

MEMORANDUM

TO: Joint Budget Committee

FROM: Craig Harper (303-866-3481)

SUBJECT: Department of Law – Expansion of Special Prosecutions Unit Response

DATE: March 14, 2014

During the Committee's hearing with the Department of Law on November 20, 2013, the Committee and the Attorney General discussed the compensation of local district attorneys' staff and options for the State to assist local district attorneys. The Committee asked the Department to consider the viability of expanding the Special Prosecutions Unit (which assists local district attorneys with complex cases upon request) as one means of addressing potential disparities between local prosecutors and defense counsel.

The Department provided the attached response (also previously provided to the JBC members). Staff is providing the Department's response for discussion purposes. Staff is not making a recommendation relative to this response, and the Department has not officially requested the additional resources discussed in the response.

**COLORADO ATTORNEY GENERAL'S OFFICE
CRIMINAL JUSTICE SECTION
LOCAL ASSISTANCE 2013**

I. Current Resources

The Criminal Justice Section of the Colorado Attorney General's Office has several units that prosecute cases throughout the State of Colorado: 1) Special Prosecutions Unit, which includes the Violent Crime Assistance Team; 2) Financial Fraud Unit, which prosecutes insurance fraud and securities fraud; and 3) the Medicaid Fraud Control Unit. While all of the prosecutors have original jurisdiction to prosecute statutorily enumerated crimes (for example: insurance fraud, tax fraud, voter fraud, etc.), it is more typical that Assistant Attorney Generals are sworn as Special Deputy District Attorneys by the local elected District Attorney to provide assistance, or continue to prosecute crimes investigated by the statewide grand jury. For purposes of this request, this will focus on Special Prosecutions Unit, which is most commonly assists local jurisdictions.

A. Special Prosecutions: Supervised by a First Assistant Attorney General

1. Violent Crime Assistance Team (VCAT): VCAT is most commonly called upon to provide all levels of assistance with major violent crimes throughout Colorado. VCAT has been sworn as Special Deputy District Attorneys for the purposes of participating in trials, motions, but has also been called upon by prosecutors all over Colorado for legal consultation.
 - a. Senior Assistant Attorney General
 - b. Assistant Attorney General
 - c. Criminal Investigator II
 - d. Legal Assistant I.
2. Special Prosecutions: Special Prosecutions either prosecutes crimes of statutorily enumerated crimes of original jurisdiction, or may request to be sworn as Special Deputy District Attorneys for cases investigated by the statewide grand jury that have a multijurisdictional connections. The Special Prosecutions Unit may be called upon to assist local district attorneys, if necessary to assist within their fields of expertise.

- a. Senior Assistant Attorney General: Specializes in human trafficking cases, economic crime, and other major crime;
 - b. Senior Assistant Attorney General: Specializes in drug; investigations, economic crime, and environmental crime;
 - c. Senior Assistant Attorney General: Specializes in drug investigations
 - d. Criminal Investigator III: Specializes in environmental crimes;
 - e. Criminal Investigator II: Specializes in major crime including economic crime;
 - f. Legal Assistant I.
3. Auto Theft Initiative: This unit is grant funded by CATPA to investigate and prosecute multijurisdictional and complex auto theft rings.
- a. Senior Assistant Attorney General
 - b. Criminal Investigator II
 - c. ½ Legal Assistant I.

II. History of Assistance¹

- A. 2012: Violent Crime Assistance Team (VCAT)
- a. 2 new requests for motions and trial assistance
 - i. Hampson, 22nd Judicial District, Montezuma Co.
 - ii. Contreras-Perez, 16th Judicial District, Crowley Co.
 - b. Continued assistance on 16 cases in 5/22 judicial districts. Assistance included a two week jury trial in the 12th Judicial District, Conejos County, and weeks of motions on several cases in both Metro and rural counties.
 - c. Consultation with local prosecutors, November 2011 - November 2012
 - i. 127 consults
 - ii. 17/22 judicial districts
- B. 2011: Homicide Assistance Team (subsequently renamed VCAT)
- a. 5 new requests for assistance
 - i. Nozolino, 4th Judicial District, El Paso Co.
 - ii. Wells, 18th Judicial District, Douglas Co.
 - iii. Sher, 18th Judicial District, Douglas Co.

¹ See Attached A: History of Prosecution Assistance, 2005 – 2012. Statistics compiled for the Joint Budget Committee in November 2012.

- iv. Two more cases that are open investigations
 - b. Continued assistance on 14 cases in 4/22 judicial districts.
 - C. 2010: Homicide Assistance Team
 - a. 9 new requests for assistance
 - i. Mueller, 7th Judicial District, Hinsdale (subsequently tried twice in 2013)
 - ii. Geidner, 12th Judicial District, Costilla County
 - iii. Martinez, 12th Judicial District, Conejos County (subsequently tried in 2012)
 - iv. Northrip, 12th Judicial District, Conejos County
 - v. Westerfield, 18th Judicial District, Arapahoe County
 - vi. Gallegos
 - vii. Newmiller, 4th Judicial District, El Paso County
 - viii. Clark, 20th Judicial District, Boulder
 - ix. Open investigation
 - b. Continued assistance on 12 cases in 6/22 judicial districts.
 - D. 2005 – 2009: Capitol Crimes Unit focused primarily on death penalty litigation and investigations. Cases include but are not limited to Ray, Owens, Montour, Perez, and Bueno.
- III. 2013: Increase in Requests for Assistance (See Figure 1: 2013 Assistance to Local Prosecutors below)
- A. New Requests for Assistance: In 2013, we have seen a dramatic increase in new requests for assistance from rural district attorneys (Montezuma, Montrose, and Prowers Counties) and continued requests from district attorneys in larger urban areas (Denver, Arapahoe, and Douglas Counties). In addition to our traditional assistance on pending violent crimes, Special Prosecutions and VCAT, have accepted requests for assistance on Rule 35(c) motions, conflict free investigations, and other major cases.
 - B. Continued Assistance: In 2013, despite an increase in the numbers and nature of assistance to local prosecutors, VCAT continued to honor its previous commitments which required weeks in motions and trial for a team that only has two full time attorneys, and an investigator. This two attorney team also continued to provide consultation on over 100 different occasions to over half the judicial districts in Colorado.

C. Anticipated Assistance: As demonstrated in the narrative and Figure 1 below, requests for VCAT assistance has expanded in recent years. As VCAT has proven to be a valuable resource, more District Attorneys in more parts of the state have requested assistance on major crimes. It is anticipated that this trend will continue. However, with more resources, it is anticipated that Special Prosecutions and VCAT could offer to assist in other areas like Rule 35 and complex crimes. Rule 35 allows a defendant to certain postconviction remedies, for instance, relief from ineffective assistance of counsel, and correction of an illegal sentence. Often times these motions may result in a new trial. These motions are not an appeal, are handled by the trial court, therefore must be litigated by the trial prosecutor. Often these motions are very labor intensive, and can require just as much attention as the original trial. In their requests for assistance, rural District Attorneys have expressed that they face challenges in prosecuting the new complicated violent crimes that occur, while trying to manage resources to address other cases, including litigating Rule 35 motions. Currently, VCAT is assisting the District Attorney in the 22nd Judicial District with a Rule 35 motions that will go to hearing in the next several months.

Figure 1: 2013 Assistance to Local Prosecutors

CASE	JURISDICTION	DESCRIPTION	DATE OF REQUEST	ASSISTANCE
NEW REQUESTS	FOR ASSISTANCE			
People v. Ablng 13CR14	15th Judicial District/Powers Co.	Make my day Homicide	November 15, 2013	To be determined
People v. Lewis 12CR4743	2 nd Judicial District/Denver Co.	Multiple victim (5) homicide, death penalty	November 5, 2013	Motions assistance
People v. Faux 13CR44	12 th Judicial District/Conejos Co.	Drug related homicide	October 31, 2013	Pending motions and trial
People v. Miera 05CR58	22 nd Judicial District/Montezuma, Co.	Rule 35(C) Motions and hearing	August 2011	Several day motion hearing scheduled for 2014
People v. Nozolino 10CR2496	4 th Judicial District/El Paso Co.	Murder and attempt murder of public official	April 22, 2013 (Previous assistance in 2011 – 2012)	Motions assistance
People v. Holmes	18 th Judicial	Multiple victim	March 2013	Motions assistance

12CR1522	District/Arapahoe Co.	homicide, death penalty		
People v. Dunlap 93CR2071	18 th Judicial District/Arapahoe Co.	Multiple victim homicide, death penalty	March 2013	Motions and legal assistance
People v. Garcia 12CR42	7 th Judicial District/Montrose Co.	Make my day homicide	February 12, 2013 (Previously requested on November 5, 2012)	Motions and sentencing (defendant accepted plea bargain)
CONTINUED	ASSISTANCE			
People v. Contreras-Perez 12CR60	16 th Judicial District/Crowley Co.	DOC Inmate/guard murder	October 1, 2012	Motions and trial
People v. Mueller 12CR1 (Broomfield 13CR122)	7 th Judicial District/Hinsdale Co.	Wife died suspiciously while on hike with husband.	May 25, 2011	Jury trial (7 weeks) – hung jury Second jury trial (2 weeks) – hung jury
People v. Hampson 12CR15	22 nd Judicial District/Montezuma Co.	Murder, stabbing	January 24, 2012	Motions and sentencing (defendant accepted plea bargain)
People v. Bessey	12 th Judicial District/Rio Grande Co.	Murder		Motions and trial assistance
People v. Montour 02CR782 (Lincoln 02CR95)	18 th Judicial District/Douglas Co.	DOC Inmate/guard murder, death penalty		Many weeks of motions, jury trial set next year.
People v. Ray 06CR697	18 th Judicial District/Arapahoe Co.	Witness homicide, death penalty		Unitary review motions assistance
People v. Owens 06CR705	18 th Judicial District/Arapahoe Co.	Witness homicide, death penalty		Unitary review motions assistance
OTHER	ASSISTANCE			

Pending Conflict-free Investigation	21 st Judicial District/Mesa Co.	*Pending investigation		
Pending Conflict-free investigation	4 th Judicial District/El Paso Co.	*Pending investigation		
Pending Conflict-free investigation	4 th Judicial District/El Paso Co.	*Pending investigation		
*Consulted with prosecutors statewide 118 times in 2013	Prosecutors from 14/22 judicial districts called for assistance, including 9 judicial districts outside the Denver Metro Area			

IV. Expanded Resources for Local Prosecutors

The Department of Law was asked to make budgetary estimates to triple the size of the 3.0 FTE (2 attorneys and 1 Criminal Investigator) that currently support District Attorney Offices on request. Currently, the Department of Law cannot rationalize a tripling of the staffing based on current workload and anticipated workload moving forward. However, the Department does believe, based upon the increased requests for assistance by rural District Attorneys demonstrated in the data above and expanding the types of cases that VCAT can provide assistance that 2 additional attorneys and one additional Criminal Investigator would be a justifiable state investment in supporting the criminal process statewide.

If the Legislature chooses to fund these activities in FY 15 and out years, the Department of Law estimate is:

	FY 15	FY 16
Total Calculation	\$ 368,080	\$ 360,906
GF	\$ 368,080	\$ 360,906

The Difference in the two fiscal years is due to the pay date shift of GF employees impacting FY 15, whereby only 11 months of payroll would be paid and due to one-time operating costs in the first year that are not needed in out years.

Please see details below.

Calculations for Criminal Investigator II	FY 15	FY 16
Supplies @ \$500/\$500	\$ 500	\$ 500
Computer @ \$900/\$0*2	\$ 900	\$ -
Office Suite Software @ \$330/\$0	\$ 330	\$ -
Office Equipment @ \$8,767/\$0 (includes office furniture, chair, bookcase)	\$ 8,767	\$ -
Telephone Base @ \$450/\$450	\$ 450	\$ 450
Mileage use on state vehicle (assume 12,000miles at \$.212/mile)	\$ 2,544	\$ 2,544
Assume 2 overnight stays in hotel per month at \$75/night	\$ 1,800	\$ 1,800
Assume avg per diem at \$66 per day for 2 nights each month	\$ 1,584	\$ 1,584
Specific New Investigator Operating Expenses		
Badge (Flat) and Badge Case \$102.25 with shipping	\$ 102	
Glock Pistol \$477.00	\$ 477	
Holster \$20.00	\$ 20	
Mag Pouch \$20.00	\$ 20	
Handcuff Case \$27.99	\$ 28	
Vest (protective) \$840.00	\$ 840	
Body Armor vest carrier cover	\$ 150	
Nextel Phone \$150.00	\$ 150	
Motorola XTS 2500 Digital portable radio battery and charger	\$ 2,618	
Pepper Spray (Foam) \$15.95	\$ 16	
Pepper Spray Carrying Case \$30.95	\$ 31	
Range User Fee (annual) \$225.00	\$ 225	\$ 225
Hearing Protectors \$19.95	\$ 20	
Shooting Glasses \$15.95	\$ 16	
Portable radio accessories(battery/charger/conditioner	\$ -	
Portable radio extended life battery	\$ -	
Stinger Rechargeable flashlight	\$ 103	
Cell Phone \$80/month	\$ 960	\$ 960
5.11 brand response coat	\$ 68	
Total Operating	\$ 22,719	\$ 8,063

Monthly Salary Criminal Invest II (mid range)	\$ 6,854	\$ 6,854
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Annual Salary 11 months FY 15, 12 months FY 16	\$ 75,394	\$ 82,248
PERA at 10.15%	\$ 7,652	\$ 8,348
Medicare at 1.45%	\$ 1,093	\$ 1,193
Total PS	\$ 84,140	\$ 91,789

Total Criminal Investigator II	\$ 106,859	\$ 99,852
GF	\$ 106,859	\$ 99,852

Calculations for 2.0 Senior Attorney Generals	FY 15	FY 16
Supplies @ \$500/\$500*2	\$ 1,000	\$ 1,000
Computer @ \$900/\$0*2	\$ 1,800	\$ -
Office Suite Software @ \$330/\$0 *2	\$ 660	\$ -
Office Equipment @ \$8,767/\$0 (includes office furniture, chair, bookcase) *2	\$ 17,534	\$ -
Telephone Base @ \$450/\$450 *2	\$ 900	\$ 900
Mileage use on state vehicle (assume 12,000miles at \$.212/mile)	\$ 2,544	\$ 2,544
Assume 4 overnight stays in hotel per month at \$75/night	\$ 3,600	\$ 3,600
Assume avg per diem at \$66 per day for 4 nights each month	\$ 3,168	\$ 3,168
Est Litigation Expenses at \$5,000 per Attorney	\$ 10,000	\$ 10,000
Cell phone at \$80/month for 2 FTE	\$ 1,920	\$ 1,920
Total Operating	\$ 43,126	\$ 23,132

Monthly Salary Senior Attorney General (midpoint)	\$ 8,883	\$ 8,883
Annual Salary 2.0 Senior AG, 11 months FY 15 and 12 months FY 16	\$ 195,426	\$ 213,192
PERA at 10.15%	\$ 19,836	\$ 21,639
Medicare at 1.45%	\$ 2,834	\$ 3,091
Total PS	\$ 218,095	\$ 237,922

Total 2 Senior Attorney Generals	\$ 261,221	\$ 261,054
GF	\$ 261,221	\$ 261,054

	FY 15	FY 16
Total Calculation	\$ 368,080	\$ 360,906
GF	\$ 368,080	\$ 360,906