locate only two statutes that identify electronic commission of the act as the basis for the crime: sections 18-7-107 and 108, C.R.S. (2015). Both statutes classify posting of private images on social media or any website under defined circumstances as a criminal act. Since these laws went into effect on July 1, 2014, there have been 59 cases filed with at least one charge under these statutory sections.

31. What is the current occupancy of the Carr Center? What is the vacant capacity of the Carr Center? Is the occupancy of the building tracking to what was planned when the building was constructed?

The Carr Center currently has approximately 1,277 occupants. As for the remaining vacancy within the Carr Center, there is approximately 1,308 RSF (rentable square feet) remaining in the entire facility. The remaining rentable space located on the second floor would be best suited for a storage room or possibly a conference room, as it does not have any windows, or ability to bring in natural light. The original projections intended to accommodate growth through 2030. Unfortunately, we will be occupying nearly 100 percent of the building’s expansion capabilities by early 2016. Several factors this year have contributed to additional growth in occupancy, including the following:

- The Department of Law expanded their existing space to capture some of the existing space that Attorney Regulation previously held, but no longer required. This area constitutes approximately 6,154 RSF.

- The State Court Administrator's Office (SCAO) added additional conference rooms and offices on the second floor. This area constitutes approximately 3,491 RSF.
- SCAO will be expanding to absorb the area currently occupied by the State Internet Portal Authority (SIPA) on the 11<sup>th</sup> floor. This area constitutes approximately 6,012 RSF.
- The Office of the Respondent Parents' Counsel will become a new tenant, and will occupy 3,510 RSF on the 4<sup>th</sup> floor.
- SIPA will relocate to the 4<sup>th</sup> floor, and will occupy approximately 6,200 RSF.
- The Office of the Child Protection Ombudsman will become a new tenant, and will occupy new space on the 4<sup>th</sup> floor (the actual RSF will need to be verified).
- The building will add an additional conference room on the 4<sup>th</sup> floor for all tenants to use (the actual RSF will need to be verified).
- ADC will expand to absorb existing shell space on the 3<sup>rd</sup> floor. This area constitutes approximately 3,800 RSF.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

32. 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.

- Senate Bill 13-123 CONCERNING PROVISIONS THAT IMPROVE THE REINTEGRATION OPPORTUNITIES FOR PERSONS INVOLVED IN THE CRIMINAL JUSTICE SYSTEM. Senate Bill 13-123 requires courts to seal individual charges in a criminal case that were dismissed. Previously, sealing dismissed charges was limited to cases where all charges were dismissed. The current Judicial IT systems can only seal charges when every charge in the case is ordered sealed. Partial sealing of charges requires programming to both the new JPOD system and the old ICON system. Until programming to JPOD and ICON is complete, the Department has developed a temporary method to prevent sealed charges from being made public.
- House Bill 02-1046, CONCERNING THE RELOCATION OF CERTAIN EXISTING CRIMINAL SENTENCING STATUTES TO A NEW ARTICLE IN TITLE 18, COLORADO REVISED STATUTES. House Bill 02-1046 requires defendants to pay interest on unpaid restitution at a rate of 12 percent per year. Interest is owed from the date of the restitution order. The Judicial Department will automate calculation of interest on restitution by December 2015 in most cases. Interest calculations on cases where defendants in the same criminal incident owe restitution jointly and severally to a victim will be automated by June 2018. The Judicial Department is coordinating this effort with other entities with which we share data and processes.

- House Bill 14-1061, CONCERNING SENTENCES IMPOSING MONETARY PAYMENTS IN CRIMINAL ACTIONS, AND, IN CONNECTION THEREWITH, ELIMINATING PRISON SENTENCES FOR PERSONS WHO ARE UNABLE TO PAY CRIMINAL MONETARY PENALTIES. House Bill 14-1061 eliminated the Failure to Pay Warrant as of May 9, 2014. The Judicial Department Legal unit is currently working with a small number of judges who have ordered warrants for defendants who have failed to pay fees and fines since the legislation, to determine the legality of these orders.

33. Please provide a detailed description of all program hotlines administered by the Department, including:

- a. The purpose of the hotline;
- b. Number of FTE allocated to the hotline;
- c. The line item through which the hotline is funded; and
- d. All outcome data used to determine the effectiveness of the hotline.

The Judicial Department does not operate any program hotlines.

34. Describe the Department's experience with the implementation of the new CORE accounting system.

- a. How has the implementation improved business processes in the Department?

CORE has NOT had a positive impact on business processes. While there are some business enhancement features in CORE, the system is, overall, unnecessarily difficult. In fact, because of some limitations in CORE, Departments have had to use “work around” procedures in order to process specific types of accounting transactions. It is also important to note that the State lost some “budget control” system functionality in the transition from COFRS to CORE. Accordingly, Department staff spend more time reviewing CORE transactions than they did COFRS transactions.

- b. What challenges has the Department experienced since implementation and how have they been resolved (i.e. training, processes, reports, payroll)?

#### Training

The training that was provided by the State and the vendor were not adequate. Accordingly, Department staff had to learn the basics of the system (via “trial and error”) and then create detailed training material for use in training district personnel. Hundreds of hours have been spent developing and delivering training on CORE and

InfoAdvantage within our Department. As we continue to learn and/or as the system is changed (by the Executive Branch), we update and/or create additional training material.

### Reports

Initially, the reports in InfoAdvantage were challenging to interpret and had various issues such as incorrect math. Accordingly, the reports could not be relied upon to be complete and accurate. In the spring of 2015, staff in the State Controller's Office began the process of reviewing and correcting the reports; the reports have improved.

### Payroll

The interface of payroll data into CORE has been and continues to be a significant issue for the State. In fact, as of 11/19/15, the expenditures for only one bi-weekly payroll have posted in CORE for FY16. A majority of payroll expenditures are incurred in the monthly cycles, none of which (July – Oct) have posted in CORE. In addition, CPPS is no longer generating the payroll expenditure reports that it produced prior to CORE. Accordingly, budget monitoring and financial reporting is very difficult.

- c. What impact have these challenges had on the Department's access to funding streams?

Because of the payroll issues described above, the Department cannot finalize expenditures related to grants; thus, we cannot complete the corresponding financial reports and revenue draws. This could jeopardize future grant awards.

- d. How has the implementation of CORE affected staff workload?

Overall, CORE has negatively impacted staff productivity due to the following: (1) system connectivity continues to be a daily issue, (2) transactional processing is more tedious and difficult than it needs to be, (3) the system is not user-friendly with regard to reviewing transactions for approval, (4) the on-going discovery of system glitches, (5) budget monitoring continues to be difficult because of the payroll and reporting issues described above, and (6) fiscal year-end closing changed from being a two-month process to being a four-month process.

- e. Do you anticipate that CORE implementation will result in the need for a permanent increase in staff? If so, indicate whether the Department is requesting additional funding for FY 2016-17 to address it.



Assuming that the State will continue to address and resolve issues, the Department is hopeful that the negative impact on staff workload will reverse. Thus, we are not seeking funding for additional staff at this time.

35. If the Department receives federal funds of any type, please provide a detailed description of any federal 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 2015-16.

The Judicial Department is not aware of any sanctions that may be issued against the Department by the federal government.

36. Does the Department have any outstanding high priority recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated October 2015 (link below)? What is the Department doing to resolve the outstanding high priority recommendations?

[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/\\$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations,%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations,%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf)

The Judicial Department has no outstanding high priority recommendations.

37. Is the Department spending money on public awareness campaigns related to marijuana? How is the Department working with other state departments to coordinate the campaigns?

The Judicial Department is not spending money on public awareness campaigns related to marijuana.

38. Based on the Department's most recent available record, what is the FTE vacancy rate by division? What is the date of the report?

<b>Judicial Department Vacancy Rate as of July 31, 2015</b>	
<b>Program</b>	<b>Vacancy Rate</b>
Overall Judicial Department	5.02%
Appellate Courts	6.55%
State Court Administrator's Office	7.24%
Trial Court	4.39%
Probation	5.32%

39. For FY 2014-15, do any line items in your Department have reversions? If so, which line items, which programs within each line item, and for what amounts (by fund source)? What are the reasons for each reversion? Do you anticipate any reversions in FY 2015-16? If yes, in which programs and line items do you anticipate these reversions occurring? How much and in which fund sources do you anticipate the reversion being?

**FY2015 Summary of Over/Under Expenditures  
REVERSIONS**

Line Item	Amount			Reason
	Total	GF	CF	
<b>CENTRAL ADMINISTRATION</b>				
Health/Life/Dental	(293,208)		(293,208)	Unused spending authority
Short-Term Disability	(20,319)		(20,319)	Unused spending authority
Salary Survey	(349,438)		(349,438)	Unused spending authority
Merit	(106,558)		(106,558)	Unused spending authority
AED	(404,007)		(404,007)	Unused spending authority
SAED	(438,009)		(438,009)	Unused spending authority
<b>CENTRAL ADMIN PROGRAMS</b>				
Victim Assistance	(782,484)		(782,484)	Insufficient revenue
Victim Compensation	(67,186)		(67,186)	Insufficient revenue
Collections Program	(242,091)		(242,091)	Grants not matching spending authority
Problem Solving Court	(21,127)		(21,127)	Program Underspent
Language Interpreters	(19,124)	(19,124)		Program Underspent
Courthouse Capital	(74,551)		(74,551)	Projects did not use all appropriated capital outlay
Courthouse Security	(1,146,777)		(1,146,777)	Calendar year program - didn't use all spending authority
Family Violence	(19,937)		(19,937)	Program grants not all spent by fiscal year end
Judicial Education	(13,111)		(13,111)	Program Underspent
Judicial Performance	(131,663)		(131,663)	Insufficient revenue
Restorative Justice	(272,056)	(272,056)		Program Underspent
Adult Diversion	(354,094)	(354,094)		Program Underspent
Family Friendly	(128,210)		(128,210)	Insufficient revenue to use all spending authority
Child Support Enforcement	(5,495)	(5,495)		Difference in contract amount vs. true cost
<b>TRIAL COURT</b>				
Trial Court Programs	(51,557)		(51,557)	Underspent
DA Mandated	(162,113)		(162,113)	Underspent
Federal Funds and other grants	(812,217)		(812,217)	Grant receipts didn't match spending authority
<b>PROBATION AND RELATED SERVICES</b>				
Personal Services	(1,166,747)		(1,166,747)	Underspent
Offender Treatment and Svcs.	(2,133,081)		(2,133,081)	Underspent reappropriated funds from other departments
Reimbursement for Law Enforce	(101,101)		(101,101)	Underspent
Federal Funds and other grants	(379,357)		(379,357)	Grant receipts didn't match spending authority
<b>RALPH L CARR COLORADO JUDICIAL CENTER:</b>				
Personal Services	(79,240)		(79,240)	Underspent
Operating	(237,756)		(237,756)	Underspent

The Judicial Department anticipates having some reversions in FY 2015-16; however, it is too early in the fiscal year to determine from which line items and programs these will occur or

the amount of the reversions.

40. Are you expecting an increase in federal funding with the passage of the FFY 2015-16 federal budget? If yes, in which programs and what is the match requirement for each of the programs?

The Judicial Department is not expecting an increase in federal funding with the passage of the FY 2015-16 federal budget.

41. For FY 2014-15, did the Judicial Branch exercise a transfer between lines that is allowable under state statute? If yes, between which line items and programs did this transfer occur? What is the amount of each transfer by fund source between programs and/or line items? Do you anticipate transfers between line items and programs for FY 2015-16? If yes, between which line items/programs and for how much (by fund source)?

FY 2015 Year- End Transfers				
FROM Code	Name	TO Code	Name	AMOUNT
JGIBE2000	OCR	JGHLV3000	Court Appointed Counsel, ADC	300,000
JGL100310	Legal Services	JGCPEJUDG	Senior Judge Program	17,418
JGTCPERS	Trial Court Programs	JGCWAMAND	Court Costs, Jury Costs, CAC	321,903
JGIBE2000	OCR	JGHLV3000	Court Appointed Counsel, ADC	340,000
<b>Subtotal</b>				<b>979,321</b>
<b>ANTICIPATED</b>				
<b>Subtotal</b>				<b>-</b>
<b>Subtotal</b>				<b>-</b>
<b>Remaining Transfer Authority following New +Anticipated+ Done</b>				<b>20,679</b>

The Judicial Department anticipates having some transfers between line items and programs in FY 2015-16; however, it is too early in the fiscal year to determine from which line items and programs or the amount of the transfers.

**JOINT BUDGET COMMITTEE HEARING**



**APPEARING ON BEHALF OF THE AGENCY:**

**DOUGLAS K. WILSON**  
*COLORADO STATE PUBLIC DEFENDER*

**KAREN S. PORTER**  
*Chief Financial Officer*

**Wednesday, December 02, 2015**

**JUDICIAL BRANCH  
FY 2016-17 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, December 02, 2015  
9:00 am - Noon**

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**10:30 – 10:55 AM OFFICE OF THE STATE PUBLIC DEFENDER**

**INTRODUCTIONS AND OPENING COMMENTS, AND DISCUSSION OF BUDGET PRIORITIES**

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**QUESTIONS FOR THE OSPD**

Court-ordered Competency Evaluations and Services

- 1. The JBC Staff Budget Briefing document dated November 18, 2015, lists a number of options to potentially improve the process of handling mental competency issues in criminal cases (see pages 25 and 26). Please discuss whether the OSPD would support any of the options, and offer any other suggestions that should be considered.**

*“Competent to proceed” means that the defendant does not have a mental disability or developmental disability that prevents the defendant from having sufficient present ability to consult with the defendant’s lawyer with a reasonable degree of rational understanding in order to assist in the defense or prevents the defendant from having a rational and factual understanding of the criminal proceedings, per C.R.S. 16-8.5-101.*

**Judicial Discretion to Order Inpatient Evaluations**

*When we raise the issue of a client’s competency to proceed, the client is often in custody due to his or her inability to post bond and the court has refused to release the client on a personal recognizance bond pursuant to 16-8.5-105.*

*For those clients, there are two options for competency evaluations: 1) transport to CMHIP and evaluation at CMHIP; or 2) evaluation in the county jail by a contract or staff doctor sent by CMHIP. Availability of day-to-day mental health services varies greatly across Colorado’s 64 county jails. Some jails have few or no resources to treat an acutely mentally ill detainee. Courts often determine that CMHIP is the most appropriate setting for a competency evaluation.*

*The proposal here is that a trial court could not order an inpatient competency evaluation at CMHIP unless the client met the standard for an emergency procedure under the civil commitment statutes (C.R.S. 27-65-105(1)(a)(I)). As such a client could only be evaluated for competency at CMHIP if they were an imminent danger to themselves, others or gravely disabled. The legal criteria for a non-emergency civil commitment is outlined in C.R.S. 27-65-106(1) and states that any person alleged to have a mental illness and, as a result of the mental illness, to be a danger to*

*others or to himself or herself or to be gravely disabled may be given an evaluation of his or her condition under a court order pursuant to this section.*

*The proposal here would provide more due process to civil commitments than for criminal competency evaluations as this proposal would compel a trial court to improperly apply a civil standard to determine the location of a competency evaluation. The location of a competency evaluation is a determination allocated to the trial court, pursuant to section 16-8.5-105 (1)(a), C.R.S. What follows is the current process for raising the question of a defendant's competency to proceed. This process was revised and implemented by the General Assembly in 2008:*

*If either the defense or the prosecution has reason to believe that the defendant is incompetent to proceed, either party may file a motion in advance of the commencement of the particular proceeding. A motion to determine competency shall be in writing and contain a certificate of counsel stating that the motion is based on a good faith doubt that the defendant is competent to proceed. The motion shall set forth the specific facts that have formed the basis for the motion. The motion shall be sealed by the court. If the motion is made by the prosecution, the prosecution shall provide to the defense a copy of the motion. If the motion is made by the defense, the defense shall provide to the prosecution notice of the filing of the motion at the time of filing, and if the defense requests a hearing, the defense shall provide the motion to the prosecution at the time the hearing is requested. The motion may be filed after the commencement of the proceeding if, for good cause shown, the mental disability or developmental disability of the defendant was not known or apparent before the commencement of the proceeding. C.R.S. 16-8.5-102.*

*As a result of the 2008 legislative changes, filing a request for a competency evaluation is even more challenging and requires judicial oversight not the Department of Human Services.*

*This proposal assumes incorrectly that the Executive Director of DHS would be in a superior position to make an initial competency determination as compared to a trial judge. The court is in a better position to make a timely determination based on the court's own observations of the defendant and based on information provided by the prosecution and/or the defense.*

### **Court Payments for Inpatient Competency Evaluation Services**

*We have similar concerns as those raised in the Judicial Branch Briefing, in that increasing the amount paid by the courts may result in the courts making inappropriate decision about competency evaluations based on financial constraints. In order to avoid this situation, we suggest that a representative amount of current expenditures be transferred to the Department of Human Resources budget to support the cost of conducting competency evaluations.*

### **Outpatient Competency Evaluation Resources**

*Outpatient competency evaluations, as used in this section, would appear to cover only evaluations conducted outside of CMHIP. Whether statutory or rule changes were implemented or not, without releasing the lower risk clients on personal recognizance bonds pursuant to C.R.S. 16-8.5-105 to allow individuals or entities to conduct competency evaluations and restoration in the community setting, all that will occur is an increase in incompetent clients continuing to be housed in county jails.*

*Therefore, it is OSPD's position that DHS should work with key stakeholders in the criminal justice system including the judiciary and community health centers to encourage the use of*



*statutorily authorized personal recognizance bonds so that out of custody evaluations and restorations could occur in the community.*

### **Educating Judicial Officers**

*While educating judicial officers on any topic would appear to be a good idea, the specific reference to monitoring the outcomes of the court ordered competency evaluations by judge seems to imply that individual judges will be denounced for ordering any competency evaluation which results in a competency finding. The implication being that initial competency finding and the resulting evaluation were improperly ordered. This would have a chilling effect on lawyers' performing their ethical duty to raise competency issues and on the courts performing their legal obligation to order competency evaluations in appropriate cases.*

### **Judicial Discretion to Determine Location for a Competency Evaluation**

*We agree that it is best practice for both that competency evaluations be performed in the least restrictive environment for the level of risk the client presents. This decision should be a bond decision based upon a pre-trial release scoring instrument, using the same factors as any other case. Many jurisdictions presently use the Colorado Pretrial Assessment Tool (CPAT) or similar risk assessment to determine the clients' eligibility to be released into the community on a personal recognizance bond. Unfortunately, many of the judiciary do not follow the mandates of the bail reform that was passed by the Legislature in 2013. C.R.S. 16-4-101, et.seq.*

### **Rates Paid for Mental Health Evaluations**

- 2. Should the party requesting a second competency evaluation or a second sanity evaluation be required to pay the costs of such an evaluation, regardless of whether it is conducted by the Department of Human Services or by a private professional?**

*Our answer to this question is a solid "no," for two main reasons. Currently, the second competency evaluation in an adult criminal case is paid for by the Court.*

- First, not only will shifting these costs to other agencies not have a cost savings or even a cost neutral result, we strongly suspect that expenditures in this area will actually increase. For the reasons detailed in the next item, other agencies paying for this type of evaluation will inevitably pay more and face more delays than are currently being experienced by the Court. These higher costs will be exhibited even more so in rural areas of our state.*
- Second, confidence in the quality and timeliness of mental health evaluations is one of the main keys to a fair and just judicial system. By the issuance of a court order, the Judicial Department is the best position to compel the achievement of a quality mental health evaluation that is performed in a cost-efficient and timely manner. Additionally, the Department of Human Services comes from a position of strength in that they have economies of scale in their evaluation services that no other agency can provide. These strengths are even more indispensable for evaluations that need to be performed in rural areas.*

- 3. If either the prosecution or the defense requests a second competency or a second sanity evaluation, should that party be required to provide the resulting report to the court?**

*The court orders the second evaluation. As a result the evaluation already goes to the court.*

- 4. Should the Department of Human Services consider taking actions to improve the quality and consistency of competency evaluations to reduce the number of requests for a second competency evaluation?**

*Yes. The lack of a quality first competency evaluation can be a driver of a request for a second competency evaluation. One way the quality of competency evaluations can be improved is by raising the limit on the maximum number of hours, thereby removing the unintended disincentive that exists to conduct hurried, non-comprehensive and low quality evaluations.*

- 5. Should CJD 12-03 differentiate the maximum hourly rates paid for sanity, competency, and other types of mental health evaluations?**

*CJD 12-03, as amended July 1, 2015, increased compensation for some of the experts and evaluators. We would expect those that did not receive an increase but are mentioned in CJD 12-03 to challenge their inability to receive an hourly fee of \$ 150 per hours. We would support increasing the maximum for all experts and evaluators mentioned in CJD 12-03 to \$ 150 per hour.*

- 6. Should CJD 12-03 differentiate the presumptive cap on total fees (and thus the allowable number of hours for which an hourly fee will be paid) for sanity, competency, and other types of mental health evaluations?**

*Yes. As currently written, the maximum fee limitations in CJD 12-03 are not adequate to attract a qualified professional to spend the number of hours required to provide an evaluation of dependable quality for the typical client. Current funding processes and policies have inadvertently given rise to evaluators who have a disincentive to complete thorough evaluations, since judges will often not authorize amounts over the maximum, even when there are a massive number of records to review. Or, the judge may authorize the evaluation but not time needed for preparation or for the testimony.*

*The maximums that exist assume that ten hours is a realistic amount of time to provide an evaluation. This ten hours is quickly consumed by time spent interviewing the client (who is usually in custody), review records, interviewing family members, interviewing the lawyer and other relevant witnesses, reading discovery, and reading through all existing relevant mental health records. Some of our clients have thousands of pages of records to review, in addition to the interviews that need to be performed. If the court should refuse to grant an exception to the existing maximums to an amount that is reasonable, the court is potentially left with an incomplete and inaccurate picture of the client.*

*Furthermore five hours is not an adequate amount of time to prepare to testify and to provide testimony. This process requires a review of records in preparation for the testimony and preparing testimony with the party who subpoenas the evaluator.*

*In addition to these caps, there is also a cap of six hours for travel and wait time. Travel time alone, in good weather and traffic conditions, could be 10-15 hours if the client is in non-metro locations such*

*as Cortez, Craig or Lamar. Wait time is beyond the control of the agency requesting the evaluation and the evaluator. Instead, this time is controlled by the timeliness of the court proceedings and any access to clients in facilities. The timeliness of court proceedings is recognized by the statement in the CJD(I)(G), which states, "During court proceedings, expert witnesses should be accommodated, to the extent possible, to minimize waiting time."*

**7. Should the maximum number of paid hours for travel be increased for certain geographic areas of the state?**

*Yes. In addition to the overall caps, there is also a cap of six hours for travel and wait time. Travel time alone, in good weather and traffic conditions, could be 10-15 hours if the client is in non-metro locations such as Cortez, Craig or Lamar. Wait time is beyond the control of the agency requesting the evaluation and the evaluator. Instead, this time is controlled by the timeliness of the court proceedings and any access to clients in facilities. The timeliness of court proceedings is recognized by the statement in the CJD(I)(G), which states, "During court proceedings, expert witnesses should be accommodated, to the extent possible, to minimize waiting time."*

**8. Should CJD 12-03 limit the number of hours that an evaluator is paid to wait when the circumstances are beyond his or her control (i.e., waiting to appear in court or waiting to see a defendant in custody)?**

*No. Wait time is beyond the control of the agency requesting the evaluation and the evaluator. Instead, this time is controlled by the timeliness of the court proceedings and any access to clients in facilities. The timeliness of court proceedings is recognized by the statement in the CJD(I)(G), which states, "During court proceedings, expert witnesses should be accommodated, to the extent possible, to minimize waiting time."*

**9. Should judges be required to set a hearing or to allow *ex parte* presentation of information during such hearing when the defense or the prosecution requests approval to exceed the limits established by CJD 12-03?**

*Yes. There are potential problems with language included in this CJD. As currently written, the CJD allows judges to grant, deny, or set a hearing on any motion to exceed the hourly rate. What this translates to is that the judge may deny a motion to exceed without the opportunity for a hearing on the motion. Also, the CJD should include a mechanism for *ex parte* presentation of information justifying a greater number of hours. A lawyer should not be compelled to disclose privileged information in front of opposing counsel when compelled to explain a deviation from the maximums.*

**10. The Committee requested that the Department and various agencies provide information about Judicial Branch expenditures of state funds in FY 2014-15 for compensation of expert witnesses and professionals who conduct mental health examinations or evaluations of juveniles or adults concerning either sanity or competency. Please expand upon the information summarized on page 30 of the JBC Staff Budget Briefing dated November 18, 2015, including more detail about the specific types of evaluations.**

We do not track any additional breakout of the specific types of evaluations beyond what has already been provided.

**Other Issues**

**11. Please discuss and quantify the impact of H.B. 13-1210 (Right to Legal Counsel in Plea Negotiations) on the OSPD's caseload and workload.**

*H.B. 13-1210, commonly referred to as “Rothgery,” removed the statutory requirement that required an indigent person charged with a misdemeanor or other minor offense to meet with the prosecuting attorney for plea negotiations before legal counsel is appointed. This legislation went into effect on January 01, 2014. The OSPD carefully tracked caseload and workload data to determine where best to place staffing provided by the legislation. Annual caseload tied to this legislation was originally estimated to be 20,000, but the most recent numbers indicate that the impact was just under 18,000 cases, which allowed us to return 6 FTE and related funding originally received through this bill.*

*Below is a table showing the agency’s Misdemeanor closed caseload prior to the implementation of Rothgery in FY 2012-13 compared to FY2014-15.*

	2013 Closed	2013 Res Alloc	2015 Closed	2015 Res Alloc	% increase
Misdemeanor 1	9,541	54.6	12,677	73.1	33%
Misdemeanor Sex Assaults	428	2.5	474	2.7	11%
Misdemeanor 2	6,240	19.6	4,129	13.1	-34%
Misdemeanor 3/Traffic/PO	12,212	39.3	22,064	70.8	81%
Subtotal Misd Trial and PreTrial	28,421	116.0	39,344	159.8	38%
Subtotal Misd Other Proceedings **	16,053	9.1	26,687	13.6	66%
<b>Total Misdemeanor</b>	<b>44,474</b>	<b>125.1</b>	<b>66,031</b>	<b>173.3</b>	<b>48%</b>

*\*\* Misdemeanor advisement/bond hearings are not included. We began tracking this distinct set of hearings in November of 2014. Accordingly, the 12,231 misdemeanor advisement/bond hearings for FY15 represents only a partial year.*

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**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

**12. Provide a list of any legislation that the OSPD has: (a) not implemented or (b) partially implemented. Explain why the OSPD has not implemented or has only partially implemented the legislation on this list.**

*All legislation has been fully implemented.*

**13. Describe the OSPD's experience with the implementation of the new CORE accounting system.**

- a. How has the implementation improved business processes in the OSPD?**
- b. What challenges has the OSPD experienced since implementation and how have they been resolved (i.e. training, processes, reports, payroll)?**
- c. What impact have these challenges had on the OSPD’s access to funding streams?**

- d. How has the implementation of CORE affected staff workload?**
- e. Do you anticipate that CORE implementation will result in the need for a permanent increase in staff? If so, indicate whether the OSPD is requesting additional funding for FY 2016-17 to address it.**

a. *We have viewed the implementation of CORE as an opportunity to reevaluate existing processes. The CORE system provides for the retention of data online indefinitely and the ability to move towards a paperless environment. The agency realizes this as a benefit and as a method to create a more efficient use of time when researching, processing and storing transactions.*

b. *The CORE system has presented various challenges over the past year including:*

- *Security. The reduced level of security within the CORE system required modifications to both CORE and to business practices. Work has been completed by DPA and CGI to secure documents and is ongoing to address system reporting issues.*
- *Accounting Codes. CORE was designed to use what is known as ‘event types’ in order to post transactions correctly. However, this requirement has consumed a great deal of additional time in continually having to relearn and retrain staff. This operational change and inability to directly post transactions to the desired accounting elements has created delays, problems and additional work to make the necessary corrections. Over the past year, event codes have been continuously added, changed and deleted for all types of documents yet will hopefully provide better functionality going forward.*
- *Reports. Reports were not always reliable and/or functional for our purposes. While there have been many new reports created and modifications to existing reports made, it has been difficult and time consuming to determine which report to use for the purpose at hand. The agency has developed external methods in order to track, update and verify various accounting balances.*
- *Payroll and Closing Dates. While payroll itself is not a problem, the ability to timely interface and update accounting information into CORE has created delays in timely reconciliations as well and in both monthly and year-end closings.*

c. *The agency hasn't had any challenges with access to funding streams.*

d. *Basic operations within CORE have impacted staff workload. Documents and processes now require more data to be entered on multiple screens and require many more steps to finalize. In addition, in order to process payments in a timely manner, we have been forced to forego certain documents (i.e. PRC1- for credit card payments).*

e. *Efforts related to the initial learning curve have begun to stabilize. Despite reallocating work, the work required to process payments in CORE continues to be markedly higher than we had seen in COFRS. We are reviewing our FTE needs and may ask for additional FTE in a future fiscal year.*

- 14. Does the OSPD have any outstanding high priority recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated October 2015 (link below)? What is the OSPD doing to resolve the outstanding high priority recommendations?**

*The OSPD does not have any outstanding high priority recommendations identified in the “Annual Report of Audit Recommendations Not Fully Implemented” report published by the State Auditor’s Office dated October 2015.*

**15. Based on the OSPD’s most recent available record, what is the FTE vacancy rate? What is the date of the report?**

*We do not track or report vacancy rates, instead we use attrition rates. The most recent attrition rates available were reported on November 01, 2015 in our SMART Act Annual Performance Report and are as follows.*

<b><i>FY15 Annual Rates of Attrition</i></b>	
<i>Attorneys</i>	<i>12%</i>
<i>Investigators</i>	<i>8%</i>
<i>Administrative Assistants</i>	<i>18%</i>
<i>Total All Employees</i>	<i>11%</i>

**16. For FY 2014-15, did the OSPD revert any moneys appropriated? If so, detail the reversions by line item and fund source. What are the reasons for each reversion? Do you anticipate any reversions in FY 2015-16? If yes, please list by line item and fund source.**

*Our focus continues to be spending the funds allocated to our agency in the most responsible manner. This can restrict our ability to react nimbly to new staffing requirements tied to special bills and attrition due to our lack of immediate access to a pool of new attorneys from which we make hiring and placement decisions. These deferrals can have a cascading effect on the rest of our budget. For example, we systematically rolled out staffing tied to H.B. 13-1210 in accordance with our workload factors and where we saw related caseloads. Although this did alter our expenditures, we feel this was the most responsible way to implement the bill. Furthermore, through careful tracking of our numbers, we were able to determine that the caseload and related workload was less than had been originally estimated. This allowed us to give back 6.0 FTE and \$ 559,046 in FY15. In FY 2014-15 the agency did revert funds in a few areas.*

- *Personal Services. Most of our staff are attorneys. The estimation of the number of attorneys needed are made a year out. Our estimated need for attorneys has been too low over the past few years due to unexpected legislation and increased attrition. As a result of this and the systematic rollout in staffing for H.B. 13-1210 our reversion was \$ 999,046 GF (general funds). Although we may continue to experience some of the same volatility in FY16, we expect FY17 to provide a more stable picture.*
- *Leased Space / Utilities. We have been negotiating many leases over the past few years due to expiring lease terms as well as the need to expand locations to accommodate the additional staff received from recent legislation. The agency, with the assistance of the state’s real estate consultants, has been able to negotiate favorable terms with up front rent concessions. In addition, the process for renewals and expansion is taking longer than anticipated. A few locations have had to extend their lease for a 1 year term while negotiations can be finalized and a couple have fallen through. All of this combined has resulted in less expenditures in the leased space line this past year, may linger to some extent in the current year, yet is not expected to continue in future years. As we continue negotiating some of our leases now, with the real estate*

*market in Colorado doing so well, we do not feel it is sensible to assume that similar deals will be negotiated in the future. Reversion was \$ 858,191 GF.*

- *Vehicle Lease Payments. This line is a centrally appropriated line. As such, calculations of actual need are not determined through the OSPD. Reversion was \$ 13,628 GF.*
- *Attorney Registration. Reversion was \$ 5,825 GF.*
- *Operating Expenses. Reversion was \$ 4,639 GF.*
- *Contract Services. Reversion was \$ 3,570 GF.*
- *Automation. Reversion was \$ 1,483 GF.*
- *Mandated Costs. Reversion was \$ 1 GF.*
- *Grants. These funds give us the cash fund spending authority which we can use to administer grants. Our single grant award was not sufficient to spend the full amount of spending authority appropriated. Reversion was \$ 84,072.*

## **OSPD’S RESPONSE TO DISTRICT ATTORNEY MANDATED COSTS FISCAL YEAR 2015/2016**

The Office of the State Public Defender (OSPD) believes that in order for our criminal justice system to be constitutionally fair and efficient, the judiciary, the prosecution and public defense must all be professional and well-resourced. In order for the Legislature to determine to what extent these goals are met, it must be provided with accurate and reliable information about the needs in all three areas.

Each year, the judicial branch and the OSPD present their budget requests to the Joint Budget Committee based upon objective workload analyses. Additionally, the OSPD presents a salary survey commissioned jointly with the Colorado Attorney General’s Office and conducted by an independent company.

On the other hand, each year the Colorado District Attorney’s Council (CDAC) on behalf of 21 of the 22 elected prosecutor offices submits a request through the Judicial Department to the Joint Budget Committee to fund mandated costs for these local prosecutor offices. (See Section VII of the Judicial Department’s Budget request [https://www.courts.state.co.us/userfiles/file/Administration/Financial\\_Services/FY17BudgetRequestWeb.pdf?11032015](https://www.courts.state.co.us/userfiles/file/Administration/Financial_Services/FY17BudgetRequestWeb.pdf?11032015) ). It is unclear what criteria the CDAC uses in making its requests other than blanket statements that the OSPD has more resources than the prosecution. As demonstrated below, this is simply incorrect.

Since the CDAC request for FY17 includes an inaccurate and misleading portrayal of the OSPD, I am compelled to respond to some of the more glaring misstatements contained in CDAC’s request.

- First and foremost, the prosecutors state they receive a “minimal contribution” from the state. This claim ignores the fact that the State of Colorado will provide funds to local prosecutors in excess of \$13.7 Million this year.
- CDAC inaccurately states that the OSPD, on average, only represents 60-65% of the defendants charged with criminal proceedings. Actually OSPD, on average, represents 75% of the felony cases across the state and in some jurisdictions, that percentage is higher. Additionally, since the unconstitutional practice of requiring indigent misdemeanants to meet with prosecutors without counsel was corrected by the legislature in 2014, OSPD’s workload in misdemeanor cases has increased by over 20,000 cases.
- The staffing of the OSPD is based upon a *workload*, not caseload, analysis. We have been evaluating staffing needs for the JBC in this fashion for over 20 years. Despite repeated requests of CDAC to do the same (as the literature suggests they should), the county prosecutors refuse.
- CDAC inaccurately describes the growth of the OSPD’s budget as well, and they fail to inform this Committee of the reasons for the growth. The actual numbers and the reasons for the growth are as follows:



OSPD FY05 Appropriations \$32,545,665 and 378.9 FTE  
OSPD FY15 Appropriations \$83,255,824 and 773.1 FTE

- In the past 10 years, while the OSPD's budget has increased by \$50,710,159 (156%), **74% of that increase (\$37.6 M) has been from such things as criminal justice legislation, legislation increasing the number judges statewide, common policy items, and mandated cost increases. All of these events have been beyond OSPD's control.**
- In that decade, **only \$13.1M (26%)** of the increase came from OSPD requests, necessary due to growth in our caseloads, as well as efforts to achieve pay parity based on recommendations from the salary survey commissioned jointly with the AG's office.
- In FY05 our mandated cost payments to the prosecutors state-wide for discovery was \$586,633. **By FY15, the payments for discovery to the local prosecutor offices ballooned by 232% to \$1,949,814.**
- In FY05 our mandated costs for transcripts were \$843,000. **In FY15, our transcript costs were \$1.5M, an increase of 85%.** In contrast, because the party who initially requests the transcript bears the full cost of that transcript, the prosecution routinely receives transcripts at no cost to the counties.
- **So, while our total mandated cost line item has grown by 160%, the bulk of that growth has resulted in pass through supplements from the State to the local prosecutors.**

These are just a few examples of misleading information about OSPD expenditures provided to this Committee by the CDAC in their mandated costs request. Although OSPD continues to maintain that the prosecution in Colorado should be well-funded and professional, as should public defense, any additional funding of the prosecution by the State should be based on accurate and reliable information.

**In order to achieve resource and staffing parity, professionalism and transparency, OSPD has repeatedly suggested to CDAC the following:**

- 1. That Colorado explore the idea of a State, not county, prosecutorial agency;**
- 2. That CDAC conduct a workload study as OSPD and the Judiciary do in order to focus on state-wide staffing based on workload, not caseload;**
- 3. Because any issue regarding pay parity between local prosecutor offices is not driven by OSPD resources, but rather by competition between the various district attorney offices across the state, OSPD has urged CDAC and the local prosecutor offices to undertake a salary survey that would provide them with relevant data and enable them to seek and achieve the pay parity they see as lacking today.**

**4. That CDAC help institute state-wide recruitment, hiring and placement for the local prosecutors to ensure that all areas of the state are adequately and professionally staffed.**

We submit this document after receiving and reviewing the budgets of all 22 elected prosecutor offices. OSPD has been attempting to compare these budgets for years in order to address the CDAC's allegations of resource inequalities. After several months of negotiation, OSPD received the information and found that the **combined budgets of the prosecutor offices exceeded \$160,000,000** (this does not include additional resources provided to the prosecution through local law enforcement agencies, CBI, state patrol, the AG's office and rent free office space). This amount, which is over twice that of the OSPD, is contrary to CDAC's claims. It is equally clear that most elected prosecutors and their attorneys are not only competitive with the salaries of the OSPD and the AG's salary survey; but are often times significantly higher, especially in the metro area.

**Therefore, OSPD would suggest that for a good start towards transparency, CDAC and all of the local prosecutors should be required to post their annual budgets on CDAC's website and that CDAC should be required to report annually pursuant to the SMART ACT before the House and Senate Judiciary Committees.**

Again, the system only works if we are all appropriately funded. The criticism of OSPD is unwarranted, unfounded and unnecessary for the local prosecutors to make their case to this Committee for an increase in funding by the State.

**JUDICIAL DEPARTMENT  
FY 2016-17 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, December 2, 2015  
9:00 am – 12:00 pm**

**10:55-11:20      OFFICE OF THE ALTERNATE DEFENSE COUNSEL (OADC)**

**INTRODUCTIONS AND OPENING COMMENTS**

Court-ordered Competency Evaluations and Services

1. The JBC Staff Budget Briefing document dated November 18, 2015, lists a number of options to potentially improve the process of handling mental competency issues in criminal cases (see pages 25 and 26). Please discuss whether the OADC would support any of the options, and offer any other suggestions that should be considered.

The following are the OADC responses to the options listed on pages 25 and 26 of the Judicial Staff Budget Briefing:

*Judicial Discretion to Order Inpatient Evaluations.*

The OADC does not take a position with regard to amending C.R.S. § 16-8.5-103 to limit a judge's ability to order inpatient competence evaluations to certain situations. The agency does agree that involuntary hospitalization is a "massive curtailment of liberty" and its use should be limited. However, the Agency does not necessarily agree that involuntary hospitalization is a more significant "curtailment of liberty" than being in the county jail.

Below, however, is a suggestion from OADC that defense social workers be utilized to assist in preventing unnecessary competency evaluations.

*Court Payments for Inpatient Competency Evaluation Services*

The OADC shares the mental health experts concerns that if CMHIP bills the courts for the actual cost of these services per day this may result in the courts making inappropriate decisions about competency evaluations based on financial constraints.

*Outpatient Competency Evaluation Resources*

The OADC is in support of exploring options for reducing the number of referrals for inpatient competency evaluations. The suggestions outlined in the JBC staff budget briefing document on page 26, as listed below, are all ideas that we believe are worth exploring.

- a. Modifying Section 16-8.5-103 (2), C.R.S., to clearly authorize the Department of Human Services to contract with individuals or entities to conduct outpatient competency evaluations and prepare evaluation reports for the court.

- b. Making statutory and rule changes to allow masters level clinicians to perform competency evaluations if they have forensic training and are supervised by a psychiatrist or licensed psychologist who has forensic expertise (this would be particularly important in rural areas of the state).
- c. Provide the Department with the authority and resources necessary to establish a data driven system of monitoring the quality and consistency of competency evaluations and the ability to address individual outliers.

*Educating Judicial Officers.*

The OADC is in support of this recommendation.

*Judicial Discretion to Determine Location for a Competency Evaluation*

The OADC is in support of this recommendation. It should be noted that there are at least 10 counties in the state that are using a standardized risk assessment tool (Colorado Pretrial Assessment Tool (CPAT)) - as part of the bond process.

**The following is a suggestion from the OADC to help reduce the number of requests for competency evaluations.**

One of the reasons that a defense lawyer may raise the competence of her/his client is an inability to communicate. This could be based on the client's inability to stay on track, focus, or understand the words (legal and non-legal), or become agitated, experience hallucinations, etc. These conditions may be related to a mental illness, but could also be the result of detoxification (be it from alcohol or drugs – both illegal and prescribed), head injuries, long term use of legal and illegal drugs, Post-Traumatic Stress Disorder (PTSD), or other medical and mental conditions.

Although some of these conditions may “pass” or resolve themselves relatively quickly, lawyers do not necessarily know this. In Decision Item R-2, OADC is requesting 1 FTE, a Social Worker Coordinator. Although a significant portion of this Decision Item focuses on the use of social workers in juvenile delinquency cases, the Decision Item also includes the use of social workers for high needs adult cases. The inability to communicate as outlined in the previous paragraph is exactly what the OADC means when the Agency refers to high needs adult cases. The OADC proposes that a qualified social worker be engaged to work with clients where the OADC lawyer is concerned about the client's competency, to work with the client, gather information regarding the client's history and current situation, and make recommendations that might avoid a competency evaluation. This use of social workers may be adequate in many situations to address the lawyer's ethical concerns about whether or not to raise competency. If the OADC had a Social Worker Coordinator, it could begin a pilot project on this specific issue, keep data, and report back in the next budget cycle.

## Rates Paid for Mental Health Evaluations

2. Should the party requesting a second competency evaluation or a second sanity evaluation be required to pay the costs of such an evaluation, regardless of whether it is conducted by the Department of Human Services or by a private professional?

Yes and no. The party requesting a second evaluation should pay IF THEY ARE CHOOSING THE EXPERT. If the court insists on choosing the second evaluator, the court should pay.

3. If either the prosecution or the defense requests a second competency or a second sanity evaluation, should that party be required to provide the resulting report to the court?

The OADC takes no position.

4. Should the Department of Human Services consider taking actions to improve the quality and consistency of competency evaluations to reduce the number of requests for a second competency evaluation?

Yes. If lawyers receive a competency evaluation that they believe is reliable, consistent and of good quality, and that addresses the lawyer's concerns regarding competence, the number of second evaluations is likely to decrease.

5. Should CJD 12-03 differentiate the maximum hourly rates paid for sanity, competency, and other types of mental health evaluations?

The maximum hourly rate for a court-ordered sanity or competency evaluation should be consistent. The OADC is only in a position to address the hourly rates for sanity and competency evaluations, as the other types of court-ordered mental health evaluations in the CJD do not apply to criminal or juvenile delinquency cases.

6. Should CJD 12-03 differentiate the presumptive cap on total fees (and thus the allowable number of hours for which an hourly fee will be paid) for sanity, competency, and other types of mental health evaluations?

The OADC does not have a specific position with regard to a cap on court-ordered evaluations. However, in our experience not all cases are the same; in fact they vary widely. Some defendants have many more records to review than others, some defendants have few records. Some lawyers provide a great deal of information to the evaluator, some provide none. The evaluator should have an opportunity to estimate the number of hours necessary and then request those hours.

7. Should the maximum number of paid hours for travel be increased for certain geographic areas of the state?

Travel time is just a fact – that is, the time it takes to get to a location for the evaluation. Therefore there should not be a cap. However, travel time should not be paid at the same rate as evaluation time because driving is not a special skill. The OADC negotiates travel time rates separately from evaluation rates.

8. Should CJD 12-03 limit the number of hours that an evaluator is paid to wait when the circumstances are beyond his or her control (*i.e.*, waiting to appear in court or waiting to see a defendant in custody)?

Wait time for court could possibly be handled by a statutory change that states that as to competency hearings, (not sanity trials) all court appointed evaluators are allowed to appear by telephone or video conferencing. This would reduce wait time for court appearances; in fact it could eliminate court appearances. Wait time at jails and prisons is a mystery to all of us. Judges could endorse on the court order that the court-appointed evaluator should not be kept waiting. If the evaluator waits, they should be paid for this time.

9. Should judges be required to set a hearing or to allow *ex parte* presentation of information during such hearing when the defense or the prosecution requests approval to exceed the limits established by CJD 12-03?

The OADC has no opinion regarding this.

10. The Committee requested that the Department and various agencies provide information about Judicial Branch expenditures of state funds in FY 2014-15 for compensation of expert witnesses and professionals who conduct mental health examinations or evaluations of juveniles or adults concerning either sanity or competency. Please expand upon the information summarized on page 30 of the JBC Staff Budget Briefing dated November 18, 2015, including more detail about the specific types of evaluations.

The following is a list of some of the types of assessments the OADC has funded in FY14-15:

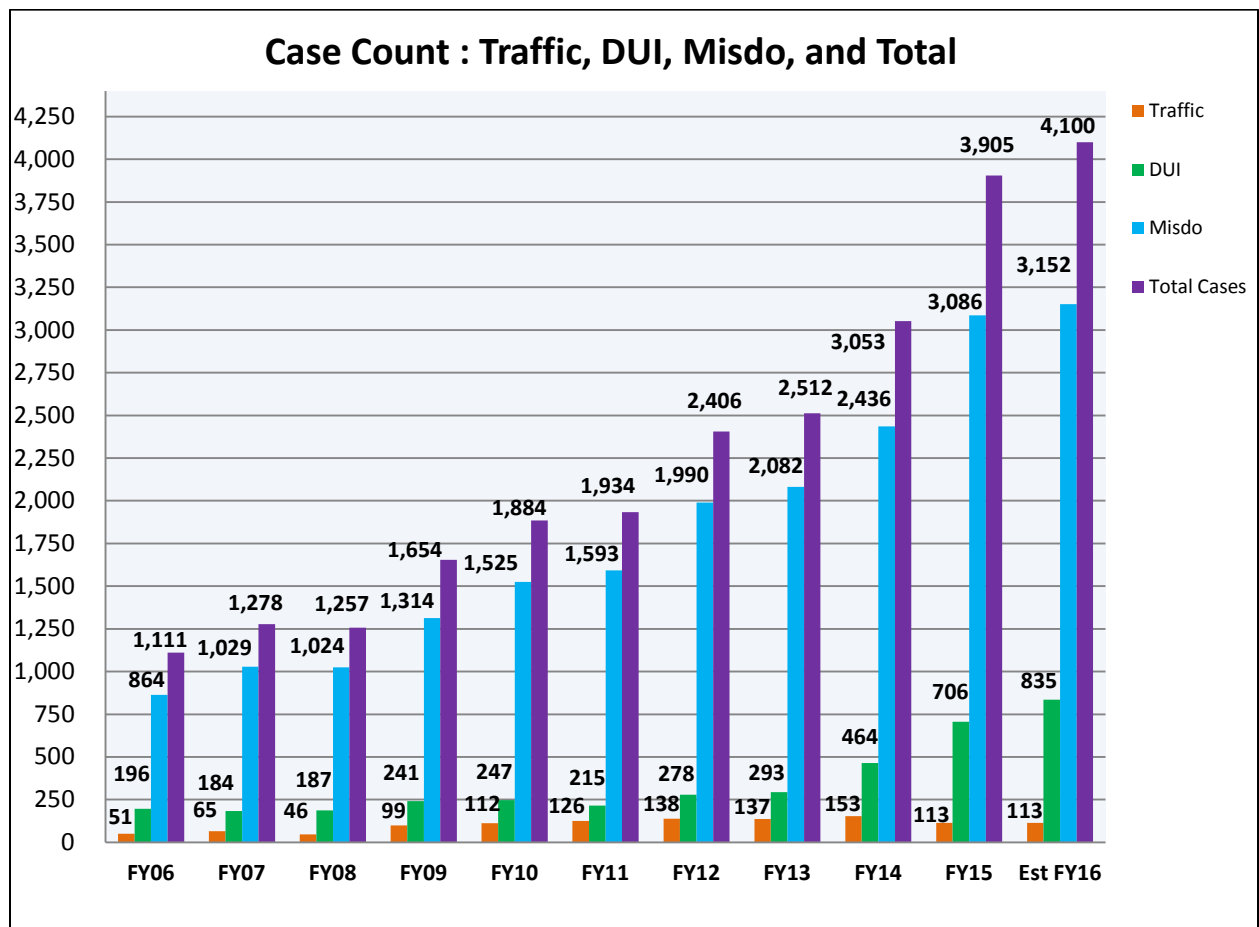
- a. Sanity
- b. Competency
- c. Sex Offender Evaluations
- d. Mental Health Evaluations
- e. Language Impairment
- f. Developmental Disability

- g. Brain Functioning
- h. Neurological

Other Issues

11. Please discuss and quantify the impact of H.B. 13-1210 (Right to Legal Counsel in Plea Negotiations) on the OADC's caseload and workload.

In 2013, the legislature passed HBI3-1210, which became effective January 12, 2014 (*Rothgery Bill*). In anticipation of a significant increase in misdemeanor cases as a result of HB 13-1210, the OSPD received several million dollars. At the time the OADC indicated that it could not estimate the effect of HB 13-1210 on its misdemeanor caseload, but as can be seen in the chart below, the number of misdemeanor cases (including traffic and DUI) handled by the Agency has increased by more than 1,000 cases. The OADC has no way to determine how many of these additional misdemeanor, traffic and DUI cases are attributable to HB 13-1210, but since there has not been the same increase in case filings the agency can only conclude that a significant portion of this increase is because of HBI3-1210.



**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

12. Provide a list of any legislation that the OADC has: (a) not implemented or (b) partially implemented. Explain why the OADC has not implemented or has only partially implemented the legislation on this list.

None.

13. Describe the OADC's experience with the implementation of the new CORE accounting system.

a. How has the implementation improved business processes in the Department?

The new CORE system has improved security workflow and also provides better checks and balances. Each manual entry in CORE requires at least one second level of approval. The CORE system is also more efficient at tracking which individual has created, modified, deleted, or approved an entry in CORE. This has improved the Agency's internal audit process, and is a statewide prevention tool for financial fraud, waste, and abuse.

b. What challenges has the Department experienced since implementation and how have they been resolved (i.e. training, processes, reports, payroll)?

The main challenges the Agency has experienced is an increase in workload due to the new CORE system, which is detailed below in question d. In FY16 the JBC approved a 1.0 FTE Accountant that has helped resolved workload challenges surrounding the implementation and use of CORE. The new position has allowed for much needed assistance in report processing/creation and reconciliations in payroll, operating, and program expenses. Before the 1.0 FTE was appropriated these tasks were a challenge when combining the Agency's limited staff and newly created CORE accounting system standards/requirements.

c. What impact have these challenges had on the Department's access to funding streams?

The challenges have had no impact on the Agency's funding streams.

d. How has the implementation of CORE affected staff workload?



The implementation of CORE has added a considerable amount of manual processing which is primarily due to the increase of required fields/tabs in CORE entries (i.e. Payment entries, Journal Correcting entries, Vendor additions, ProCard processing, and Cash Receipts) that did not exist in the previous system. System reports (InfoAdvantage) also continue to be challenging in that the complexity of the new statewide coding system can make it difficult/time consuming when trying to reconcile expenditures and revenue for each closing period to the Agency's bill processing software (CAAPS). Because the system continues to evolve and improve, processes or reports executed in previous periods may have changed, so reconciling and learning those changes can take time. Also, it seems that the State is still working towards reporting Payroll expenditures timely. This adds an additional workload in that Agency staff has to go outside of the CORE system (to CPPS (Colorado Personnel Payroll System ) or HRDW (Human Resources Data Warehouse) to produce reports for monthly Budget to Actual activities.

- e. Do you anticipate that CORE implementation will result in the need for a permanent increase in staff? If so, indicate whether the Department is requesting additional funding for FY 2016-17 to address it. If a permanent staff increase is needed and the Department is NOT requesting additional funding for FY 2016-17 for it, how will the Department pay for the new staff?

The Agency does not anticipate a need for additional FTE beyond what was appropriated by the JBC in FY16.

14. Does the OADC have any outstanding high priority recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated October 2015 (link below)? What is the OSPD doing to resolve the outstanding high priority recommendations?

[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/\\$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations,%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations,%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf)

None.

15. Based on the OADC's most recent available record, what is the FTE vacancy rate? What is the date of the report?

As of November 20, 2015, the OADC does not have any FTE vacancies, and has not for several years.

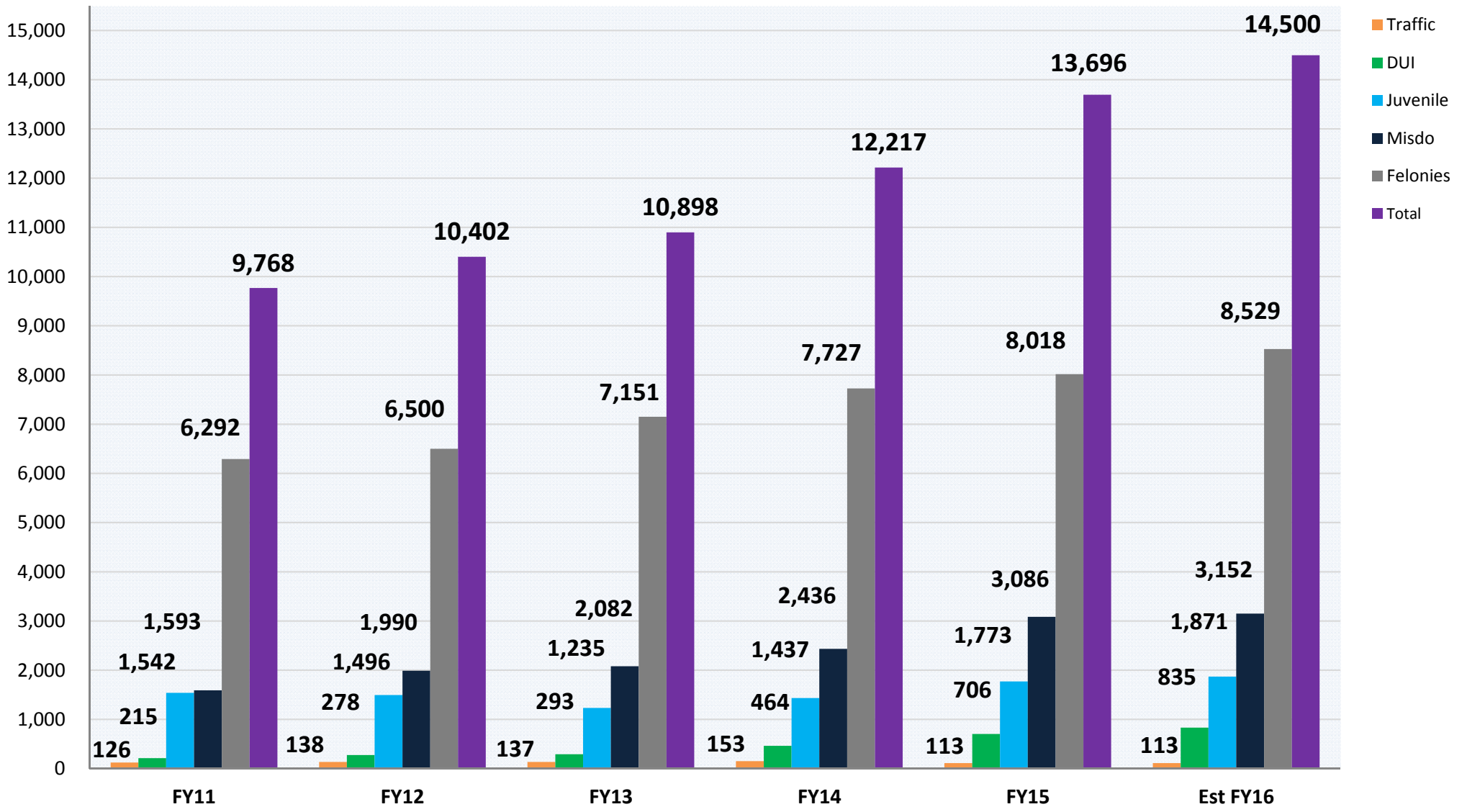
16. For FY 2014-15, did the OADC revert any moneys appropriated? If so, detail the reversions by line item and fund source. What are the reasons for each reversion? Do you anticipate any reversions in FY 2015-16? If yes, please list by line item and fund source.

No money was reverted, and the OADC does not anticipate any reversions in FY2015-16.

**Office of the**  
**Alternate  
Defense  
Counsel**



# Trial Case Count : Traffic, DUI, Juv, Misdo, Felonies, and Total



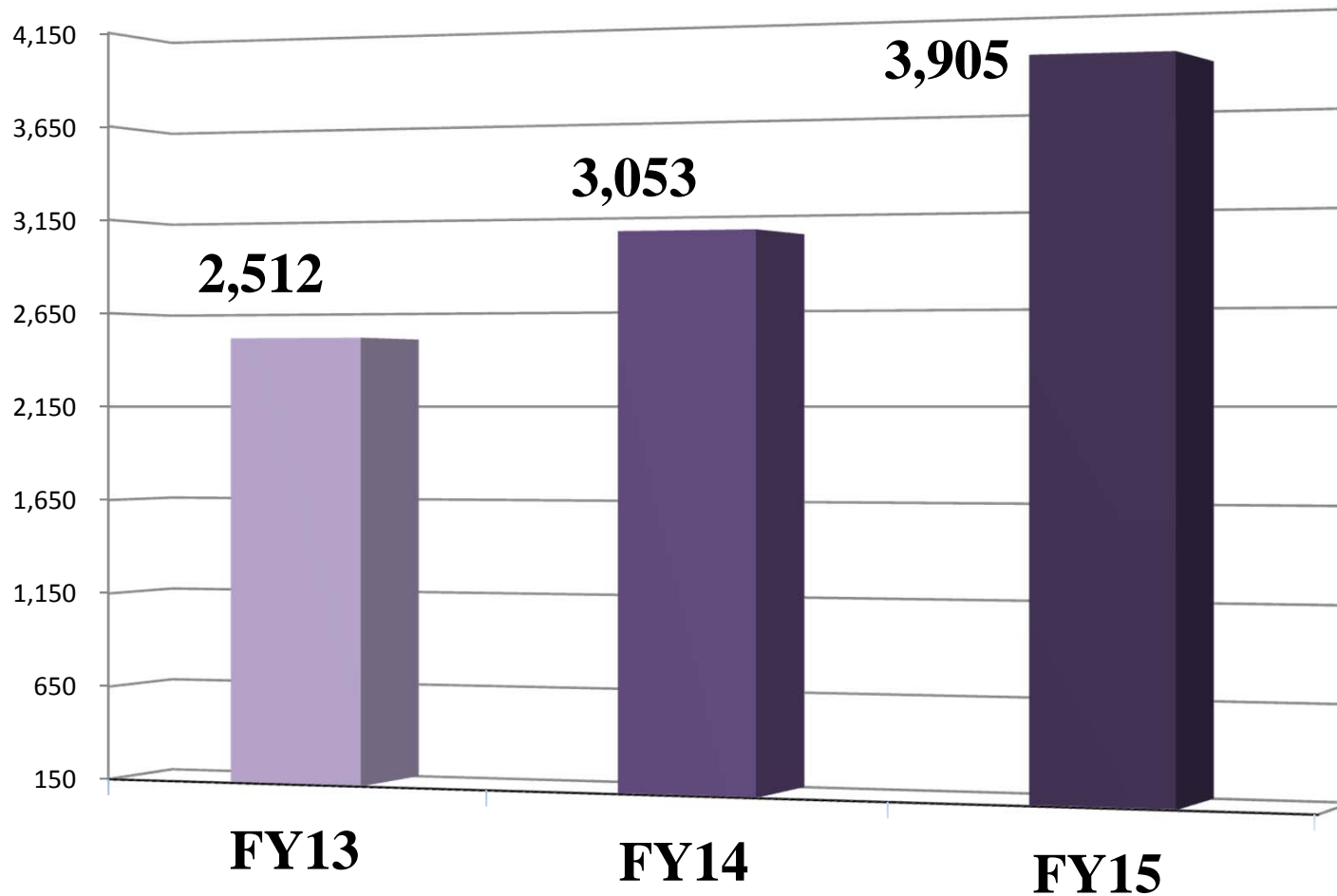
## Total Case Increase and Percentage – FY12 to FY15

	<b>FY12 Actual</b>	<b>FY13 Actual</b>	<b>FY14 Actual</b>	<b>FY15 Actual</b>
Caseload	12,585	13,290	15,085	16,680
% Increase	5.95%	5.60%	13.51%	10.57%

Attorney Hours Per Case		FY10 Actual	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Budget	FY17 Request
Contain the total number of Attorney hours per case. Includes all case type hours.	Target Attorney hours	19.64	19.64	19.64	19.64	19.64	19.64	19.64	19.64
	Actual	20.81	19.22	18.91	17.94	17.91	16.57		

- 4.24 hours per case decrease
- 20.37%

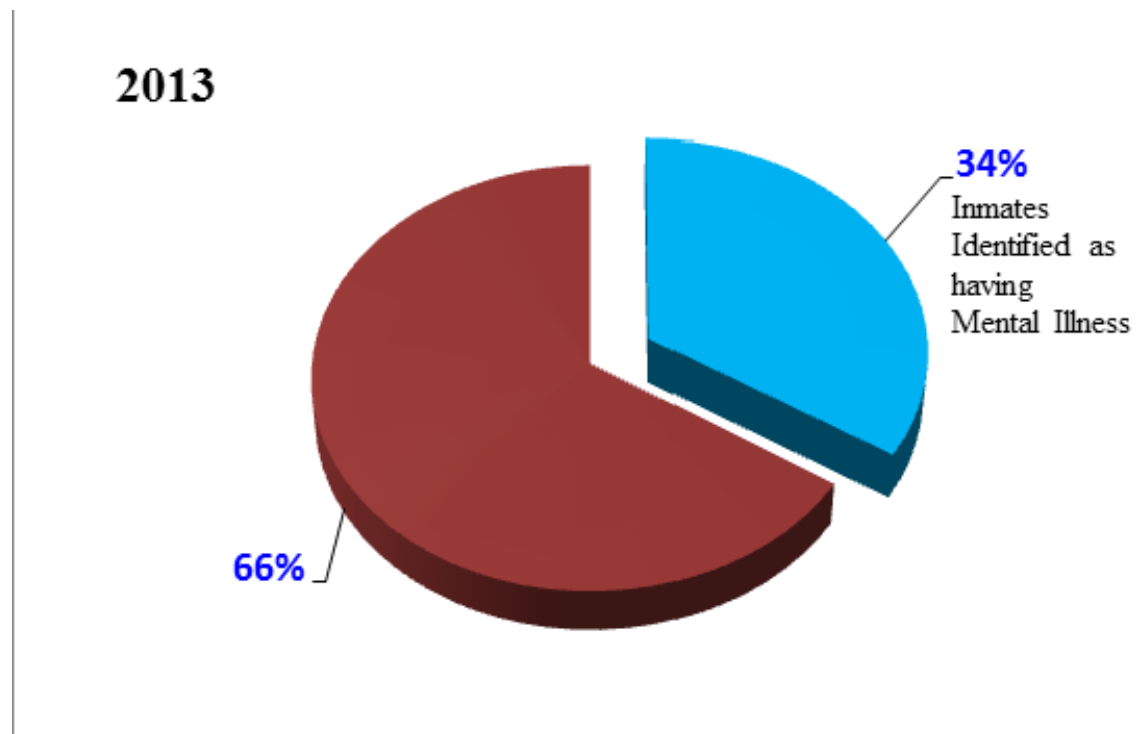
## HB13-1210 (Rothgery)? Cases FY13 - FY15



**% increase from FY13 – FY15 = 35%**

# Competency

- According to the Colorado Department of Corrections 2013 Statistical Report, 34% of inmates in Colorado were identified as having moderate to serious mental health needs.

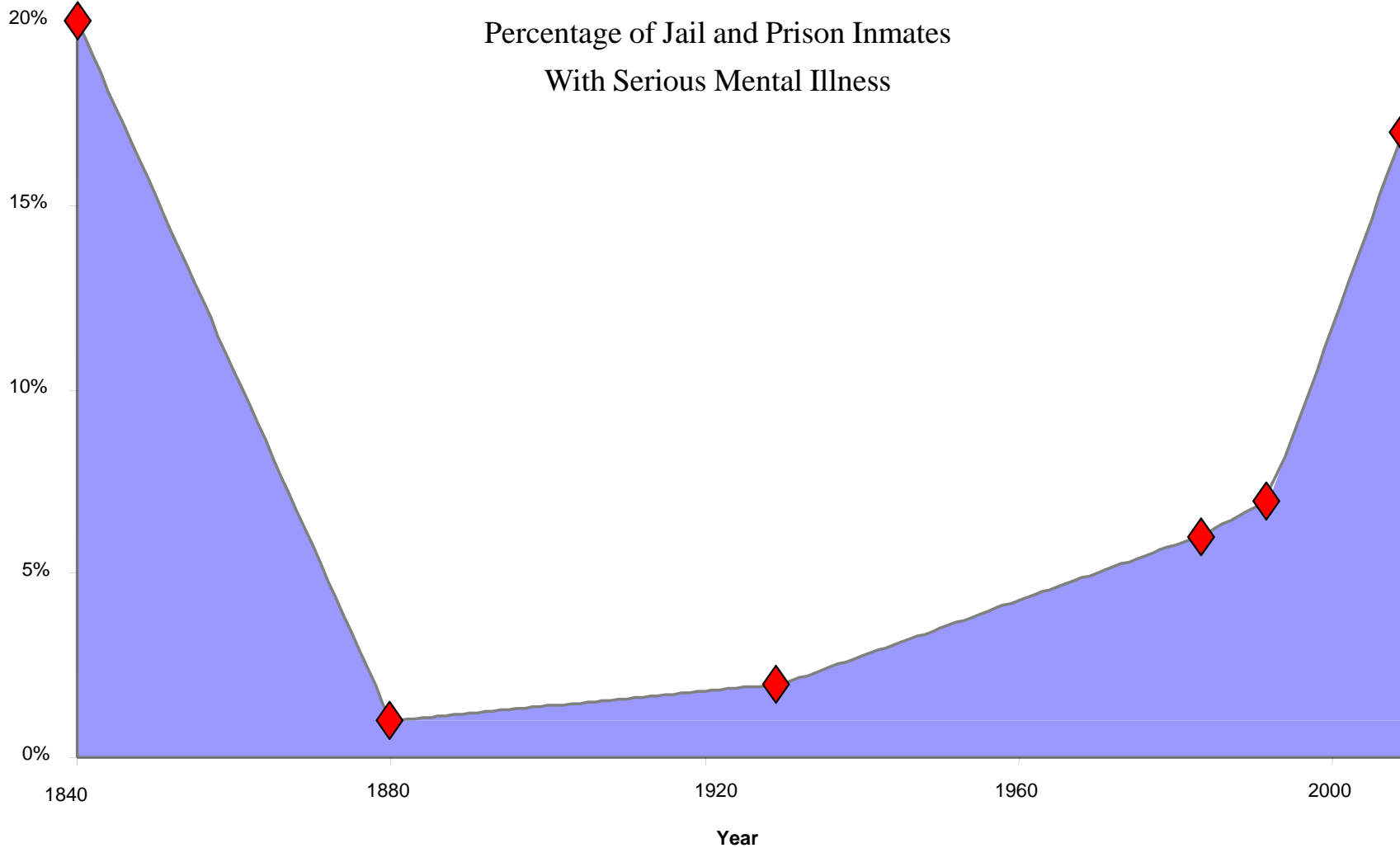




- Also according to the Colorado Department of Corrections, the most significant trend in the area of inmate needs in Colorado is the growing population of inmates with mental illness.

# Figure 1

## Percentage of Jail and Prison Inmates With Serious Mental Illness



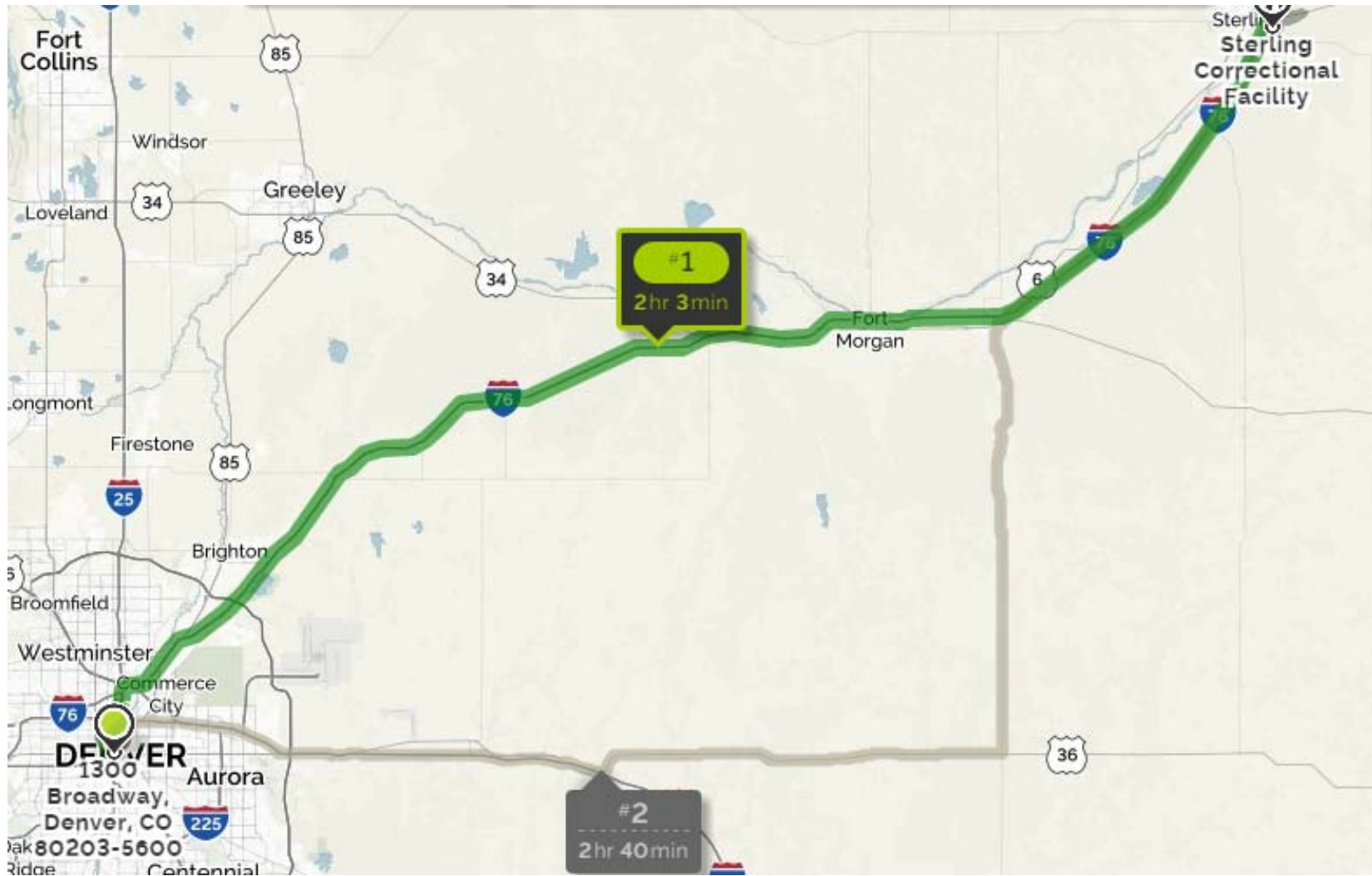
\*1840 estimate based on qualitative reports from that time

Torrey, E.F., Kennard, A.D., Eslinger, D., Lamb, R., and Pavle, J. (2010). More Mentally Ill Persons are in Jails and Prisons Than Hospitals: A Survey of the States. *Treatment Advocacy Center and National Sheriffs' Association*.

# Competency and the Criminal Defense Lawyer:

- Mental Illness**
- Detoxification**
- Head Injuries (TBI)**
- Long term use of legal and illegal drugs**
- PTSD**
- Other medical and mental conditions.**

# Communications Coordinator



# Attorney Client Visit Cost to OADC – Denver to Sterling

Starting Point	Destination	Miles Traveled	Millage Rate	Millage Billed	Duration (hrs.)	Hourly Rate	Hours Billed	Total Billed per client visit
Denver, CO	Sterling, CO	127	\$ 0.52	\$ 66.04	2.0	\$ 70	\$ 140	\$ 206
Sterling, CO	Denver, CO	127	\$ 0.52	\$ 66.04	2.0	\$ 70	\$ 140	\$ 206
				\$ 132			\$ 280	<b>\$ 412</b>

*x 100 trips*

**\$ 41,208**

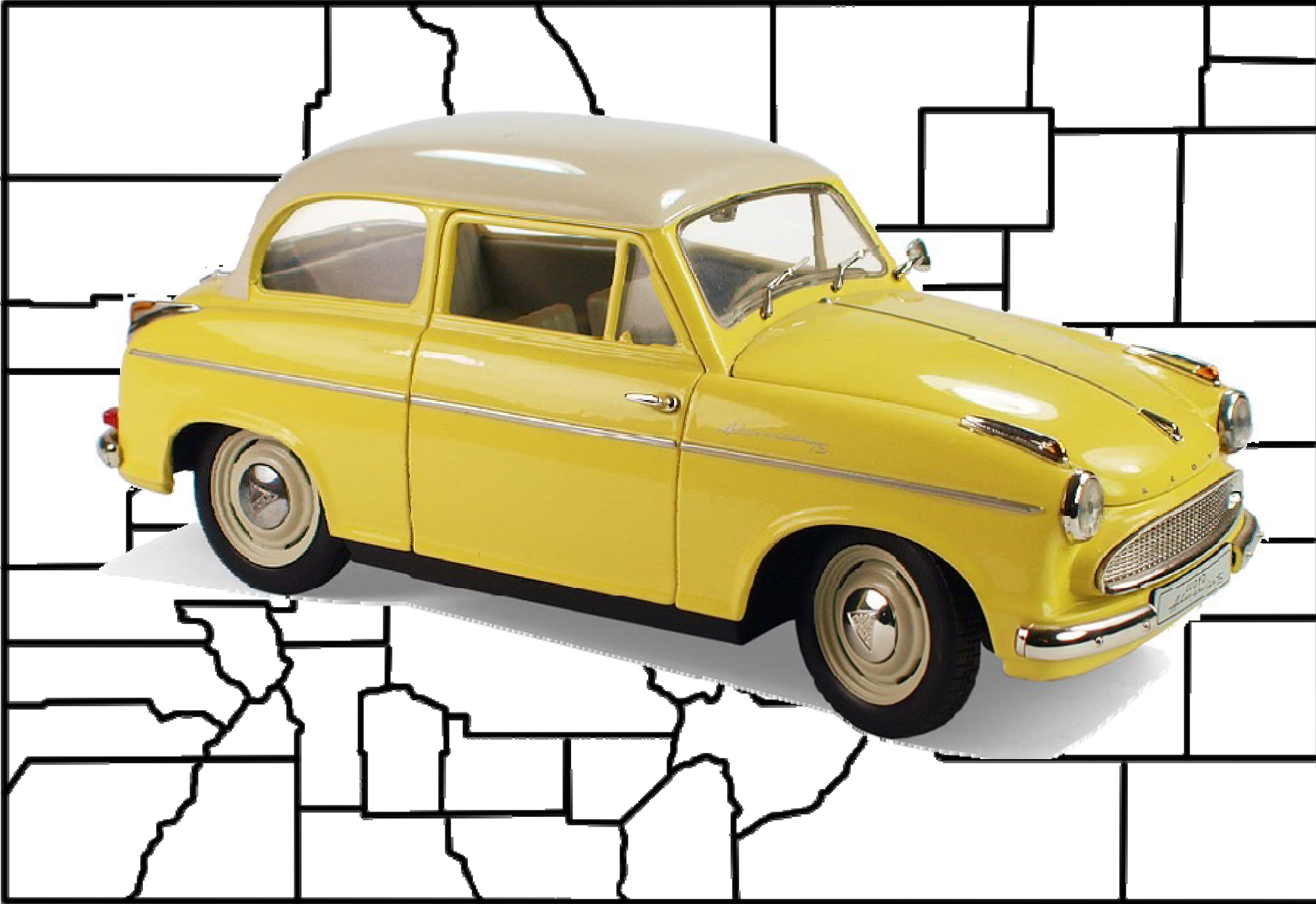
	FY15 Actual
Appeal Cases	806
35b/35c & Post Conviction	562
<b>Total Cases</b>	<b>1,368</b>

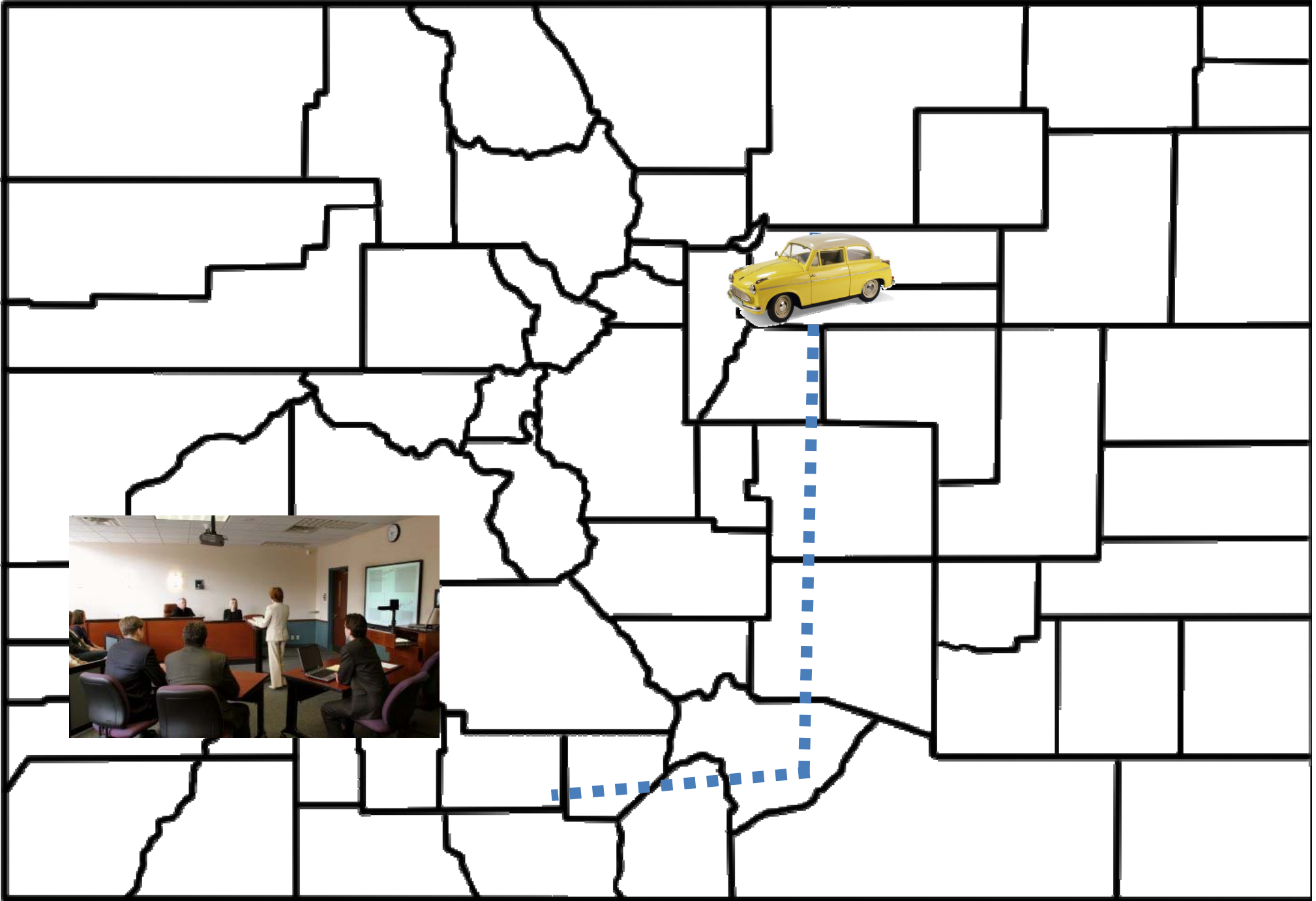
*Ucla*













*Ucla*



## Witness Testimony in Alamosa

Starting Point	Destination	Miles Traveled	Millage Rate	Millage Billed	Duration (hrs.)	Hourly Rate	Hours Billed	Total cost per expert
Denver, CO	Alamosa, CO	233	\$ 0.52	\$ 121.16	4.0	\$ 150	\$ 600	\$ 721
Alamosa, CO	Denver, CO	233	\$ 0.52	\$ 121.16	4.0	\$ 150	\$ 600	\$ 721
				\$ 242			\$ 1,200	<b>\$ 1,442</b>

## ADC'S top 10 innovations in the past 10 years that have increased effectiveness while decreasing costs:

- 1. Appellate and post-conviction case management
- 2. Systematic training and evaluation
- 3. Technology (both in and out of court)
- 4. Access data base
- 5. Document and Discovery management
- 6. Weekly law updates
- 7. Brief and motions bank
- 8. Social Science Library
- 9. Case support (Research, paralegal, investigators, lawyers who specialize in DNA, Cell towers, mental health, etc.)
- 10. Social Workers

**JUDICIAL DEPARTMENT  
FY 2016-17 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, December 2, 2015  
9:00 am – 12:00 pm**

**11:20-11:30      OFFICE OF THE CHILD'S REPRESENTATIVE (OCR)**

**INTRODUCTIONS AND OPENING COMMENTS**

1. Please discuss recent increases in the number of truancy and juvenile delinquency cases in which the OCR pays for court appointed counsel. Do these increases mirror overall trends in court case filings? What are the factors driving these increases?

As illustrated by the following table, the increases in OCR's delinquency and truancy appointments do not mirror filing trends:

	FY 2012-13		FY 2013-14		FY 2014-15	
	OCR Caseload Change	Filing Change	OCR Caseload Change	Filing Change	OCR Caseload Change	Filing Change
Delinquency	7%	-9%	16%	-6%	10%	2%
Truancy	64%	3%	23%	-29%	16%	1%

*\*Change in filings and appointments calculated from previous fiscal year*

OCR's appointments do not mirror filing trends in these two case types for two reasons. First, the OCR measures appointments as any open and active appointment on which the OCR has been billed, whether it is a new filing in the most recent fiscal year or an open active appointment that may be several years old. Second, and more significantly, appointments in these case types are discretionary appointments.

Section 19-1-111(2)(a), C.R.S. provides that the court may appoint a GAL in a delinquency case when a parent does not appear, the court finds a conflict of interest exists between the child and the parent, or the court makes specific findings that the appointment is necessary to serve the best interests of the child. Section 19-1-111(2)(b), C.R.S. allows a court to appoint a GAL for a child in a truancy proceeding when the court finds "the appointment is necessary due to exceptional and extraordinary circumstances." If the child is already represented by counsel in the truancy matter, the court must additionally find that it is in the best interest and welfare of the child to appoint both counsel and a GAL. §19-1-105(2), C.R.S.

While the OCR does not have a way to quantify factors contributing to its increased delinquency and truancy caseload, from conversations with judicial officers, attorneys, and other stakeholders who work on these case types, the OCR believes the increased caseload can be attributed to two factors. First, the OCR has been informed by various judicial officers and attorneys that with the reduction in dependency and neglect (D&N) filings, courts have experienced an increased

prevalence of D&N-like issues presenting in delinquency and truancy cases. Concerns about child protective issues appear to be prompting the appointment of a GAL in these case types even if such concerns have not led to the filing of a D&N proceeding. Notably, this trend is consistent with the type of work GALs describe they must now perform in truancy and delinquency appointments. Second, an increasing awareness of the importance of adequately addressing needs presented in these case types as a means of promoting long-term success and minimizing the potential for future juvenile or adult charges explains the increased use of GALs. Given the GAL's role as an independent advocate focused on the best interests of the child and GALs' extensive knowledge of available services and programs, it makes sense that judicial officers have relied more than ever on GALs to ensure the decisions they make are in both the short-term and long-term best interests of the children who appear before them.

2. How does the OCR count "appointments paid" by case type when more than one case is filed for the same child or family?

Each GAL appointment on the OCR's "appointments paid" count ties to an individual case number rather than individual child(ren). For example, if a GAL is appointed to represent the best interests of the same child in three juvenile delinquency cases and OCR pays on all three cases during a fiscal year, the OCR's juvenile delinquency "appointments paid" count will reflect three open appointments during the fiscal year. Similarly, if a GAL is appointed to represent the best interests of three children in one dependency and neglect case, the OCR's D&N "appointments paid" count will reflect only one open appointment.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

3. Provide a list of any legislation that the OCR has: (a) not implemented or (b) partially implemented. Explain why the OCR has not implemented or has only partially implemented the legislation on this list.

Not applicable to the Office of the Child's Representative (OCR).

4. Describe the OCR's experience with the implementation of the new CORE accounting system.
  - a. How has the implementation improved business processes in the OCR?

The OCR has not experienced improved business processes as a result of the implementation of the new CORE accounting system.

- b. What challenges has the OCR experienced since implementation and how have they been resolved (i.e. training, processes, reports, payroll)?



The OCR has experienced the following challenges with the implementation of CORE:

1. Available reports: While there are several “canned” reports available from InfoAdvantage (the report application for CORE), the limitations of each report often require OCR to run multiple reports to obtain the necessary information. Because of differing results depending on the reports and criteria selected, staff must analyze multiple reports to reconcile expenditures. This reconciliation (and running multiple reports) has added significant time to most of OCR’s internal financial reporting processes. The OCR is appreciative of the full day of training provided by the Office of the State Controller in October. While the training will assist the OCR in developing customized reports, developing and testing these reports will require a significant time investment before the reports are useful and reliable.
2. Posting of payroll: During Fiscal Year 2014-15, payroll information was posted several weeks after payroll was run. Delays such as this made it difficult to project expenditures. The OCR has overcome these delays by obtaining detailed payroll information from a non-CORE system and developing monthly payroll projection spreadsheets by individual employee. The payroll information is available within days after each payroll is run, and reconciled with the general ledger when the payroll transactions are ultimately posted. The timeliness of payroll posting was expected to improve in Fiscal Year 2015-16; however, the July 31 payroll was not posted to the general ledger until mid-November.
3. Credit Card P-card Processing: The system document (PRC1) used to process the payment for the state credit card is extremely cumbersome. During the initial implementation of CORE, the PRC1 was not even generated by CORE until after the bill’s due date had passed. This resulted in the OCR having late fees and interest assessed on its account and required an enormous amount of staff time to clear the charges. Additionally, the payment takes considerably longer to enter than in COFRS. The PRC1 requires an extensive number of fields and manual entry even though it is interfaced with the CITI system. While the OCR has streamlined the processing of these payments so the time of entry is more manageable, the process used in COFRS was a much more efficient way to process credit card payments.

c. What impact have these challenges had on the OCR’s access to funding streams?

Challenges with the CORE implementation have had no impact on the OCR’s access to funding streams.

d. How has the implementation of CORE affected staff workload?

In the beginning stages of the CORE implementation, the OCR experienced a significant increase in staff workload as a result of the many system issues that CORE presented. In addition to the huge learning curve of using a new system, the processing time for document entry, submittal, and approval increased. The CORE system pushed much of the processing to the individual agencies. As a result, this in itself contributed to an increased workload. For example, vendor creation and changes once completed centrally now reside with the agency staff. Additionally, document types in CORE are not user-friendly or intuitive – which makes navigation and data entry more difficult.

For the reasons described in 4(b)(1), OCR finance staff must spend additional time and effort to extract and validate data. The OCR's Program Administrator has been valuable in linking CORE data with case data from the OCR's case management system. Since CORE is a very "open" system, the OCR no longer includes confidential case numbers in any of its financial transactions as it did in COFRS. As such, the OCR is no longer able to retrieve case-specific data from CORE. The Program Administrator has developed a process to extract relevant case and cost data by individual contract attorney from the OCR's case management system, providing the necessary detail analysis to the OCR's staff attorneys. Nevertheless, finance staff must analyze these reports with relevant CORE data.

Finally, the system itself has repeatedly dealt with slowness issues and "freezing," which has increased time spent waiting on the system and workload by requiring the re-entry of data.

- e. Do you anticipate that CORE implementation will result in the need for a permanent increase in staff? If so, indicate whether the OCR is requesting additional funding for FY 2016-17 to address it.

At this time, the OCR does not anticipate a need for a permanent increase in staff as a result of the CORE implementation.

- 5. Does the OCR have any outstanding high priority recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated October 2015 (link below)? What is the OCR doing to resolve the outstanding high priority recommendations?

[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/\\$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations.%20As%20of%20June%2030.%202015.%20Informational%20Report.%20October%202015.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations.%20As%20of%20June%2030.%202015.%20Informational%20Report.%20October%202015.pdf)

The OCR does not have any outstanding recommendations identified in the OSA's annual report of outstanding audit recommendations.

6. Based on the OCR's most recent available record, what is the FTE vacancy rate? What is the date of the report?

Currently, the OCR has no vacancies. For Fiscal Year 2014-15, four full-time positions experienced turnover resulting in those positions being vacant a total of 222 days. As a result, the OCR experienced a vacancy rate of 2.2% during Fiscal Year 2014-15.

7. For FY 2014-15, did the OCR revert any moneys appropriated? If so, detail the reversions by line item and fund source. What are the reasons for each reversion? Do you anticipate any reversions in FY 2015-16? If yes, please list by line item and fund source.

The OCR reverted approximately \$844,000 to the General Fund at the end of FY 2014-15:

Personal Services: \$49,027 (due to vacancies and lower than anticipated personnel-related costs)

Operating Expenses: \$16,452 (the OCR fully spent its Operating appropriation and this reversion resulted after \$67,000 was transferred from Personal Services to cover additional expenditures)

Training: \$412 (similarly, the OCR fully spent its Training appropriation and this reversion resulted after \$12,000 was transferred from Personal Services to cover additional expenditures)

Court-appointed Counsel: \$777,237 (lower than anticipated expenditures related to GAL representation)

Mandated Costs: \$1,289 (lower than anticipated costs related to discovery)

The OCR anticipates that its Court-appointed Counsel appropriation will not be fully spent in FY 2015-16; however, it is difficult to project the dollar amount of any reversion as only four months of expenditures are available for analysis. Additionally, the OCR does not expect that Personal Services will be fully expended; however, it is difficult to estimate the magnitude of any reversion as only five of twelve payrolls have occurred.



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# **Office of the Child's Representative**

FY 16-17 Joint Budget Committee Hearing

# OCR Appointment Types:

- Child Abuse & Neglect (D&N)
- Delinquency
- Truancy
- Domestic Relations
- Paternity
- Probate/ Mental Health
- Appeals

# Appointments = Appointments Paid

- Relates to the individual case number rather than the individual child
- Examples
  - One child welfare case involving 3 children: 15JV123
  - Two delinquency cases involving 1 child: 15JD111, 15JD125

# Abuse and Neglect Cases:

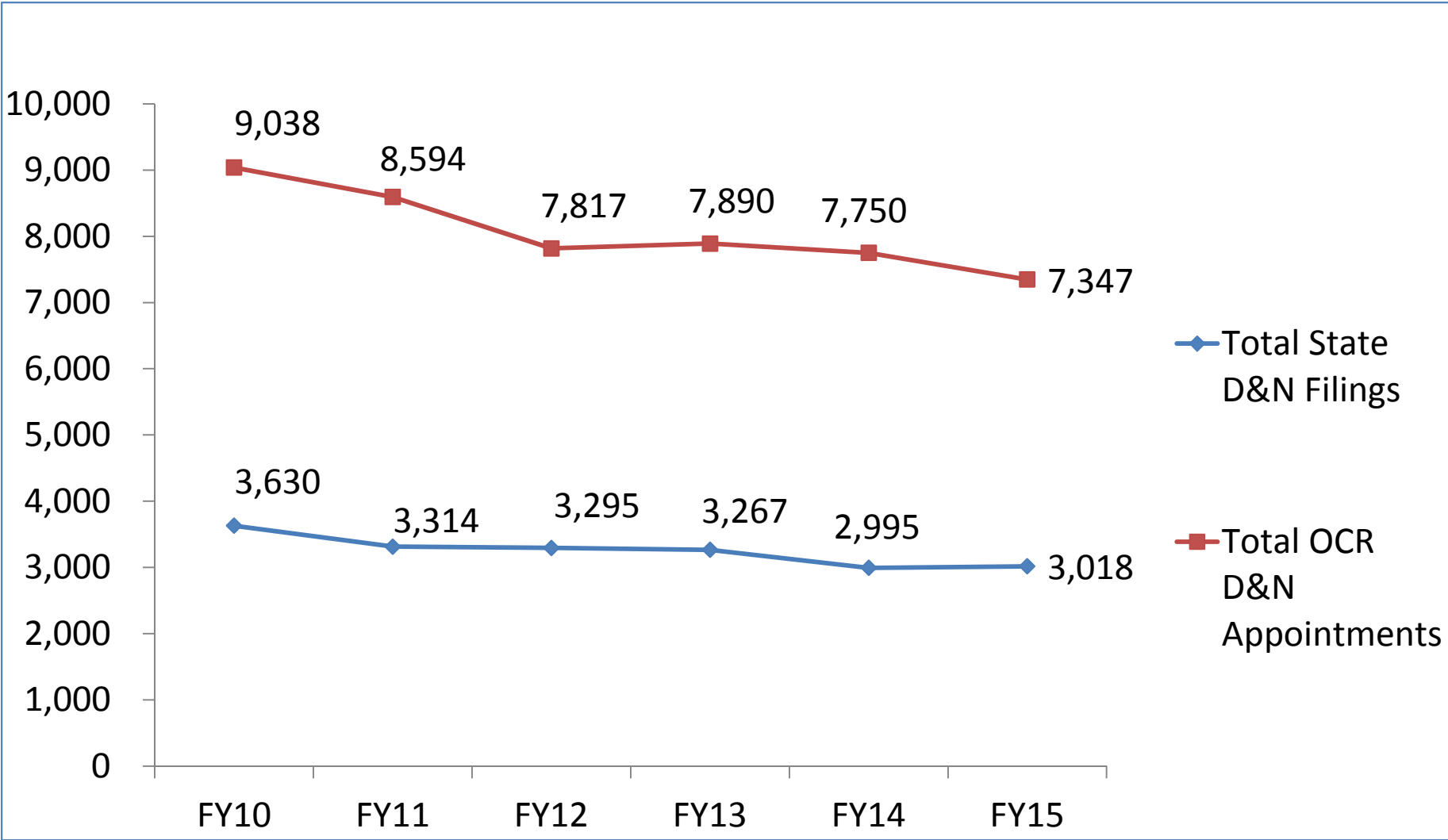
- Mandatory appointment
- Multiple children on a case
- Multiple respondents
- Cases continue until safe, appropriate permanent home is legally effected for each child

# Abuse & Neglect Appointments

	<b>% of Total Cases</b>	<b>% Expenditures</b>	<b>Hours Per Case/Year</b>
<b>FY 11-12</b>	<b>60%</b>	<b>81%</b>	<b>24</b>
<b>FY 12-13</b>	<b>57%</b>	<b>80%</b>	<b>25</b>
<b>FY13-14</b>	<b>53%</b>	<b>80%</b>	<b>27.8</b>
<b>FY14-15</b>	<b>50%</b>	<b>78%</b>	<b>26.8</b>



# State of Colorado Dependency & Neglect Filings and Appointments



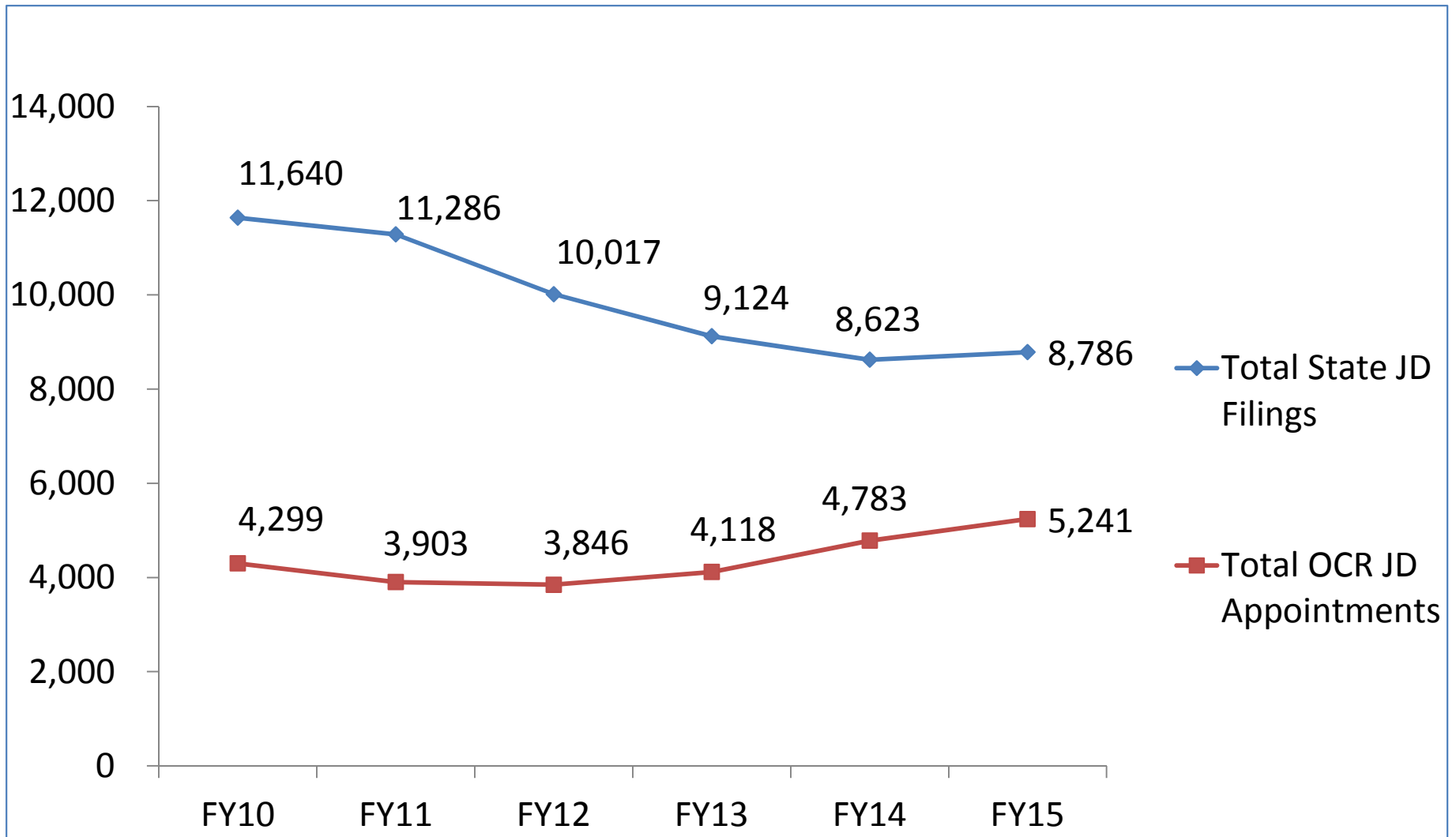
# Factors Increasing GAL Workload in Abuse and Neglect Cases:

- Only most difficult high risk cases are filed given County efforts to serve families outside of court
- Increased responsibilities of GALs
  - case law
  - legislation
  - standards
- Practice initiatives in Child Welfare
- Caseworker shortages and turnover

# Delinquency GAL Appointments

	<b>% of Total Cases</b>	<b>% Expenditures</b>	<b>Hours Per Case/Year</b>
<b>FY 11-12</b>	<b>30%</b>	<b>13%</b>	<b>7.7</b>
<b>FY 12-13</b>	<b>30%</b>	<b>14%</b>	<b>8.2</b>
<b>FY13-14</b>	<b>33%</b>	<b>15%</b>	<b>8.2</b>
<b>FY14-15</b>	<b>36%</b>	<b>16%</b>	<b>7.8</b>

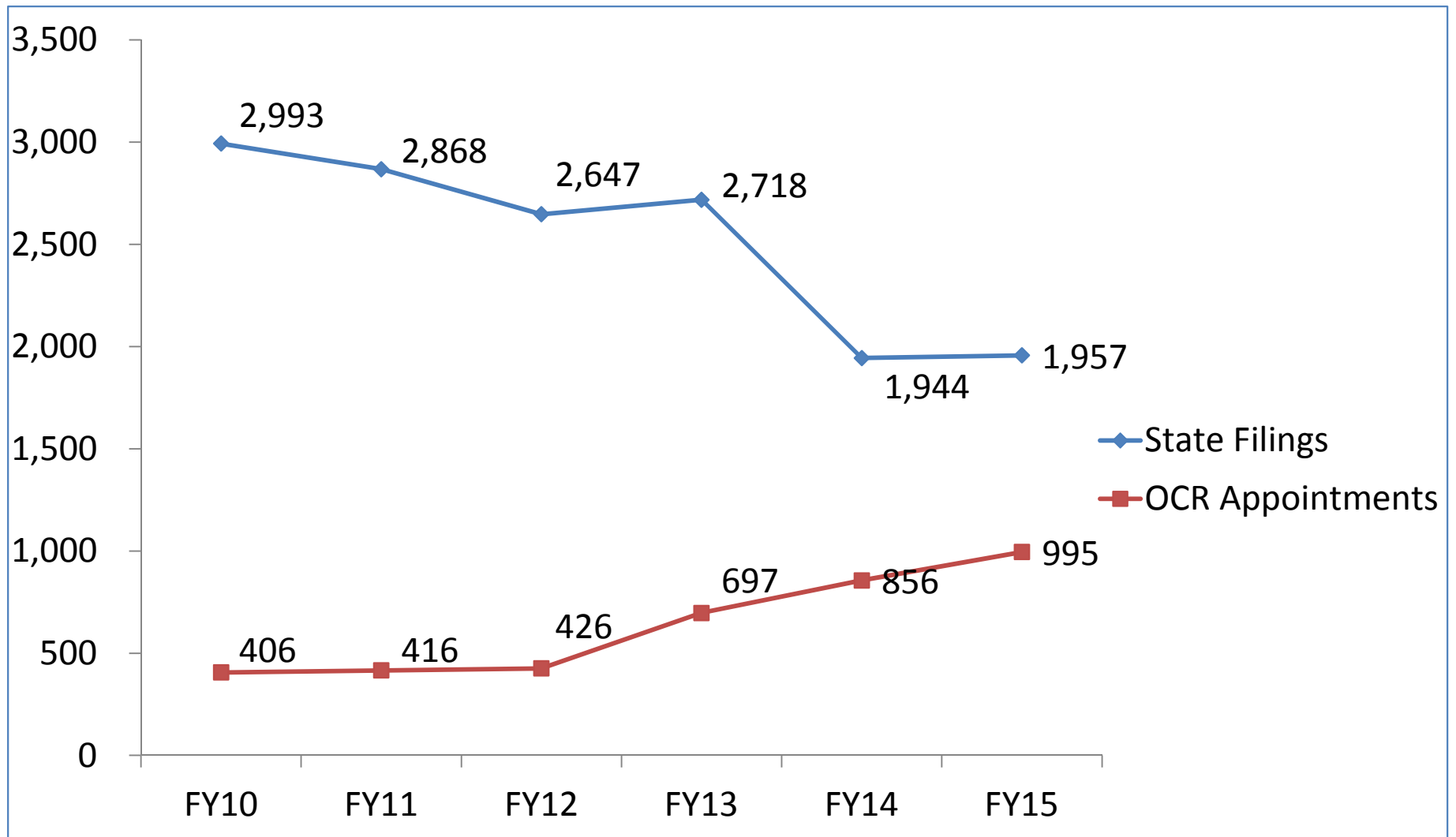
# State of Colorado Juvenile Delinquency Filings and Appointments



# Truancy GAL Appointments

	<b>% of Total Cases</b>	<b>% Expenditures</b>	<b>Hours Per Case/Year</b>
<b>FY 11-12</b>	<b>3%</b>	<b>1%</b>	<b>4.8</b>
<b>FY 12-13</b>	<b>5%</b>	<b>1%</b>	<b>4.9</b>
<b>FY13-14</b>	<b>6%</b>	<b>2%</b>	<b>5.3</b>
<b>FY14-15</b>	<b>7%</b>	<b>2%</b>	<b>4.3</b>

## State of Colorado Truancy Filings and Appointments



# Factors Impacting Delinquency and Truancy GAL Appointments:

- Increased prevalence of child protection issues such as mental health, substance abuse, domestic violence, homelessness
- Increased awareness of importance of addressing issues in the home to promote child's long term success and minimize future court involvement

# Innovations & Efficiencies

- Well-Trained Attorneys
- Well-Resourced Attorneys
- Data-Driven Evaluation
- Multidisciplinary Approach



**JUDICIAL DEPARTMENT  
FY 2016-17 JOINT BUDGET COMMITTEE HEARING AGENDA**

**INDEPENDENT ETHICS COMMISSION (IEC)**

**QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

1. In late FY 2014-15, the Commission received a \$1,300 grant from the Statewide Internet Portal Authority (SIPA) to purchase a microphone and a laptop to use for streaming during Commission meetings and to pay for streaming services and online storage that can be accessed through the Internet. Please describe how these funds were utilized, and the Commission's current capacity to stream audio over the Internet during Commission meetings.

The IEC used the SIPA funds to purchase two recorders, microphones, and other equipment needed for meeting recording and/or streaming. The items were purchased in June. The Commission has used the equipment to record three meetings since that time.

The Commission is attempting to determine whether live streaming is technologically possible given the staff limitations during meetings. With a staff of one, the Commission needs its Executive Director to organize and run the meeting, perform the work of the Commission, take notes and do minutes during the meeting. Monitoring a webstream would appear to be technologically difficult given the other responsibilities of staff on meeting day. An alternative would be to utilize a tool such as "Go To Webinar", which would require participants to register in advance and would not allow dial in capability by people not registered.

The Commission may determine that recording and uploading recordings to the IEC website immediately following the meeting is the better alternative. The equipment purchased with SIPA funds will be highly useful toward this end, as it is of much better quality than equipment the IEC possessed in the past, and includes items such as microphones that the Commission did not previously have, which will improve sound quality tremendously, especially during hearings. This would still give the public access to what occurs during the meetings while acknowledging the IEC's limited resources.

2. Provide a list of any legislation that the Commission has: (a) not implemented or (b) partially implemented. Explain why the Commission has not implemented or has only partially implemented the legislation on this list.

There is not any legislation the Commission is aware of that it has either not implemented or has only partially implemented.

3. Does the Commission have any outstanding high priority recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated October 2015 (link below)? What is the department doing to resolve the outstanding high priority recommendations?

[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/\\$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations.%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations.%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf)

The Commission does not have any outstanding priority recommendations as outlined in the "Annual Report of Audit Recommendations Not Fully Implemented."

4. For FY 2014-15, did the Commission revert any moneys appropriated? If so, detail the reversions by line item and fund source. What are the reasons for each reversion? Do you anticipate any reversions in FY 2015-16? If yes, please list by line item and fund source.

The Commission did revert moneys in 2015. Please see the table below. It is not anticipated that reversion will be at this rate in FY 2015-2016. Lawsuits that were anticipated in FY 2014-2015 were not filed until FY 2015-2016 and therefore those legal costs were pushed into the current year. Additionally, there will not be personnel savings as there were last year, due to the ongoing vacancy in the second FTE position, which was not funded this FY. The Commission meeting schedule fluctuated last year due to workload so there were some savings in operating, which may or may not hold true this year. Thus, it is not anticipated that the reversions will be as likely this year.

	Total	General Fund	Reason
Health/Life/Dental	(5,414)	(5,414)	Unused due to vacancy
Short term disability	(148)	(148)	Unused due to vacancy
Salary survey	(4,567)	(4,567)	Unused due to vacancy
Merit	(1,827)	(1,827)	Unused due to vacancy
AED	(2,761)	(2,761)	Unused spending authority
SAED	(2,584)	(2,584)	Unused spending authority
Legal Services	(32,749)	(32,749)	Unused – see above
Operating/Personal Services Expenses	(6,977)	(6,977)	Unused – see above

# **eDiscovery Steering Committee Members**

**Scott Turner, Deputy Attorney General, Chair**

**Gerald Marroney, State Court Administrator, Vice-Chair**

**George Brauchler, District Attorney, 18th Judicial District**

**Jeff Chostner District Attorney, 10th Judicial District**

**Thom LeDoux, District Attorney, 11th Judicial District**

**John Jackson, Chief of Police, City of Greenwood Village**

**Chris Johnson, Sheriff, Park County**

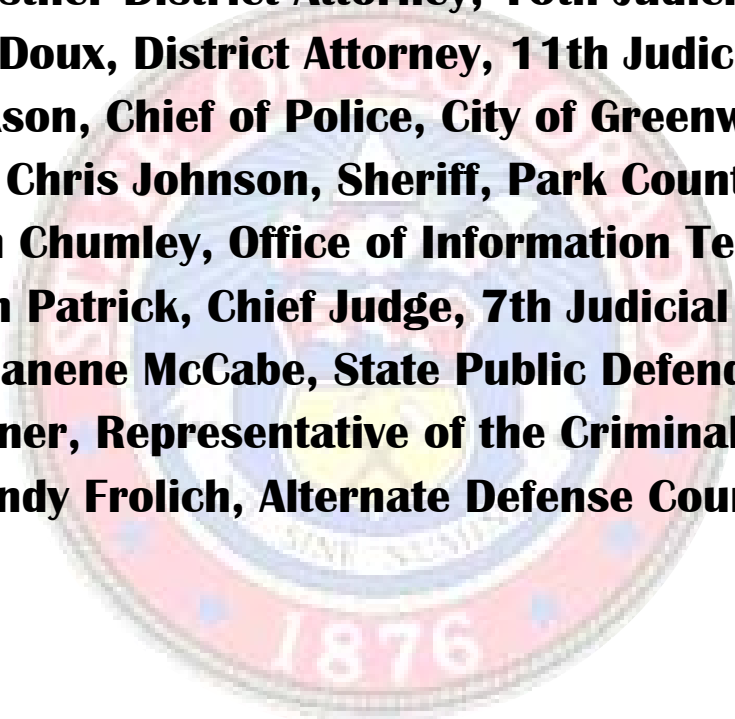
**William Chumley, Office of Information Technology**

**Steven Patrick, Chief Judge, 7th Judicial District**

**Janene McCabe, State Public Defender**

**Philip Cherner, Representative of the Criminal Defense Bar**

**Lindy Frolich, Alternate Defense Counsel**



# eDiscovery Project Status

November 16, 2015

## Introduction

The eDiscovery project is comprised of 3 phases. These phases and the corresponding entity responsible for creating them are:

Phase	Work done by
1. Obtain discovery and data from Law Enforcement	Xerox/PARC
2. Enhance ACTION to streamline the discovery process at the DA's office	CDAC
3. Provide discovery in an electronic format to the Defense	CDAC

### Selected Vendor for eDiscovery:

The contract is officially with PARC (Palo Alto Research Center). PARC is a wholly owned subsidiary of Xerox. PARC is supplying the project management portion of the project as well as expertise in the criminal justice space, while Xerox is supplying the software system that will gather the discovery from Law Enforcement and get it to the DA's case management software system.

### Contract with Xerox/PARC:

The contract is for an amount not to exceed \$3 million dollars. The project has been divided into Task Orders for manageability and for payment. Each Task Order has a Milestone that allows CDAC to ensure the Task Order is on track. As each Task Order is delivered, CDAC verifies it works as planned and then signs off on the Task Order, allowing Xerox/PARC to then invoice for that Task Order. The deliverables and dates are as shown below. These are adjustable based on mutual agreement of CDAC and Xerox if it is found to be in the best interest of the project's success.

## Phase 1. Obtain discovery and data from Law Enforcement:

The work will be done by Xerox/PARC:

Ref. No.	Task Order*	Deliverables and Milestones*	Date of Initiation*	Delivery Date*
1.	Assessment Phase	<ul style="list-style-type: none"><li>Deliverable: Assessment field work completed and Assessment report delivered, including initial version of Functional Specifications and Requirements;</li></ul>	3/27/2015	8/21/2015  Delivered 8/21/2015
2.	Development Task Order 1 - Initial RMS Data Extraction Tool	<ul style="list-style-type: none"><li>Deliverable: Initial RMS Data Extraction Tool release (LEDS)</li></ul>	8/10/2015	10/28/2015  Delivered 10/9/2015

3.	Development Task Order 2 - Initial Core System and Central Repository	<ul style="list-style-type: none"> <li>• Deliverable: Initial Core System &amp; Central Repository release</li> <li>• Computer cluster equipment purchased</li> </ul>	10/02/2015	1/16/2016
4.	Development Task Order 3 - Initial Interface to CDAC ACTION System	<ul style="list-style-type: none"> <li>• Deliverable: Initial Interface to CDAC ACTION system release</li> </ul>	11/02/2015	4/28/2016
5.	Development Task Order 4 - Initial Supplemental Case Selection Screens	<ul style="list-style-type: none"> <li>• Deliverable: Initial Supplemental Case Selection Screens release</li> </ul>	1/1/2016	3/15/2016
6.	Development Task Order 5 - Additional and Priority Backlog Features	<ul style="list-style-type: none"> <li>• Deliverable: Additional features release</li> </ul>	4/29/2016	8/18/2016
7.	System as a Whole – Completion of Development Phase	<ul style="list-style-type: none"> <li>• Operational System</li> </ul>		8/18/2016
8.	Deployment	<ul style="list-style-type: none"> <li>• Deployment for mutually agreed upon** agencies of District 18</li> <li>• Testing and Acceptance for mutually agreed upon** agencies of District 18</li> <li>• Completion of training for District 18</li> <li>• Completion of scheduled classroom and Webex sessions</li> <li>• Deployment for mutually-agreed upon** agencies for balance of state, following an agreed-upon order of districts</li> <li>• Testing and Acceptance Deployment for mutually-agreed upon** agencies in all other state districts</li> </ul>	5/16/2016	6/1/2017
9.	Implementation Date – Completion of Deployment Phase	System made available to all participating District Attorneys and Law Enforcement Agencies		6/1/2017

\* Subject to change upon mutual, written agreement of the parties through execution of Task Orders. Delivery Date assumes CDAC authorizes the Task Order at the Date of Initiation.

\*\* In the event an LEA opts to not participate, then such LEA is excluded from the list of agreed to agencies.

## Phase 2. Enhance ACTION

Phase 2 consists of enhancements to ACTION that will create efficiencies in the processing of electronic discovery by the DA offices. Some of the major enhancements include:

Ref. No.	Description	Implementation Date
1	DUI enhancement, Traffic data import from Judicial	08/2014
2	Enhancements to Work Flow, Noting, Prosecutor Docket tools, Defense Attorney maintenance, eFiling with Judicial	11/2014
3	ACTION Scan (version 1.0)	12/2014
4	Enhancements to eFiling with Judicial, Work Flow, Prosecutor Docket tools, Filing Cabinet	02/2015
5	Enhancements to eFiling with Judicial, Work Flow, Division Docket tool, Filing Cabinet	04/2015
6	Enhancements to eFiling with Judicial, eDiscovery zip packets, Filing Cabinet, Work Flow	06/2015
7	ACTION Scan (version 2.0)	07/2015
8	Enhancements to Traffic Case entry, eFiling with Judicial, Filing Cabinet, eDiscovery Bate Stamping	08/2015
9	Convert District 4 to the Filing Cabinet from their existing Document Management System	01/2016
10	ACTION Scan (version 3.0)	01/2016
11	Web Portal Registration system	01/2016
12	Web Portal Ordering system	02/2016
13	eDiscovery available for local pickup/physical media	02/2016
14	Convert District 17 to the Filing Cabinet from their existing Document Management System	02/2016
15	Convert District 18 to the Filing Cabinet from their existing Document Management System	02/2016
16	Work Queue for scanned images/documents	03/2016
17	Co-Defendant case processing	04/2016
18	CORE to ACTION Interface	05/2016
19	Server based backend OCR processing	06/2016
20	Document searching	06/2016
21	New Document Generation System	07/2016
22	Convert District 8 to the Filing Cabinet from their existing Document Management System	12/2016

### Phase 3: Provide discovery to Defense

Phase 3 consists of creating a storage location to hold the “Discovery Packets” created by the DA and creating a website for the Defense to download these discovery packets. The website work is currently under way with a model ready for limited testing in District 19 (Weld County).

The website will provide the following components:

- Secure log in
- Display of all discovery packets available to the user (packets will be in a compressed zip format)
- Provide a “shopping cart” method to allow user to select multiple packets from multiple cases
- Provide a method to allow selected packets to be downloaded to the user’s computer
- Provide a receipt showing all downloaded packets and their contents.

### Project expenditures, incurred and planned

For the current 2015-16 year, we have \$1,075,892 left over from the \$2,300,000 original budget. This leaves us with a budget shortfall of \$570,000

Fiscal Year	2014-15	2015-16	2016-17	2017-18
Xerox/PARC	\$0	\$2,000,000	\$1,000,000	\$750,000 **
<b>ACTION</b>				
Personnel	\$885,706	\$1,326,000 *	\$1,780,000 *	1,780,000
Supplies & Operating	\$88,240	\$129,000	\$170,000	170,000
Travel/Meetings	\$6,619	\$25,000	\$20,000	20,000
Equipment/Software	\$143,545	\$262,000	\$330,000	330,000
<b>ACTION Total</b>	<b>\$1,124,110</b>	<b>\$1,742,000</b>	<b>\$2,300,000</b>	<b>\$2,300,000</b>
<b>Total</b>	<b>\$1,124,110</b>	<b>\$3,724,000.00</b>	<b>\$3,300,000</b>	<b>\$3,050,000</b>
Potential PD/ADC transfer			\$1,000,000 ***	\$2,500,000
Necessary funds from General Assembly	\$0	\$570,000	\$1,300,000	550,000 **

\* - Includes 3-4 additional FTEs in 2015-16 and 3 additional FTEs in 2016-17.

\*\* - Maximum maintenance of the Xerox eDiscovery portion, the actual amount may be less.

\*\*\* - \$1,000,000 is the estimated amount to be accrued incrementally throughout the year as District Attorney offices are cut over to the new system. The schedule is not set and may change, affecting this amount.



## Sample Implementation Plan

\$ Rank	District	Begin	Complete	FY 2014-15 Payments	FY portion
3	18	5/2016	7/2016	\$ 298,916	\$274,000
5	17		8/2016	\$ 159,351	\$132,800
21	5		8/2016	\$ 17,189	\$14,300
2	4		9/2016	\$ 297,548	\$223,000
6	8		10/2016	\$ 141,244	\$94,000
15	19		10/2016	\$ 27,797	\$18,500
7	10		11/2016	\$ 115,598	\$67,400
8	11		11/2016	\$ 107,480	\$62,700
12	6		11/2016	\$ 42,090	\$24,500
13	21		1/2017	\$ 35,062	\$14,600
14	12		1/2017	\$ 31,302	\$13,000
16	7		1/2017	\$ 24,692	\$10,200
19	22		1/2017	\$ 20,979	\$8,700
17	14		1/2017	\$ 22,738	\$9,400
18	16		2/2017	\$ 21,181	\$7,000
20	3		2/2017	\$ 18,091	\$6,000
22	15		3/2017	\$ 11,707	\$3,000
11	13		4/2017	\$ 45,658	\$7,600
10	9		4/2017	\$ 45,852	\$7,600
4	1		5/2017	\$ 267,428	\$22,300
9	20		5/2017	\$ 99,012	\$8,200
1	2		6/2017	\$ 696,875	\$0
				Total	\$1,028,800