

The following file contains two documents:

- A document dated January 12, 2016, titled "Supplemental Requests for FY 2015-16: Judicial Branch". This document includes staff recommendations related to supplemental requests submitted by Judicial Branch agencies.
- A memorandum to the Joint Budget Committee members dated January 11, 2016. This memorandum includes a staff-initiated recommendation to reduce the FY 2015-16 appropriation for the District Attorney Mandated Costs line item.

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



SUPPLEMENTAL REQUESTS FOR FY 2015-16

JUDICIAL BRANCH

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

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January 12, 2016**

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JUDICIAL BRANCH

Department Overview

One of three branches of Colorado state government, the Judicial Branch primarily interprets and administers the law and resolves disputes. The state court system consists of the Colorado Supreme Court, the Colorado Court of Appeals, district courts, the Denver probate and juvenile courts, and all county courts except the Denver county court. Municipal courts and Denver's county court are not part of the state court system, and they are funded by their respective local governments. The Judicial Branch also supervises juvenile and adult offenders who are sentenced to probation, and it includes the following independent agencies:

- The Office of the State Public Defender (OSPD) and the Office of Alternate Defense Counsel (OADC) provide legal representation for indigent criminal defendants. Such cases are first assigned to the OSPD, and cases are referred to the OADC if the OSPD has an ethical conflict of interest.
- The Office of the Child's Representative oversees the provision of legal services to children entitled to legal representation at state expense, and is responsible for ensuring quality representation.
- The Office of the Respondent Parents' Counsel provides legal representation for respondent parents involved in dependency and neglect proceedings.
- The Office of the Child Protection Ombudsman receives, investigates, and seeks resolution of complaints concerning child protection services and recommends changes to improve such services.
- The Independent Ethics Commission hears complaints and issues findings and advisory opinions on ethics-related matters that arise concerning public officers, members of the General Assembly, local government officials, or government employees.

The Department's FY 2015-16 appropriation represents 2.6 percent of statewide operating appropriations and 5.0 percent of statewide General Fund appropriations.

Summary: FY 2015-16 Appropriation and Recommendation

Judicial Branch: Recommended Changes for FY 2015-16						
	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
FY 2015-16 Appropriation						
SB 15-234 (Long Bill)	\$670,009,402	\$477,393,699	\$155,800,052	\$32,390,651	\$4,425,000	4,573.3
Other legislation	<u>4,473,305</u>	<u>1,381,285</u>	<u>1,542,020</u>	<u>1,550,000</u>	<u>0</u>	<u>19.0</u>
Current FY 2015-16 Appropriation	\$674,482,707	\$478,774,984	\$157,342,072	\$33,940,651	\$4,425,000	4,592.3

JBC Staff Supplemental Recommendations: FY 2015-16
Staff Working Document – Does Not Represent Committee Decision

Judicial Branch: Recommended Changes for FY 2015-16						
	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
Recommended Changes						
Current FY 2015-16 Appropriation	\$674,482,707	478,774,984	\$157,342,072	\$33,940,651	\$4,425,000	4,592.3
JUD S1 Courthouse Capital and Infrastructure Maintenance	(1,901,000)	(1,620,000)	(281,000)	0	0	0.0
JUD S2 Mandated Costs	746,107	746,107	0	0	0	0.0
JUD S3 Legal Services	57,006	57,006	0	0	0	0.0
JUD S4 Technical Adjustments	63,987	(71,489)	(10,000)	145,476	0	0.0
OADC S1 Caseload Increase	1,513,302	1,513,302	0	0	0	0.0
OCPO S1 Legal Services	21,567	21,567	0	0	0	0.0
NP Vehicle Lease Payment True-up	<u>(8,353)</u>	<u>(8,353)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.0</u>
Recommended FY 2015-16 Appropriation	\$674,975,323	\$479,413,124	\$157,051,072	\$34,086,127	\$4,425,000	4,592.3
Recommended Increase/(Decrease)	\$492,616	\$638,140	(\$291,000)	\$145,476	\$0	0.0
Percentage Change	0.1%	0.1%	(0.2%)	0.4%	0.0%	0.0%
FY 2015-16 Executive Request	\$674,975,323	\$479,413,124	\$157,051,072	\$34,086,127	\$4,425,000	4,592.3
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	\$0	(0.0)

Request/Recommendation Descriptions

JUD S1 Courthouse Capital and Infrastructure Maintenance: The request includes a decrease of \$1,901,000 total funds, including \$1,620,000 General Fund and \$281,000 cash funds from the Judicial Information Technology Cash Fund to reflect the early completion, delay, or cancellation of local courthouse facility projects. The recommendation includes the requested decrease.

JUD S2 Mandated Costs: The request includes an increase of \$746,107 General Fund to cover court-appointed counsel expenses for attorneys to represent parents and guardians in dependency and neglect cases, for attorneys to represent impaired adults in civil cases, and for non-attorney child and family investigator services in domestic relations cases. The recommendation includes the requested increase.

JUD S3 Legal Services: The request includes an increase of \$57,006 General Fund to allow the Department to purchase an additional 600 hours of legal services from the Department of Law for two pending cases. The recommendation includes the requested increase.

JUD S4 Technical Adjustments: The request includes several technical adjustments that would result in a reduction in both General Fund (-\$71,489) and cash fund (-\$10,000) appropriations, offset by an increase in reappropriated funds (+\$145,476). The recommendation includes the requested adjustments.

OADC S1 Caseload Increase: The request includes an increase of \$1,513,302 General Fund to cover expenses associated with an increase in the number of cases requiring an Office of the Alternate Defense Counsel contract attorney to provide legal representation for indigent criminal defendants and juveniles. The recommendation includes the requested increase.

OCPO S1 Legal Services: The request includes an increase of \$21,567 General Fund to allow the newly created Office of the Child Protection Ombudsman to cover the cost of legal services provided to date by the Department of Law to the newly created Child Protection Ombudsman Board, as well as an additional 40 hours of legal services required to facilitate the continuity of operations as the program transitions from the Department of Human Services to the Judicial Branch. The recommendation includes the requested increase.

Prioritized Supplemental Requests

SUPPLEMENTAL REQUEST, COURTS/PROBATION (JUD) PRIORITY #1 COURTHOUSE CAPITAL AND INFRASTRUCTURE MAINTENANCE

	Request	Recommendation
Total	<u>(\$1,901,000)</u>	<u>(\$1,901,000)</u>
FTE	0.0	0.0
General Fund	(1,620,000)	(1,620,000)
Cash Funds	(281,000)	(281,000)
Reappropriated Funds	0	0
Federal Funds	0	0

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

Department Request: The Department requests a \$1,901,000 decrease in the FY 2015-16 appropriation for Courthouse Capital and Infrastructure Maintenance to reflect the impact of several local courthouse facility projects that were completed early (in FY 2014-15) or have been delayed or cancelled by the counties involved. Please note that the Department has also submitted a budget amendment to increase its FY 2016-17 request for this line item by \$1,461,000 (including \$1,370,000 General Fund and \$91,000 cash funds) to cover the State's share of costs related to local projects that counties have delayed from FY 2015-16 to FY 2016-17.

Staff Recommendation: Staff recommends that the Committee approve the supplemental request.

*JBC Staff Supplemental Recommendations: FY 2015-16
Staff Working Document – Does Not Represent Committee Decision*

Staff Analysis:

The Department requests a \$1,901,000 decrease in the FY 2015-16 appropriation for Courthouse Capital and Infrastructure Maintenance, including decreases of \$1,620,000 General Fund and \$281,000 cash funds from the Judicial Department Information Technology Cash Fund. First, five projects that were funded through the initial FY 2015-16 appropriation have been delayed, so the Department's request would shift this funding from FY 2015-16 to FY 2016-17. The following table, prepared by the Department, lists these five projects.

Projects Delayed from FY 2015-16 to FY 2016-17				
<u>District</u>	<u>County</u>	<u>Project</u>	<u>General Fund</u>	<u>Cash Funds</u>
4th	El Paso	El Paso County is moving court and probation staff to the Sheriff's annex building.	\$ 140,000	\$ 91,000
6th	La Plata	La Plata County is providing an additional courtroom and additional space for collections, pro se, and probation.	170,000	
18th	Arapahoe	Arapahoe County is building a new facility for the probation office.	330,000	
18th	Arapahoe	Arapahoe County is providing two additional courtrooms, chambers, and staff area.	180,000	
22nd	Montezuma	Montezuma County is remodeling the courthouse, including 4 courtrooms and associated court, probation, and public spaces.	550,000	
TOTAL COURTHOUSE CAPITAL TO BE SHIFTED			<u>\$1,370,000</u>	<u>\$ 91,000</u>

Second, the Department is requesting the elimination of FY 2015-16 funding for three projects:

- Two projects in Summit and Gunnison counties were completed early, and the Department was able to meet its spending obligations related to these projects in FY 2014-15.
- Archuleta county authorities have decided to cancel a courthouse expansion project.

The following table, prepared by the Department, lists these three projects.

Projects to Revert in FY 2015-16				
<u>District</u>	<u>County</u>	<u>Project</u>	<u>General Fund</u>	<u>Cash Funds</u>
5th	Summit	Summit County provided additional space for the probation office.	\$ 50,000	\$ 110,000
6th	Archuleta	Archuleta County planned to expand a courtroom, chambers, jury, and public space.	100,000	80,000
7th	Gunnison	Gunnison County is providing space for an additional courtroom.	100,000	
TOTAL COURTHOUSE CAPITAL TO BE REVERTED			<u>\$ 250,000</u>	<u>\$ 190,000</u>

Staff recommends approving the supplemental request to more accurately reflect planned expenditures for FY 2015-16.

Background Information – State Role Related to Courthouse Facilities

Section 13-3-108, C.R.S., requires each county to provide and maintain adequate courtrooms and other court facilities. However, Section 13-3-104, C.R.S., requires that the State pay for the "operations, salaries, and other expenses of all courts of record within the state, except for county courts in the city and county of Denver and municipal courts." Pursuant to the latter provision, the General Assembly annually appropriates funds for courthouse facilities, including the following types of expenditures:

- furnishings for new, expanded, and remodeled courthouse facilities (including probation facilities);
- costs associated with the temporary relocation of a court;
- shelving;
- phone and communication systems;
- audiovisual systems; and
- wireless access.

In addition, the State Court Administrator's Office provides technical support and information for Judicial Department managers and county officials with regard to the planning, design, and construction of new or remodeled court and probation facilities. Staff is available to provide support throughout the design process including the selection of design professionals and contractors, space planning, conceptual design, schematic design, design development, and construction administration. Staff also offers technical assistance and consultation regarding courthouse security issues, courtroom technology, furnishings, fixtures, and associated equipment.

Finally, the General Assembly provides state funding to assist some counties with facility-related expenditures through the Courthouse Security Grant Program and the Underfunded Courthouse Facilities Grant Program.

Background Information - History of State Appropriations for Courthouse Facilities

The annual appropriation for courthouse capital and infrastructure maintenance varies significantly depending on the number and size of county construction projects. Historically, General Fund moneys were appropriated for this purpose. From FY 2009-10 through FY 2013-14, the General Fund appropriation was temporarily replaced with cash funds from the Judicial Stabilization Fund. This financing was made possible by delaying the implementation of the last 15 district and county court judgeships authorized by H.B. 07-1054. The one-time cash funds savings resulting from this delay were allocated to meet the State's obligation to furnish new and remodeled courthouses.

Beginning in FY 2015-16, the Department's budget request has included cash funds from the Judicial Department Information Technology Cash Fund to cover information technology-related components of the request.

*JBC Staff Supplemental Recommendations: FY 2015-16
Staff Working Document – Does Not Represent Committee Decision*

The following table provides a history of recent expenditures, the FY 2015-16 appropriation (including the requested mid-year reduction), and the amended request for FY 2016-17.

Recent Expenditures and Appropriations for Courthouse Capital and Infrastructure Maintenance			
Fiscal Year	General Fund	Cash Funds	Total Funds 1/
2000-01	\$5,808,916	\$0	\$5,808,916
2001-02	2,317,321	0	2,317,321
2002-03	317,302	0	317,302
2003-04	433,463	0	433,463
2004-05	1,027,533	0	1,027,533
2005-06	910,616	0	910,616
2006-07	1,103,359	0	1,103,359
2007-08	948,680	0	948,680
2008-09	1,000,000	0	1,000,000
2009-10	0	3,064,041	3,064,041
2010-11	80,791	2,351,276	2,432,067
2011-12	143,406	473,526	616,932
2012-13	0	1,621,173	1,621,173
2013-14	172,550	3,417,571	3,590,121
2014-15	2,194,603	24,212	2,218,815
Average Annual Expenditures			1,827,356
<i>FY 2015-16 Requested</i>			
Approp.	1,289,613	1,770,044	3,059,657
<i>FY 2016-17 Amended Request</i>			
	2,396,838	1,915,731	4,312,569

1/ Since FY 2010-11, this line item has also included funds appropriated for capital outlay expenses associated with new staff for the State Court Administrator's Office, the courts, and probation programs. Prior to FY 2010-11, such funding appeared in a separate line item in each respective division.

**SUPPLEMENTAL REQUEST, JUD PRIORITY #2
MANDATED COSTS**

	Request	Recommendation
Total	<u>\$746,107</u>	<u>\$746,107</u>
FTE	0.0	0.0
General Fund	746,107	746,107
Cash Funds	0	0
Reappropriated Funds	0	0
Federal Funds	0	0

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

Department Request: The Department requests an increase of \$746,107 General Fund for FY 2015-16 to cover three types of court-appointed counsel expenses:

- \$575,907 for respondent parent counsel in dependency and neglect cases;
- \$101,476 for non-attorney child and family investigator services in domestic relations cases; and
- \$68,724 for *guardian ad litem* representation of impaired adults in civil cases.

Please note that the Department is requesting continuation of this increase in FY 2016-17.

Staff Recommendation: Staff recommends that the Committee approve the supplemental request.

Staff Analysis:

Department Request

Respondent Parent Counsel Expenses. The Colorado Children's Code¹ defines when a child is "dependent" or "neglected", under what circumstances a child can be removed from his or her home and placed in the temporary custody of a county department of social services, and under what circumstances the court may terminate a parent-child legal relationship. A parent or guardian who is a respondent in a dependency and neglect (also called "D&N") case has the right to be represented by counsel at every stage of the proceedings; a respondent parent or guardian who is indigent has the right to counsel at State expense. Respondent parents' counsel plays a critical role in protecting parents' constitutional and legal rights and providing complete, accurate, and balanced information to the courts.

¹ See Title 19, Colorado Revised Statutes.

Over the last four fiscal years, expenditures for respondent parents' counsel have increased annually, rising by a total of \$1.7 million (20.4 percent) from FY 2010-11 to FY 2014-15. In FY 2014-15 alone expenses increased by \$1.4 million. The Department indicates that the number of court appointments for these cases is the primary reason for these cost increases. The Department is requesting \$322,575 to cover the cost of 275 additional appointments² in cases where the attorney is paid on an hourly basis ($275 \times \$1,173 = \$322,575$). The Department is also requesting \$253,332 to cover the cost of 186 additional appointments² in cases where the attorney is paid on a flat fee basis ($186 \times \$1,362 = \$253,332$). The Department is thus requesting a total of \$575,907 General Fund for respondent parent counsel appointments.

Non-attorney Child and Family Investigator (CFI) Expenses. The court may appoint an individual to serve as a "child and family investigator" (CFI) to investigate, report, and make recommendations to the court on issues that affect the best interests of children involved in a domestic relations case. Prior to January 1, 2016, the oversight of court-appointed CFIs was shared by two judicial agencies:

- the Office of the Child's Representative was responsible for overseeing state-paid CFIs who are attorneys; and
- the State Court Administrator's Office was responsible for overseeing state-paid CFIs who are not attorneys, as well as all privately-paid CFIs (both attorneys and non-attorneys).

Pursuant to H.B. 15-1153, the State Court Administrator's Office is now responsible for oversight of all court-appointed CFIs.

From FY 2010-11 to FY 2014-15, expenditures for non-attorney CFI appointments increased by \$110,895 (154.6 percent). The Department indicates that this increase is due to rises in both the number of court appointments for these cases and the average cost of such appointments. The Department is requesting \$101,476 General Fund to cover the cost of 92 additional state-paid CFI appointments² ($92 \times \$1,103 = \$101,476$).

Expenses for Guardians Ad Litem (GALs) for Impaired Adults. The court may appoint a GAL on behalf of an adult in dependency and neglect actions, probate cases, mental health cases, or any other civil case in which an adult party is impaired and GAL services are deemed necessary throughout the proceedings. The Department indicates that the number of GAL appointments for civil cases is continuing to rise. The Department is requesting \$68,724 General Fund to cover the cost of 69 additional GAL appointments² ($69 \times \$996 = \$68,724$).

Staff Recommendation

The Department does not seek annual adjustments to the "Court Costs, Jury Costs, and Court-appointed Counsel" line item because it generally manages to cover increasing costs for certain types of court appointments with reductions in other types of mandated costs or through fiscal year-end transfers from other line items. In FY 2014-15, the appropriation fell \$384,199 short of the total expenditures for this line item. The Department was able to cover the shortfall through a

² The increased numbers of appointments are based on a comparison of the actual number of appointments in FY 2012-13 to the projected number of appointments for FY 2015-16.

year-end transfer from the Trial Court Programs line item. The Department's request represents a reasonable estimate of the recent and ongoing cost increases for court-appointed counsel. Staff recommends approving the requested adjustments to ensure the Department has sufficient resources to provide appropriate legal assistance and services to indigent individuals, thereby ensuring that all parties' liberties are protected and rights upheld.

Background Information

Mandated Costs. This request concerns one of six line item appropriations in the Judicial Branch budget that covers "mandated costs". Mandated costs are associated with activities, events, and services that accompany court cases that are required in statute and the U.S. and Colorado Constitutions to ensure a fair and speedy trial, and to ensure the right to legal representation. In FY 2014-15, judicial agencies spent a total of \$32.5 million on mandated costs.

The "Court Costs, Jury Costs, and Court-appointed Counsel" line item provides funding to the State Court Administrator's Office for three types of costs: (1) Court costs (*e.g.*, transcripts, expert and other witness fees and expenses); (2) Juror payments and summons expenses; and (3) Court-appointed counsel expenses.

Court-appointed Counsel. Four independent agencies within the Judicial Branch provide or pay for court-appointed counsel in certain circumstances:

- (1) The Office of the State Public Defender (OSPD) provides legal representation for indigent defendants in criminal and juvenile delinquency cases;
- (2) The Office of the Alternate Defense Counsel (OADC) pays for private attorneys to provide legal representation for indigent defendants in criminal and juvenile delinquency cases in which the OSPD is precluded from doing so because of an ethical conflict of interest; and
- (3) The Office of the Child's Representative (OCR) provides or pays for private attorneys to provide legal representation for children involved in the court system due to abuse or neglect, delinquency, truancy, high conflict divorce, alcohol or drug abuse, mental health issues, and probate matters.
- (4) Effective July 1, 2016, the Office of the Respondent Parents' Counsel (ORPC) will pay for private attorneys to provide legal representation for a parent or legal guardian who is a respondent in a dependency and neglect case.

The State Court Administrator's Office pays for court-appointed counsel in all other circumstances. Currently, this line item primarily covers the costs of providing representation for indigent parties who:

- Are respondent parents in dependency and neglect actions (unless the party is a child);
- Require mental health, probate, or truancy counsel;
- Are adults requiring a *guardian ad litem* in mental health, probate, or dependency and neglect actions; or
- Require contempt of court counsel.

This appropriation also supports the provision of counsel in juvenile delinquency matters when the party is not indigent, but a family member is a victim or the parents refuse to hire counsel (in the latter case, reimbursement to the State is ordered against the parents).

The table on the following page details actual expenditures for this line item for the last four fiscal years. At the bottom of the table, staff has provided a comparison of the appropriation to actual expenditures.

JBC Staff Supplemental Recommendations: FY 2015-16
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Trial Court Expenditures - Court Costs, Jury Costs, and Court-appointed Counsel								
Description	FY 11-12		FY 12-13		FY 13-14		FY 14-15	
<i>Court-appointed Counsel:</i>								
Respondent Parent Counsel Attorney	8,374,063	43.8%	8,410,578	42.8%	8,630,020	42.6%	10,048,669	44.3%
Mental Health Attorney	1,593,328	8.3%	1,600,474	8.2%	1,761,992	8.7%	2,042,279	9.0%
Other Counsel/Investigators	1,291,976	6.8%	1,177,495	6.0%	1,142,786	5.6%	1,440,362	6.4%
Attorney Guardian Ad Litem	482,784	2.5%	590,240	3.0%	609,507	3.0%	691,542	3.0%
Parental Refusal (FMV)	402,033	2.1%	338,341	1.7%	363,158	1.8%	292,771	1.3%
Truancy Attorney	124,792	0.7%	165,968	0.8%	145,030	0.7%	228,051	1.0%
Non-Attorney Child and Family Investigator (CFI)	64,012	0.3%	72,737	0.4%	113,101	0.6%	182,620	0.8%
Other Appointments	52,926	0.3%	63,808	0.3%	74,985	0.4%	98,122	0.4%
Court-appointed Counsel Programming			22,730		30,942		4,399	
Attorney Fee Collection Costs	22,483	0.1%	18,321	0.1%	18,713	0.1%	14,742	0.1%
Other Counsel per S.B. 06-061	1,635	0.0%	206	0.0%	0	0.0%	0	0.0%
Interpreter	0	0.0%	0	0.0%	0	0.0%	0	0.0%
<i>Subtotal: Court-appointed Counsel</i>	12,410,032	65.0%	12,460,898	63.5%	12,890,236	63.6%	15,043,557	66.3%
<i>Annual Percent Change</i>	0.3%		0.4%		3.4%		16.7%	
<i>Court Costs:</i>								
Evaluations/Expert Witness Fees	830,071	5.5%	1,017,257	6.6%	919,049	5.8%	1,065,289	5.9%
Transcripts	137,760	0.9%	150,970	1.0%	180,803	1.1%	172,253	1.0%
Discovery & Service of Process Fees	35,458	0.2%	35,515	0.2%	36,072	0.2%	65,638	0.4%
Forms	12,175	0.1%	9,542	0.1%	11,087	0.1%	9,986	0.1%
Advertising	9,084	0.1%	8,115	0.1%	7,109	0.0%	6,810	0.0%
Interpreters	1,933	0.0%	2,928	0.0%	56	0.0%	110	0.0%
Experts/Witness Travel	1,550	0.0%	1,558	0.0%	1,760	0.0%	916	0.0%
Postage (moved to Trial Courts Operating)	209	0.0%	494	0.0%	265	0.0%	0	0.0%
Investigators	0	0.0%	4,796	0.0%	3,469	0.0%	0	0.0%
Death Penalty Costs	0	0.0%	7,196	0.0%	2,454	0.0%	26,579	0.1%
Miscellaneous	28,686	0.2%	43,088	0.3%	52,105	0.3%	19,274	0.1%
<i>Subtotal: Court Costs</i>	1,056,925	7.0%	1,281,459	8.3%	1,214,228	7.7%	1,366,854	7.6%
<i>Annual Percent Change</i>	-13.3%		21.2%		-5.2%		12.6%	
<i>Jury Costs</i>								
	1,714,537	11.3%	1,779,315	11.5%	1,710,023	10.8%	1,601,228	8.9%
<i>Annual Percent Change</i>	-8.7%		3.8%		-3.9%		-6.4%	
Total Expenses for Line Item	15,181,494	100.0%	15,521,672	100.0%	15,814,487	100.0%	18,011,639	100.0%
Less: Appropriation (total funds)	15,594,352		15,985,692		15,940,692		17,627,440	
Equals: (Excess appropriation)/Shortfall	(412,858)		(464,020)		(126,205)		384,199	

SUPPLEMENTAL REQUEST, JUD PRIORITY #3 LEGAL SERVICES

	Request	Recommendation
Total	<u>\$57,006</u>	<u>\$57,006</u>
FTE	0.0	0.0
General Fund	57,006	57,006
Cash Funds	0	0
Reappropriated Funds	0	0
Federal Funds	0	0

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

Department Request: The Department requests \$57,006 General Fund to purchase an additional 600 hours of legal services from the Department of Law.

Staff Recommendation: Staff recommends that the Committee approve the request.

Staff Analysis:

The Department indicates that its need for legal services will exceed its existing FY 2015-16 appropriation. The appropriation of \$190,020 is sufficient to purchase 2,000 hours of legal services. The Department indicates that it needs additional legal services for two pending cases:

- In August 2015, a civil rights case was filed against a district court judge [*Verlo v. Martinez* (15CV1319)]. The case involves the distribution of materials outside a Denver courthouse and whether the district court judge can prohibit such distribution through an order. Arguments have been made in the 10th Circuit Court of Appeals and trial is currently pending. The Department anticipates the need for an additional 400 hours of legal services for trial preparation and representation.
- The Department is also involved in an ongoing case with the Public Employees Retirement Association (PERA) and a former law clerk who was employed by the Department from 1979 to 1980 concerning PERA benefits. The Department anticipates the need for an additional 200 hours of legal services for representation in this case.

Staff recommends approving the request in order to ensure that the Department has sufficient resources to cover the anticipated need for legal services in these two cases. The Department's appropriation for legal services has been decreased significantly in recent years, reducing the number of hours that can be purchased from 4,227 in FY 2007-08 to the current level of 2,000. Based on recent expenditures, the existing appropriation appears to be reasonable for most fiscal years, and the Department has not objected to staff's recommendations to reduce the

appropriation. However, the Department requires a temporary increase in the appropriation to address the two cases described above. The requested amount is based on the appropriate hourly rate for FY 2015-16 (\$95.01).

SUPPLEMENTAL REQUEST, JUD PRIORITY #4 TECHICAL ADJUSTMENTS

	Request	Recommendation
Total	<u>\$63,987</u>	<u>\$63,987</u>
FTE	0.0	0.0
General Fund	(71,489)	(71,489)
Cash Funds	(10,000)	(10,000)
Reappropriated Funds	145,476	145,476
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	YES
JBC staff agrees that most components of this request are the result of new data, but staff believes that some components of this request are due technical errors in the original appropriation.	

Department Request: The Department requests several technical adjustments that would result in a reduction in both General Fund and cash fund appropriations, offset by an increase in reappropriated funds. Please note that the Department is requesting continuation of these adjustments, with one minor change, for FY 2016-17.

Staff Recommendation: Staff recommends that the Committee approve all components of the request.

Staff Analysis:

The Department requests several technical adjustments to appropriations and Long Bill letter notations, described below.

- *General Courts Administration.* The Department uses a portion of federal grant funding to cover both departmental and statewide indirect cost recoveries. These indirect cost recoveries are appropriated, in lieu of General Fund, to support a portion of the Department's administrative expenses. The Department indicates that in FY 2014-15, these federal indirect cost recoveries (\$274,821) exceeded the corresponding appropriation (\$142,000). The Department thus requests a \$133,000 reduction in the General Fund portion of this appropriation and a \$133,000 increase in the reappropriated funds portion of the appropriation for FY 2015-16 (and continuation in FY 2016-17).

- *Family Court Facilitator Training.* The General Assembly approved a request for funding to increase the number of Family Court Facilitators by 9.0 FTE, as well as funding to add 1.0 FTE to act as a statewide coordinator for Family Court Facilitators. The initial request included \$60,000 for "annual ongoing" statewide multidisciplinary team training for judicial officers and other key personnel who are involved with domestic relations cases. This amount was appropriated for FY 2014-15, but was eliminated for FY 2015-16 based on an erroneous underlying spreadsheet that reflected this funding for FY 2014-15 only. The Department requests restoration of the \$60,000 General Fund for this training, which is designed to ensure the development and sharing of best practices across jurisdictions and improve the management of domestic relations cases.
 - *Water Adjudication Cash Fund.* This fund, created in H.B. 03-1334, consists of fees paid by parties that appeal a decision by the State Engineer concerning interruptible water supply agreements. The fees are intended to cover the costs of expediting such appeals. The Long Bill annually includes a \$10,000 cash funds appropriation from this fund to allow the Water Courts to collect and spend such fees. The Department requests that this appropriation be eliminated starting in FY 2015-16, as no revenues have been or are expected to be collected for deposit into this fund.
 - *Law Library.* The Judicial Department and the Department of Law consolidated their law libraries when they moved into the Carr Center. The Department of Law provides funding to the Judicial Department to support 1.0 FTE library staff, so the Judicial Department's appropriation for the Law Library includes reappropriated funds to allow the receipt and expenditure of such funds. The Department requests an increase in this appropriation to reflect changes in employee salary and benefit expenses (\$9,548 reappropriated funds for FY 2015-16 and \$9,776 reappropriated funds for FY 2016-17).
 - *Child Support Enforcement.* The Department contracts with the Department of Human Services (DHS) to provide certain child support enforcement services. The Department receives federal child support enforcement funds, transferred from DHS, and is required to provide the required 34.0 percent General Fund match. The Department requests a \$4,439 increase in this appropriation (including \$1,511 General Fund and \$2,928 reappropriated funds) to reflect the current contract.
 - *Long Bill Letter Notation Change.* The Department requests that the letter notation in the Long Bill that describes the various cash fund sources that are used to pay for employee-related benefits include the Restorative Justice Surcharge Fund.
-

SUPPLEMENTAL REQUEST, OFFICE OF THE ALTERNATE DEFENSE COUNSEL (OADC) PRIORITY #1 CASELOAD ADJUSTMENT

	Request	Recommendation
Total	<u>\$1,513,302</u>	<u>\$1,513,302</u>
FTE	0.0	0.0
General Fund	1,513,302	1,513,302
Cash Funds	0	0
Reappropriated Funds	0	0
Federal Funds	0	0

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

Agency Request: The Office of the Alternate Defense Counsel (OADC) requests \$1,513,302 General Fund to cover the costs of a growing number of cases requiring OADC contract attorneys to provide legal representation for indigent criminal defendants and juveniles. Please note that the OADC previously submitted a decision item that would continue this requested increase in FY 2016-17.

Staff Recommendation: Staff recommends that the Committee approve the request.

Staff Analysis:

OADC Request

The OADC provides legal representation for indigent defendants in criminal and juvenile delinquency cases in which the Office of the State Public Defender (OSPD) is precluded from doing so because of an ethical conflict of interest³. Common types of conflicts include cases in which the OSPD represents co-defendants or represents both a witness and a defendant in the same case. The OADC provides legal representation by contracting with licensed attorneys and investigators. Such contracts must provide for reasonable compensation (based on either a fixed fee or hourly rates) and reimbursement for expenses necessarily incurred (*e.g.*, expert witnesses, investigators, legal assistants, and interpreters).

Last year, the OADC requested a continuation level of funding for both Conflict of Interest Contracts and Mandated Costs for FY 2015-16. While the agency projected a small increase in caseload (about four percent), it assumed that the average cost per case would decline slightly and it would not require an increase in funding. The OADC's actual expenditures in FY 2014-15 ultimately exceeded the appropriations by \$631,863 General Fund. The agency was able to cover

³ See Section 21-2-101 *et seq.*, C.R.S.

this over expenditure using unspent funds transferred from other judicial agencies. For FY 2015-16, the OADC requests \$1,513,302 General Fund to cover the costs of caseload increases experienced in FY 2014-15 (an overall increase of 1,595 cases or 10.6 percent) as well as a further projected caseload increase of 834 (5.0 percent) in FY 2015-16. The OADC previously submitted a decision item (OADC R1) to maintain the requested funding increases for FY 2016-17.

The following Table 1 provides a comparison of OADC's initial and updated caseload projections, by case type.

Table 1: OADC Caseload (Annual number of cases paid)			
Case Type	FY 2015-16 (initial projections)	FY 2015-16 (updated projections)	Change
Trial Case Types:			
<u>Felony:</u>			
Felony 1 - Death Penalty	3	3	0
Felony 1 - Other	123	110	(13)
Felony 2 and 3	2,731	2,075	(656)
Felony 4, 5, and 6	<u>4,870</u>	<u>6,341</u>	<u>1,471</u>
Subtotal: Felony	7,727	8,529	802
Juvenile	1,437	1,871	434
Misdemeanor/ DUI/ Traffic	3,053	4,100	1,047
Other	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal: Trial Cases	12,217	14,500	2,283
Appeals	762	814	52
Post-Conviction	558	568	10
Special Proceedings/ Other	1,548	1,632	84
Total Cases	15,085	17,514	2,429

As indicated in the last column in Table 1, the increases are primarily related to three case types: lower level felony cases, misdemeanor and DUI cases, and juvenile cases. The OADC attributes these caseload increases to two bills passed in 2013:

- House Bill 13-1210 repealed a statute that required an indigent person charged with a misdemeanor, petty offense, or motor vehicle or traffic offense to meet with the prosecuting attorney for plea negotiations before legal counsel was appointed. The bill applied to offenses or violations committed on or after January 1, 2014. While the bill included additional funding for the Office of the State Public Defender (OSPD) based on projected caseload increases, the OADC could not estimate the effect of this bill on its caseload. Thus, it was assumed that any impacts of this bill would be handled through the budget process.

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- House Bill 14-1032 made procedural changes that significantly increasing juveniles’ rights to court appointed counsel. Similar to the above bill, this bill included additional funding for the OSPD to take on additional cases and it was assumed that any impact to the OADC would be addressed through the budget process.

The OADC's request includes increases for two line items. First, the OADC requests an increase of \$1,392,238 for the Conflict of Interest Contracts line item, which is used to pay attorneys and investigators. The following Table 2 provides a recent history of total cases paid by the OADC, the associated expenditures, and the average cost per case for Conflict of Interest Contracts. As indicated in the last column, the OADC's supplemental request for FY 2015-16 would provide for a projected 5.0 percent increase in total caseload compared to FY 2014-15, but the average cost per case would decline slightly (from \$1,610 to \$1,599).

Description	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16 (updated projections)
Total Cases Paid	12,595	11,878	12,585	13,290	15,085	16,680	17,514
<i>annual percent change</i>	1.0%	-5.7%	6.0%	5.6%	13.5%	10.6%	5.0%
Average Cost/Case*	\$1,648	\$1,527	\$1,571	\$1,496	\$1,528	\$1,610	\$1,599
<i>annual percent change</i>	-0.6%	-7.4%	2.9%	-4.8%	2.2%	5.4%	-0.7%
Total	\$20,760,634	\$18,132,047	\$19,767,979	\$19,882,661	\$23,055,774	\$26,861,292	\$28,007,998
<i>annual percent change</i>	0.3%	-12.7%	9.0%	0.6%	16.0%	16.5%	4.3%

* Please note that the average costs per case in FY 2014-15 reflects approved increases in hourly rates.

Second, the OADC requests \$121,064 for the Mandated Costs line item, which is used to cover associated expenses such as payments to district attorney offices for discoverable materials, expert witnesses, and transcripts. This request represents a \$121,064 (6.3 percent) increase in the FY 2015-16 appropriation, but it is \$191,025 lower than actual mandated cost expenditures incurred in FY 2014-15. The OADC indicates that mandated costs were significantly higher in FY 2014-15 primarily due to one death penalty case (particularly in the area of expert witnesses and transcripts). As detailed in the following Table 3, the requested funding would provide an average of \$117 per case based on the OADC's caseload projections – the same level that was required in FY 2011-12.

Description	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16 (updated projections)
Total	\$ 1,513,582	\$ 1,429,874	\$ 1,469,945	\$ 1,764,602	\$ 1,938,282	\$ 2,238,702	\$ 2,047,677
<i>annual percent change</i>	-4.8%	-5.5%	2.8%	20.0%	9.8%	15.5%	-8.5%
Total cases paid	12,595	11,878	12,585	13,290	15,085	16,680	17,514
Average cost per case	\$120	\$120	\$117	\$133	\$128	\$134	\$117
<i>annual percent change</i>	-5.7%	0.2%	-3.0%	13.7%	-3.2%	4.5%	-12.9%

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Staff Recommendation

Staff recommends approving the request. The OADC 's annual appropriations for this line item are based on projected expenditures, and then adjusted mid-year when warranted based on appointment and expenditure data. The following Table 4 details the appropriations and actual expenditures for this line item for the last six fiscal years.

Description	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16 Request
Initial appropriation	\$22,756,306	\$23,620,477	\$22,282,009	\$21,581,562	\$21,814,730	\$28,468,131	\$28,542,373
Mid-year adjustment	0	(2,280,711)	(873,555)	0	3,041,461	0	1,513,302
Final appropriation	22,756,306	21,339,766	21,408,454	21,581,562	24,856,191	28,468,131	30,055,675
Expenditures	22,274,216	19,561,921	21,237,924	21,647,263	24,994,056	29,099,994	
Fiscal year-end (reversion/transfer)/shortfall	(482,090)	(1,777,845)	(170,530)	65,701	137,865	631,863	

As detailed in the table above, the mid-year adjustments for this line item have ranged from a decrease of \$2,280,711 to an increase of \$3,041,461 in the last six fiscal years. Despite these mid-year adjustments, the OADC appropriation exceeded expenditures in three fiscal years, and fell short in three fiscal years. These over expenditures have been covered by fiscal year-end transfers within the Judicial Branch. Based on the history of mid-year adjustments and fiscal year-end reversions/transfers and shortfalls, as well as the evidence indicating that the caseload increases are primarily related to legislation passed in 2013, the request appears reasonable.

SUPPLEMENTAL REQUEST, OFFICE OF THE CHILD PROTECTION OMBUDSMAN (OCPO) PRIORITY #1 LEGAL SERVICES

	Request	Recommendation
Total	<u>\$21,567</u>	<u>\$21,567</u>
FTE	0.0	0.0
General Fund	21,567	21,567
Cash Funds	0	0
Reappropriated Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	YES
JBC staff agrees that this request meets supplemental criteria, but believes that it is the result of an unforeseen contingency rather than the result of new data.	

Agency Request: The newly created Office of the Child Protection Ombudsman (OCPO) requests \$21,567 General Fund to cover the cost of legal services provided to date by the Department of Law to the newly created Child Protection Ombudsman Board, and to provide funding for an additional 40 hours of legal services required to facilitate the continuity of program operations as the program transitions from the Department of Human Services to the Judicial Branch.

Staff Recommendation: Staff recommends that the Committee approve the request.

Staff Analysis:

Senate Bill 15-204 established the Office of the Child Protection Ombudsman (OCPO) in the Judicial Department as an independent agency, and it established the Child Protection Ombudsman Board to oversee personnel decisions, operating policies and procedures, and budget. The act required the OCPO, by November 1, 2015, to sign an administrative memorandum of understanding with the Judicial Department with an effective date of no later than January 1, 2016. The act modified the powers and duties of the existing Child Protection Ombudsman Program in the Department of Human Services, and authorized the Executive Director of the Department of Human Services to extend the existing program contract through December 31, 2015.

The act reduced the General Fund appropriation to the Department of Human Services for FY 2015-16 for the Child Protection Ombudsman by \$270,372 (from \$512,822 to \$242,450), and appropriated \$351,086 General Fund and 2.2 FTE to the Judicial Department for FY 2015-16. The following table, excerpted from the final Legislative Council Staff Fiscal Note for S.B. 15-204, details the assumptions that underlie the appropriation changes in the bill.

Table 1. Expenditures Under SB 15-204		
Cost Components	FY 2015-16	FY 2016-17
JUDICIAL DEPARTMENT	<u>\$351,086</u>	<u>\$503,876</u>
Personal Services	141,760	340,226
FTE	2.2 FTE	4.3 FTE
Operating Expenses and Capital Outlay Costs	20,712	3,800
Travel, Training, Office Equipment, Printing, and Other Expenses	39,000	78,000
Accounting and Human Resources	10,000	20,000
Office Space Build-Out	115,000	0
Centrally Appropriated Costs	24,614	61,850
DEPARTMENT OF HUMAN SERVICES	<u>(\$270,372)</u>	<u>(\$512,822)</u>
Contract for Child Protection Ombudsman	(270,372)	(512,822)
TOTAL	<u>\$80,714</u>	<u>(\$8,946)</u>

The OCPO has incurred \$17,767 in legal services expenses as of December 2015. These expenses related to staffing meetings of the newly created Child Protection Ombudsman Board and providing legal interpretation of the enabling statutes. The OCPO requests funds to cover these legal services expenses, as well as additional funding (\$3,800) to cover the costs of purchasing an additional 40 hours of legal services related to:

- Employment letters to rehire existing employees;
- Temporary personnel rules (needed to rehire existing employees);
- Finalizing permanent personnel rules; and
- Providing additional support to the Board to clarify its roles and responsibilities.

Staff recommends approving the request. Senate Bill 15-204 was referred out of the House Committee on Public Health Care and Human Services on Tuesday, April 28, with substantial amendments including a change in the sponsoring agency, a change in the transition time lines, and the creation of a new board. The bill was then heard in the House Appropriations Committee and on Second Reading in the House on Friday, May 1. The fiscal note, and the corresponding appropriation clause in the bill, did not contemplate the legal services that have been required by the new board to perform its duties as required by the bill and by the new Ombudsman to ensure continuity of program operations as the new Office is established in the Judicial Branch and moved to the Carr Center.

Pursuant to Section 19-3.3-110, C.R.S., the Child Protection Ombudsman is required to make funding recommendations to the Joint Budget Committee for the operation of the Office, and the General Assembly "shall make annual appropriations, in such amount and form as the general assembly determines appropriate, for the operation of the office".

Background Information

The Child Protection Ombudsman's Office was established by S.B. 10-171 to serve as an independent and neutral organization to investigate complaints and grievances about child protection services, make recommendations about system improvements, and serve as a resource for persons involved in the child welfare system. Prior to S.B. 15-204, the General Assembly appropriated moneys annually to the Department of Human Services to contract with an organization to act as child protection ombudsman. Most recently, the Ombudsman's Office was located within the National Association of Counsel for Children, a national nonprofit organization based in Denver.

Statewide Common Policy Supplemental Requests

Department's Portion of Statewide Supplemental Request	Total	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Statewide vehicle lease payment true-up – Courts and Probation	\$643	\$643	\$0	\$0	\$0	0.0
Statewide vehicle lease payment true-up – OSPD	(8,996)	(8,996)	0	0	0	0.0
Department's Total Statewide Supplemental Requests	(\$8,353)	(\$8,353)	\$0	\$0	\$0	0.0

Staff Recommendation: Staff recommends that the Committee approve these requests to adjust appropriations for vehicle lease payments to reflect the actual payments these agencies will be require make for FY 2015-16.

*JBC Staff Supplemental Recommendations - FY 2015-16
Staff Working Document - Does Not Represent Committee Decision*

Appendix A: Number Pages

	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
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JUDICIAL DEPARTMENT

Nancy Rice, Chief Justice

JUD S1 Courthouse Capital and Infrastructure Maintenance

(2) COURTS ADMINISTRATION

(C) Centrally Administered Programs

Courthouse Capital/ Infrastructure Maintenance	<u>2,218,813</u>	<u>4,960,657</u>	<u>(1,901,000)</u>	<u>(1,901,000)</u>	<u>3,059,657</u>
General Fund	2,194,601	2,909,613	(1,620,000)	(1,620,000)	1,289,613
Cash Funds	24,212	2,051,044	(281,000)	(281,000)	1,770,044

Total for JUD S1 Courthouse Capital and Infrastructure Maintenance	2,218,813	4,960,657	(1,901,000)	(1,901,000)	3,059,657
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	2,194,601	2,909,613	(1,620,000)	(1,620,000)	1,289,613
Cash Funds	24,212	2,051,044	(281,000)	(281,000)	1,770,044

JBC Staff Supplemental Recommendations - FY 2015-16
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	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
JUD S2 Mandated Costs					
(3) TRIAL COURTS					
Court Costs, Jury Costs, and Court-appointed Counsel					
Counsel	<u>18,020,657</u>	<u>17,884,919</u>	<u>746,107</u>	<u>746,107</u>	<u>18,631,026</u>
General Fund	17,891,865	17,719,670	746,107	746,107	18,465,777
Cash Funds	128,792	165,249	0	0	165,249
Total for JUD S2 Mandated Costs	18,020,657	17,884,919	746,107	746,107	18,631,026
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	17,891,865	17,719,670	746,107	746,107	18,465,777
Cash Funds	128,792	165,249	0	0	165,249

JBC Staff Supplemental Recommendations - FY 2015-16
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	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
JUD S3 Legal Services					
(2) COURTS ADMINISTRATION					
(B) Central Appropriations					
Legal Services	<u>171,825</u>	<u>190,020</u>	<u>57,006</u>	<u>57,006</u>	<u>247,026</u>
General Fund	171,825	190,020	57,006	57,006	247,026
Total for JUD S3 Legal Services	171,825	190,020	57,006	57,006	247,026
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	171,825	190,020	57,006	57,006	247,026

JBC Staff Supplemental Recommendations - FY 2015-16
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
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JUD S4 Technical Adjustments

(1) SUPREME COURT/COURT OF APPEALS

Law Library	<u>652,254</u>	<u>563,121</u>	<u>9,548</u>	<u>9,548</u>	<u>572,669</u>
FTE	3.5	3.5	0.0	0.0	3.5
Cash Funds	589,133	500,000	0	0	500,000
Reappropriated Funds	63,121	63,121	9,548	9,548	72,669

(2) COURTS ADMINISTRATION

(A) Administration and Technology

General Courts Administration	<u>22,270,391</u>	<u>24,459,103</u>	<u>0</u>	<u>0</u>	<u>24,459,103</u>
FTE	206.8	234.9	0.0	0.0	234.9
General Fund	14,616,260	16,520,860	(133,000)	(133,000)	16,387,860
Cash Funds	5,591,151	5,747,813	0	0	5,747,813
Reappropriated Funds	2,062,980	2,190,430	133,000	133,000	2,323,430

(2) COURTS ADMINISTRATION

(C) Centrally Administered Programs

Child Support Enforcement	<u>85,405</u>	<u>90,900</u>	<u>4,439</u>	<u>4,439</u>	<u>95,339</u>
FTE	1.0	1.0	0.0	0.0	1.0
General Fund	28,564	30,904	1,511	1,511	32,415
Reappropriated Funds	56,841	59,996	2,928	2,928	62,924

JBC Staff Supplemental Recommendations - FY 2015-16
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
(3) TRIAL COURTS					
Trial Court Programs	<u>133,257,426</u>	<u>143,616,952</u>	<u>50,000</u>	<u>50,000</u>	<u>143,666,952</u>
FTE	1,781.3	1,860.2	0.0	0.0	1,860.2
General Fund	100,553,453	113,504,175	60,000	60,000	113,564,175
Cash Funds	31,728,323	28,862,777	(10,000)	(10,000)	28,852,777
Reappropriated Funds	975,650	1,250,000	0	0	1,250,000
Total for JUD S4 Technical Adjustments	156,265,476	168,730,076	63,987	63,987	168,794,063
FTE	<u>1,992.6</u>	<u>2,099.6</u>	<u>0.0</u>	<u>0.0</u>	<u>2,099.6</u>
General Fund	115,198,277	130,055,939	(71,489)	(71,489)	129,984,450
Cash Funds	37,908,607	35,110,590	(10,000)	(10,000)	35,100,590
Reappropriated Funds	3,158,592	3,563,547	145,476	145,476	3,709,023

JBC Staff Supplemental Recommendations - FY 2015-16
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
OADC S1 Caseload Increase					
(6) OFFICE OF THE ALTERNATE DEFENSE COUNSEL					
Conflict-of-interest Contracts	<u>26,861,292</u>	<u>26,615,760</u>	<u>1,392,238</u>	<u>1,392,238</u>	<u>28,007,998</u>
General Fund	26,861,292	26,615,760	1,392,238	1,392,238	28,007,998
Mandated Costs	<u>2,243,477</u>	<u>1,926,613</u>	<u>121,064</u>	<u>121,064</u>	<u>2,047,677</u>
General Fund	2,243,477	1,926,613	121,064	121,064	2,047,677
Total for OADC S1 Caseload Increase	29,104,769	28,542,373	1,513,302	1,513,302	30,055,675
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	29,104,769	28,542,373	1,513,302	1,513,302	30,055,675

JBC Staff Supplemental Recommendations - FY 2015-16
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
OCPO S1 Legal Services					
(9) OFFICE OF THE CHILD PROTECTION OMBUDSMAN					
Program Costs	<u>0</u>	<u>207,274</u>	<u>21,567</u>	<u>21,567</u>	<u>228,841</u>
FTE	0.0	2.0	0.0	0.0	2.0
General Fund	0	207,274	21,567	21,567	228,841
Total for OCPO S1 Legal Services	0	207,274	21,567	21,567	228,841
<i>FTE</i>	<u>0.0</u>	<u>2.0</u>	<u>0.0</u>	<u>0.0</u>	<u>2.0</u>
General Fund	0	207,274	21,567	21,567	228,841

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	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
Vehicle lease payments					
(2) COURTS ADMINISTRATION					
(B) Central Appropriations					
Vehicle Lease Payments	<u>75,258</u>	<u>93,207</u>	<u>643</u>	<u>643</u>	<u>93,850</u>
General Fund	75,258	93,207	643	643	93,850
(5) OFFICE OF THE STATE PUBLIC DEFENDER					
Vehicle Lease Payments	<u>99,127</u>	<u>114,565</u>	<u>(8,996)</u>	<u>(8,996)</u>	<u>105,569</u>
General Fund	99,127	114,565	(8,996)	(8,996)	105,569
Total for Vehicle lease payments	174,385	207,772	(8,353)	(8,353)	199,419
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	174,385	207,772	(8,353)	(8,353)	199,419
Totals Excluding Pending Items					
JUDICIAL					
TOTALS for ALL Departmental line items	598,604,377	674,482,707	492,616	492,616	674,975,323
<i>FTE</i>	<u>4,318.5</u>	<u>4,592.3</u>	<u>0.0</u>	<u>0.0</u>	<u>4,592.3</u>
General Fund	440,919,393	478,774,984	638,140	638,140	479,413,124
Cash Funds	125,781,337	157,342,072	(291,000)	(291,000)	157,051,072
Reappropriated Funds	26,315,170	33,940,651	145,476	145,476	34,086,127
Federal Funds	5,588,477	4,425,000	0	0	4,425,000

MEMORANDUM

TO: Joint Budget Committee Members

FROM: Carolyn Kampman, JBC Staff

SUBJECT: Staff-initiated mid-year adjustment for Judicial Department for FY 2015-16

DATE: January 11, 2016

Staff previously prepared a document detailing staff's recommendations for mid-year appropriation changes in response to the supplemental requests submitted by Judicial Branch agencies. This document is dated January 12, 2016, based on the scheduled date for presenting these recommendations, but was distributed to Joint Budget Committee members on Friday, January 8. Based on information I received this afternoon, I have an additional staff-initiated recommendation (described below) that I would like the Committee to consider.

JBC STAFF-INITIATED SUPPLEMENTAL #1 DISTRICT ATTORNEY MANDATED COSTS

	Request	Recommendation
Total	\$0	(\$325,000)
FTE	0.0	0.0
General Fund	0	(325,000)
Cash Funds	0	0
Reappropriated Funds	0	0
Federal Funds	0	0

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

Department Request: The Colorado District Attorneys' Council (CDAC) did not submit a supplemental request for the District Attorneys Mandated Costs line item. However, this recommendation is based on information provided by the CDAC staff, and the CDAC is aware of and does not object to staff's recommended reduction.

Staff Recommendation: Staff recommends that the Committee reduce the appropriation for District Attorney Mandated Costs for FY 2015-16 by \$325,000 General Fund to eliminate spending authority for moneys that will not be needed for the intended purposes.

Staff Analysis: The District Attorney (DA) Mandated Costs line item provides state funding to reimburse DAs for costs incurred for prosecution of state matters, as required by state statute

(e.g., expert witness fees and travel expenses). This line item is one of two for which the CDAC, rather than the Judicial Department, submits budget requests.

Since FY 2012-13, this line item has included funding that is earmarked for mandated costs associated with one or two specific, extraordinary cases. The FY 2015-16 appropriation includes \$400,000 General Fund specifically for the *James Holmes* case. As part of staff's November 18, 2015, budget briefing for the Judicial Branch, staff indicated that the Arapahoe County District Attorney's office anticipated making all mandated cost payments related to the *Holmes* case by the end of December 2015.

In response to a staff inquiry, the CDAC staff indicated that the 18th judicial district attorney's office has spent approximately \$75,000 of the \$400,000 allotted for the *Holmes* trial and does not anticipate any further expenses for that case. The CDAC staff also indicated that the remaining appropriation for all other DA mandated costs (\$2,417,350 total funds) appears to be on schedule (i.e., adequate) for the remainder of the fiscal year. Thus, staff recommends reducing the appropriation by \$325,000 General Fund to reflect the amount of earmarked funding that will not be needed. Staff also recommends amending the associated Long Bill footnote to reflect the change in the appropriation:

46 Judicial Department, Trial Courts, District Attorney Mandated Costs -- It is the intent of the General Assembly that ~~\$400,000~~ \$75,000 of the amount appropriated for District Attorney Mandated Costs be used only to reimburse mandated costs associated with one case: The People of the State of Colorado v. James Holmes (12CR1522). Should reimbursable mandated costs incurred in FY 2015-16 for this case total less than ~~\$400,000~~, \$75,000, it is the intent of the General Assembly that the unexpended funds revert to the General Fund.

Background Information – District Attorney Mandated Cost Expenditures

Section 16-18-101, C.R.S., states that, "The costs in criminal cases shall be paid by the state pursuant to section 13-3-104, C.R.S.¹, when the defendant is acquitted or when the defendant is convicted and the court determines he is unable to pay them." Pursuant to Section 18-1.3-701 (2), C.R.S., when a person is convicted of an offense or a juvenile is adjudicated, the Court shall give judgment in favor of the State, the prosecuting attorney, or the law enforcement agency and against the offender or juvenile for the amount of the costs of prosecution. Section 18-1.3-701 (2), C.R.S., specifies the types of expenditures that may be included under this provision.

Based on FY 2014-15 expenditure data provided by the CDAC, DAs' mandated costs consist of the following:

- Expert witness fees and travel expenses (\$743,242 or 32.0 percent)
- Witness fees and travel expenses (\$583,487 or 25.1 percent)

¹ This section states that the State "shall provide funds by annual appropriation for the operations, salaries, and other expenses of all courts of record within the state, except for county courts in the city and county of Denver and municipal courts".

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- Mailing subpoenas² (\$459,777 or 19.8 percent)
- Service of process³ (\$355,912 or 15.3 percent)
- Court reporter fees for transcripts (\$181,439 or 7.8 percent)

The following table provides a history of appropriations and actual expenditures for this line item, as well as the request for FY 2016-17.

District Attorneys' Mandated Costs								
Fiscal Year	Appropriation			Actual Expenditures				Over/ (Under) Budget
	General Fund	Cash Funds	Total	General Fund	Cash Funds	Total	Annual % Change	
2000-01	\$1,938,724	\$0	\$1,938,724	\$1,889,687	\$0	\$1,889,687		(\$49,037)
2001-02	1,938,724	0	1,938,724	1,978,963	0	1,978,963	4.7%	40,239
2002-03	2,025,199	125,000	2,150,199	1,833,410	71,117	1,904,527	-3.8%	(245,672)
2003-04	2,025,199	125,000	2,150,199	1,847,369	59,334	1,906,703	0.1%	(243,496)
2004-05	1,911,899	0	1,911,899	1,911,970	0	1,911,970	0.3%	71
2005-06	1,911,899	0	1,911,899	1,772,849	106,325	1,879,174	-1.7%	(32,725)
2006-07	1,841,899	125,000	1,966,899	1,928,795	99,090	2,027,885	7.9%	60,986
2007-08	1,837,733	125,000	1,962,733	2,092,974	130,674	2,223,648	9.7%	260,915
2008-09	2,101,052	125,000	2,226,052	2,063,785	125,000	2,188,785	-1.6%	(37,267)
2009-10	2,101,052	125,000	2,226,052	2,101,050	125,000	2,226,050	1.7%	(2)
2010-11 a/	2,005,324	125,000	2,130,324	2,005,507	125,000	2,130,507	-4.3%	183
2011-12	2,073,494	125,000	2,198,494	2,061,883	125,000	2,186,883	2.6%	(11,611)
2012-13 b/	2,389,549	140,000	2,529,549	2,164,497	140,000	2,304,497	5.4%	(225,052)
2013-14 c/	2,491,916	160,000	2,651,916	2,152,067	160,000	2,312,067	0.3%	(339,849)
2014-15 d/	2,527,153	170,000	2,697,153	2,374,178	160,865	2,535,043	9.6%	(162,110)
2015-16 e/	2,647,350	170,000	2,817,350					
2016-17								
Request f/	2,420,153	170,000	2,590,153					

a/ Appropriation reflects reduction of \$17,300 pursuant to H.B. 10-1291.

b/ The FY 2012-13 appropriation included \$265,100 to reimburse costs in the *Holmes* and *Sigg* cases; a total of \$111,993 was used to reimburse costs in these two cases and \$153,107 reverted to the General Fund.

c/ The FY 2013-14 appropriation included \$353,500 specifically for the *Holmes* and *Sigg* cases; a total of \$146,660 was used to reimburse costs in these two cases and \$206,840 reverted to the General Fund.

d/ The FY 2014-15 appropriation included \$300,000 specifically for the *Holmes* case; a total of \$303,820 was used to reimburse costs in this case (with \$0 reverting to the General Fund from this portion of the appropriation).

e/ The FY 2015-16 appropriation includes \$400,000 specifically for the *Holmes* case.

f/ The FY 2016-17 request does not include any funds for one or more extraordinary cases.

² A subpoena is a writ by a government agency, most often a court, which has authority to compel testimony by a witness or production of evidence under a penalty for failure.

³ Service of process is the general term for the legal document (usually a summons) by which a lawsuit is started and the court asserts its jurisdiction over the parties and the controversy.