

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



FY 2009-10 STAFF BUDGET BRIEFING

JUDICIAL DEPARTMENT

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

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**FY 2009-10 BUDGET BRIEFING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE**

JUDICIAL DEPARTMENT

Table of Contents

Graphic Overview 1

Department Overview 3

Decision Items 9

Overview of Numbers Pages 12

Issues:

Developing In-House Public Access and E-Filing Systems 14

Implementing Adult Drug Courts Statewide 26

U.S. Supreme Court *Rothgery* Decision 34

Repeal of Provisions Authorizing Transfers and Over Expenditures 37

Colorado State Museum and State Justice Center Project Status 40

Appendices:

A - Numbers Pages

B - Summary of Major Legislation from 2008 Legislative Session and Other Select Acts

C - Update on Long Bill Footnotes and Requests for Information (RFI):

Probation: Footnote #2 (multi-agency cash funds); RFI #5 (recidivism data);
and RFI #6 (offender treatment and services expenditures) C-1; C-15; C-17

Judicial Compensation for FY 2008-09 (footnote #42) C-8

Transfer Authority: Public Defender (footnote #43); Alternate Defense Counsel (footnote #44); and Office of the Child's Representative (footnote #45) C-9

Providing Public Access and E-Filing Programs In-house (RFI #1) C-10

Plan to Provide Drug Courts Statewide (RFI #2) C-10

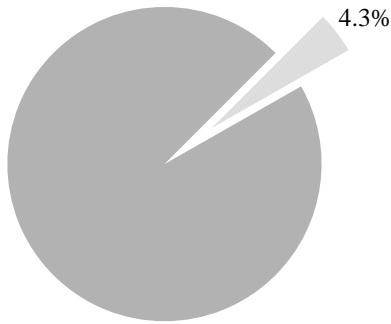
Respondent Parent Counsel Pilot Projects (RFI #3) C-11

District Attorney Mandated Costs (RFI #4) C-14

D - State Public Defender's October 31, 2008 memorandum to the Joint Budget Committee concerning the "United States Supreme Court *Rothgery* Decision"

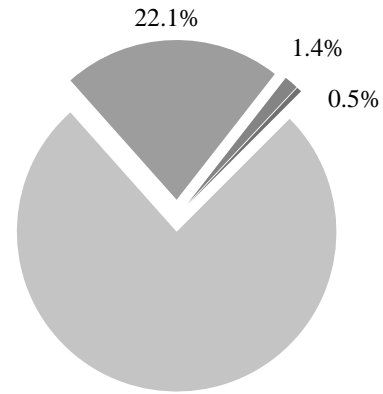
**FY 2009-10 Budget Committee Staff Budget Briefing
Judicial Department
GRAPHIC OVERVIEW**

Department's Share of Statewide General Fund



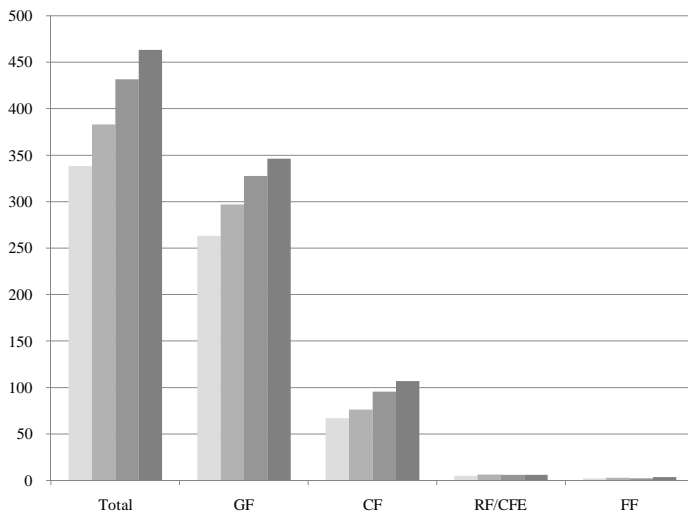
- Judicial Department
- Statewide General Fund

Department Funding Sources



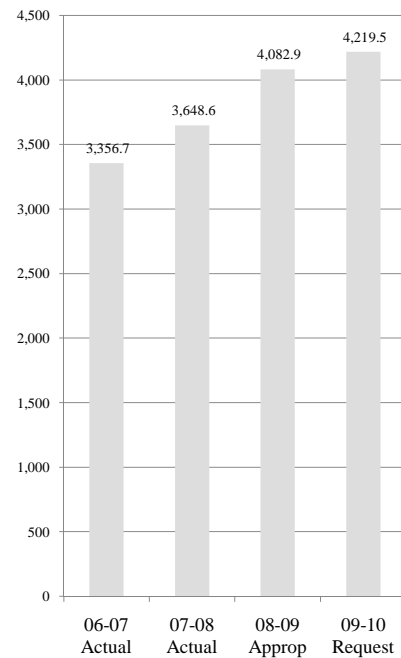
- General Fund
- Cash Funds
- Reappropriated Funds
- Federal Funds

**Budget History
(Millions of Dollars)**



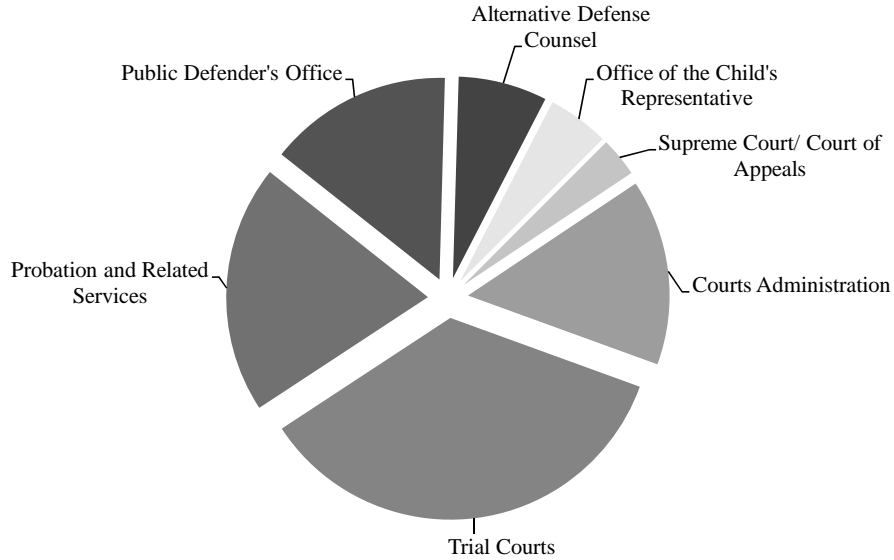
- FY 2006-07 Actual
- FY 2007-08 Actual
- FY 2008-09 Appropriation
- FY 2009-10 Request

FTE History

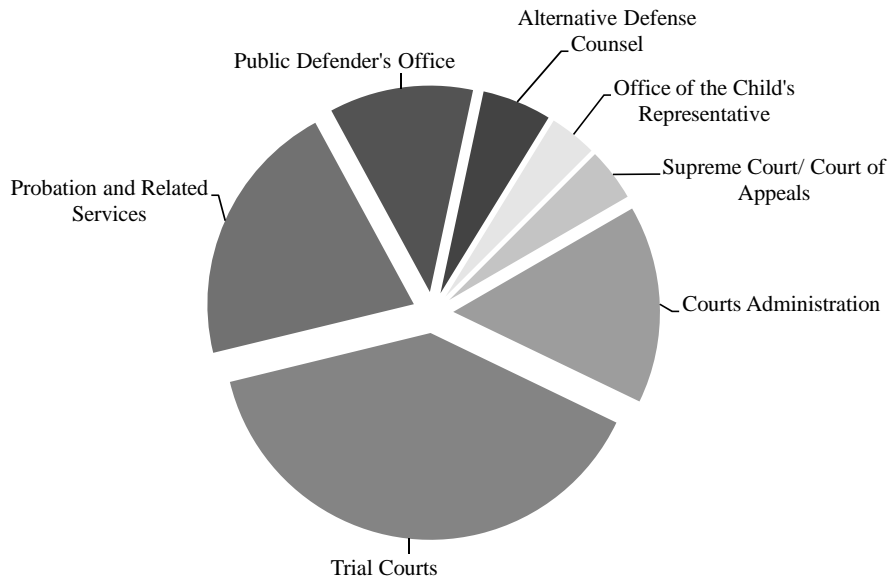


**FY 2009-10 Budget Committee Staff Budget Briefing
Judicial Department
GRAPHIC OVERVIEW**

Distribution of General Fund by Division



Distribution of Total Funds by Division



**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

DEPARTMENT OVERVIEW

Key Responsibilities

The Colorado Constitution vests the judicial power of the State in the Judicial Branch, which consists of the Supreme Court, the Court of Appeals, district courts, the Denver Probate and Juvenile Courts, county courts, and municipal courts. Municipal courts and Denver's county courts are not part of the state system, and they are funded by their respective local governments.

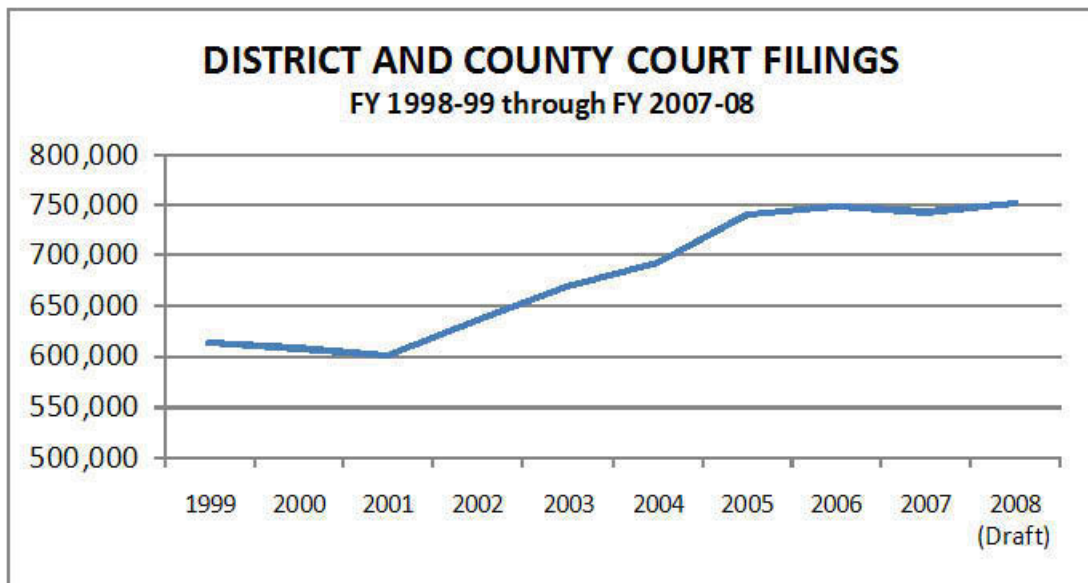
- ▶ The *Supreme Court* and *Court of Appeals* provide appellate review of decisions of trial courts as well as those of several state agencies. The Supreme Court is also responsible for overseeing the regulation of attorneys and the practice of law. The Chief Justice, selected by the justices of the Court, is the executive head of the Department.
- ▶ Trial courts consist of district courts (including water courts) and county courts. *District courts* preside over criminal, civil, domestic, and water cases; hear appeals from county and municipal courts; and review decisions of administrative boards and agencies. *County courts* handle civil actions involving no more than \$15,000, misdemeanor cases, civil and criminal traffic infractions, felony complaints, and cases involving domestic violence. County courts also hear appeals from municipal courts.
- ▶ The Branch is also charged with supervising juvenile and adult offenders who are sentenced to *probation*, preparing presentence investigation reports for the courts, and providing victim notification and assistance.
- ▶ The *State Court Administrator*, who is appointed by the justices of the Supreme Court, oversees the daily administration of the Department and provides administrative and technical support to the courts.
- ▶ The *Public Defender's Office* provides legal representation for indigent defendants in criminal and juvenile delinquency cases where there is a possibility of being jailed or imprisoned. The Office of *Alternate Defense Counsel* oversees the provision of legal representation for indigent defendants when the Public Defender's Office is precluded from doing so because of an ethical conflict of interest. Both offices are independent agencies.
- ▶ The *Office of the Child's Representative*, also an independent agency, oversees the provision of legal services to children entitled to legal representation at state expense, and is responsible for ensuring quality representation.

Factors Driving the Budget

Fiscal year 2008-09 funding for this department consists of 75.9 percent General Fund, 22.1 percent cash funds, 1.4 percent reappropriated funds, and 0.5 percent federal funds. Cash funds that support court operations primarily come from various docket fees and surcharges established in statute. The Probation program also receives cash funds from individuals sentenced to probation who pay fees that support their supervision and treatment. Attorney licensing fees are used by the Supreme Court to regulate the practice of law in Colorado.

The main factor driving the budget for the Judicial Branch is caseload. Judges, magistrates, probation officers, public defenders, and staff can only manage a certain number of cases per year. As the caseload grows, so does the need for resources if the Branch is to continue fulfilling its constitutional and statutory duties in a timely and professional manner. Caseload is generally driven by population changes, changes in the State's economic climate (which affects both the crime rate and the proportion of clients requiring state-funded representation), and changes in state laws and sentencing provisions. Caseload is also impacted by the types of cases filed, as some cases require more time and resources than others.

Case Filings and the Need for Court Staff



In FY 2007-08, approximately 756,000 cases were filed in the state court system, including 563,000 (74 percent) in county courts, 188,000 (25 percent) in district courts, 2,800 in the Court of Appeals, and 1,700 in the Supreme Court. The above graph depicts the number of cases filed in county and district courts since FY 1998-99.

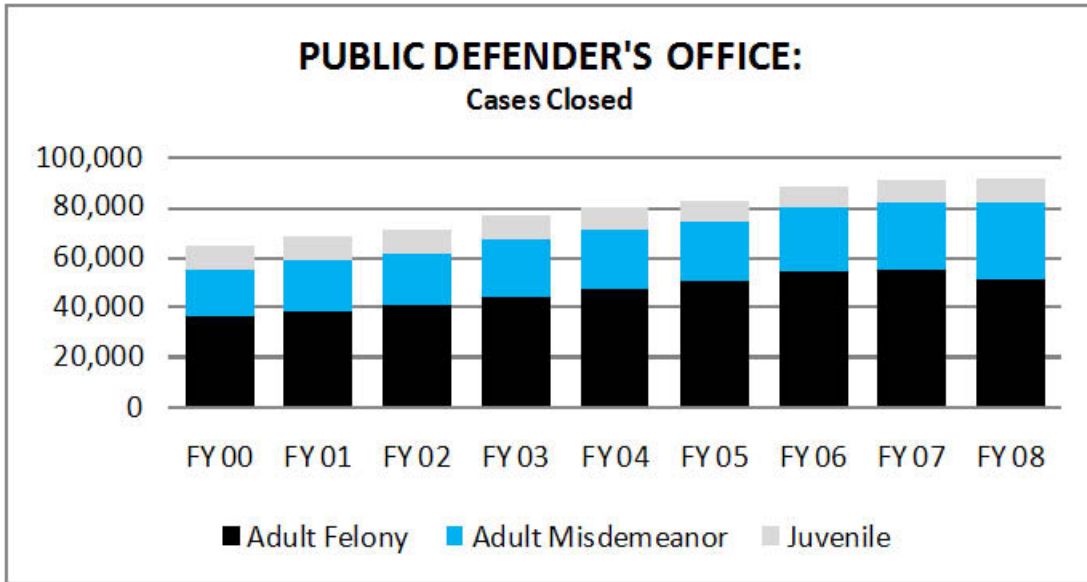
The total number of county and district case filings has increased by 22 percent over the last ten years (with a compound annual growth rate of 2.3 percent), with the most significant growth occurring from FY 2000-01 through FY 2004-05. At the district court level, the most significant increase occurred in civil cases concerning foreclosures and tax liens; the number of such cases filed increased by over 19,000, more than doubling over ten years. These cases now account for nearly one in five cases filed at the district court level. At the county court level, the most significant increase has occurred in civil cases, which increased by more than 76,000 (63 percent). Civil cases now account for over 35 percent of cases filed at the county court level.

To respond to these caseload increases, the General Assembly periodically increases the number of judges within the state court system. For example, H.B. 07-1054 increased the number of judges over a three year period, including: increasing the number of Court of Appeals judges from 19 to 22; increasing the number of District court judges from 118 to 150; and increasing the number of County Court judges from 84 to 92. Of course, the addition of 43 judges requires funding for the judges as well as the associated court support staff (e.g., law clerks, court reporters, judicial assistants, etc.), along with additional staff required by the State Public Defender and the Attorney General's Office. House Bill 07-1054 was thus estimated to require a total increase of 307.2 FTE from FY 2007-08 through FY 2009-10.

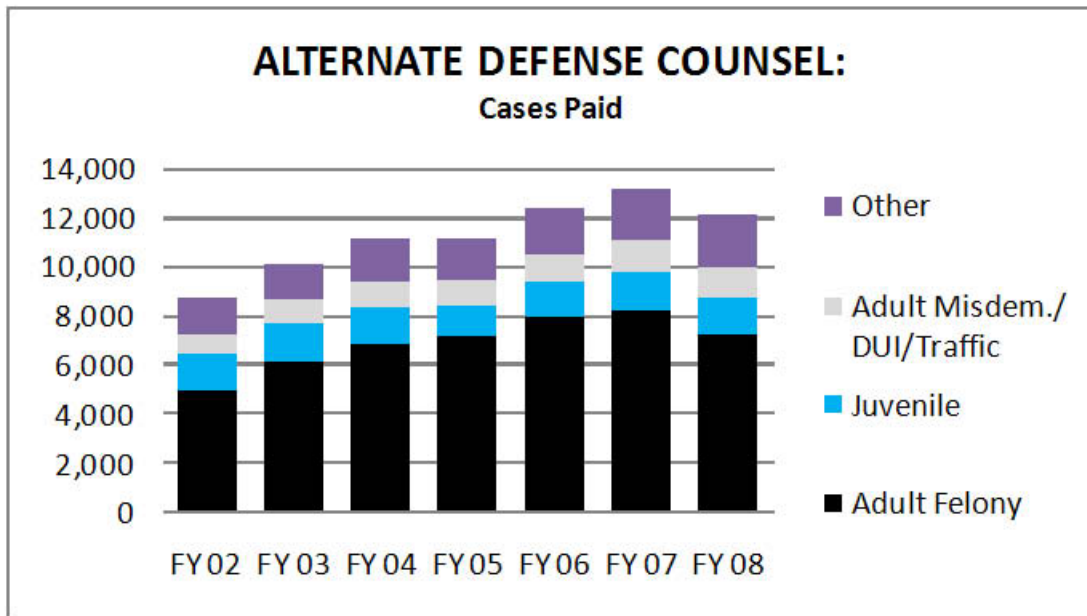
Caseload Impacts Unique to Independent Agencies

Each of the three independent agencies are affected by changes in the number of cases filed differently, based on the clients they are charged with representing. Each of these agencies is discussed below.

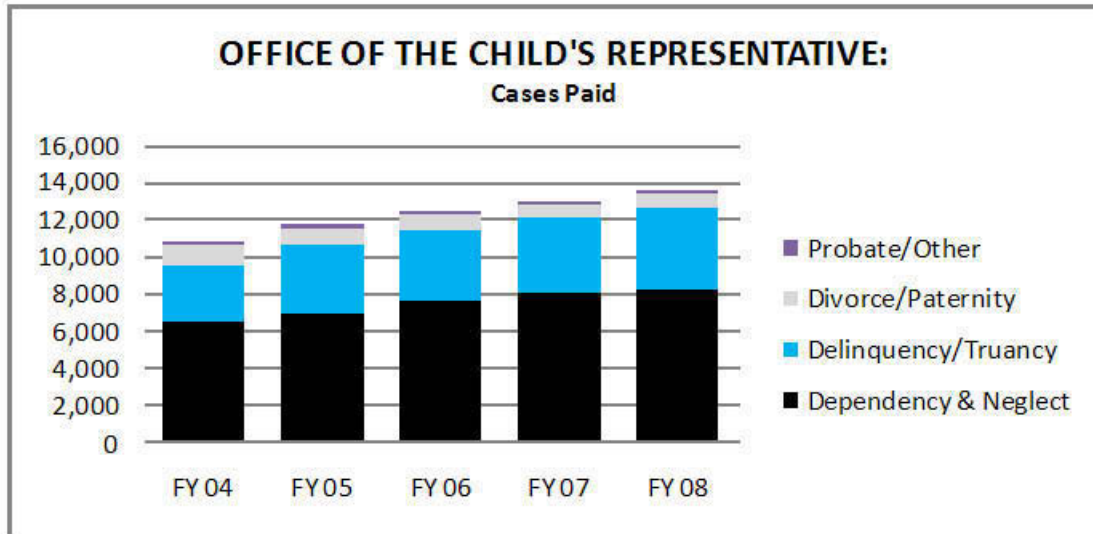
The *Public Defender's Office* represents criminal defendants who have inadequate resources to pay for their own defense. The Public Defender's Office' caseload is affected by the number and types of cases filed, as well as the proportion of clients who require state-funded representation. As in the court system, more complicated cases consume more resources than simpler cases: felonies cost more to defend than misdemeanors, and homicides cost more to defend than assaults or robberies. As illustrated in the graph on the following page, the number of cases requiring public defender involvement increased significantly from FY 1999-00 through FY 2006-07. In particular, the number of felony cases requiring pre-trial and trial involvement (the primary factor driving public defender attorney staffing needs) increased by more than 10,000 (61 percent) over this seven-year period.



The *Alternate Defense Counsel (ADC)* contracts with private attorneys to represent indigent defendants in cases where the Public Defender has an ethical conflict of interest. Similar to the Public Defender, certain types of cases (e.g., death penalty cases and other cases involving violent crimes) are more expensive than others; these types of cases require more hours of attorney time and the ADC pays a higher hourly rate for these types of cases. As illustrated in the graph below, ADC caseload growth from FY 2001-02 through 2005-06 was primarily driven by increases in the number of felony cases. In FY 2007-08, the ADC caseload declined, primarily due to reductions in the number of felony and juvenile cases.



The *Office of the Child's Representative (OCR)* is responsible for providing 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. OCR expenditures are primarily driven by the number of cases involving abuse or neglect, as these account for the most court appointments and they require the most attorney time (other than probate cases). The graph below illustrates recent caseload changes.

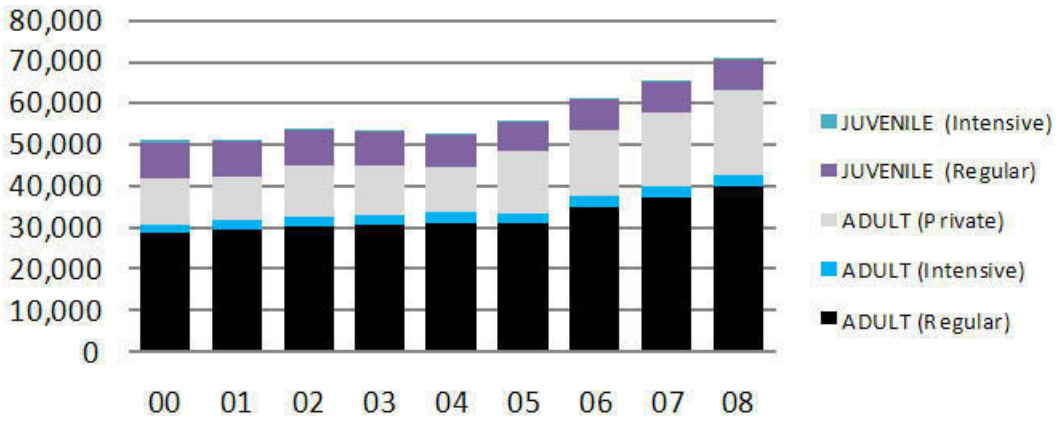


Probation and Related Services Caseload

Individuals sentenced to probation, as an alternative to incarceration, remain under the supervision of the court. Failure to meet the terms of probation set forth in the court's sentencing order may result in incarceration. Managed by the chief probation officer in each judicial district, 1,200 employees prepare assessments, provide pre-sentence investigation services to the courts, and supervise offenders sentenced to probation. Supervision services are provided based on each offender's risk of re-offending.

Funding for probation services is primarily driven by the number and types of offenders sentenced to probation and statutory requirements concerning the length of required supervision. The number of offenders under supervision has increased significantly since June 2004. In particular, the number of adult offenders increased by nearly 19,000 (42 percent). While a little over half of this growth is related to DUI/DWAI offenders who are supervised by private providers, the number of adult offenders supervised by state staff increased by more than 9,000 (27 percent). The graph on the following page depicts changes in the number of adults and juveniles under supervision since 2000.

PROBATION:
Clients on Supervision June 30



**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

DECISION ITEM PRIORITY LIST

Decision Item	GF	CF	RF	FF	Total	FTE
JUD-1	\$3,100,000	\$0	\$0	\$0	\$3,100,000	0.0
<p>Provide Courthouse Furnishings</p> <p>Courts Administration. The Department requests an additional \$3.1 million General Fund (a total of \$4.1 million) to furnish nine new courthouse facilities that are anticipated to be completed in seven judicial districts in FY 2009-10. <i>Statutory authority: Sections 13-3-104 and 108, C.R.S.</i></p>						
JUD-2	369,547	659,745	0	0	1,029,292	13.0
<p>Enhance and Expand Drug Courts</p> <p>Trial Courts; and Probation and Related Services. The Department requests a total of 17.2 FTE to enhance adult drug court operations and increase the number of offenders served. The Department requests an increase of \$1,029,291 (including \$369,547 General Fund and \$659,745 from the Judicial Stabilization Cash Fund) for 13.0 new FTE, and the transfer of \$258,131 and 4.2 FTE from the Probation division to the Trial Courts division. <i>Statutory authority: Article VI, Section 9 (1) of the Colorado Constitution; and Section 13-5-101, et seq., C.R.S.</i></p>						
JUD-3	868,538	0	0	0	868,538	14.0
<p>Add Probation Staff</p> <p>Probation and Related Services. The Department requests funding to add 14.0 FTE probation staff (including 10.0 FTE probation officers, 1.5 FTE probation supervisors, and 2.5 FTE support staff) to improve probation officers' ability to utilize intermediate sanctions in response to offenders committing technical violations or absconding. The request includes \$726,046 for personal services, \$41,300 for operating expenses, and \$101,192 for capital outlay. <i>Statutory authority: Section 13-3-101, et seq., and 18-1.3-202, C.R.S.</i></p>						
JUD-4	(69,745)	4,736,750	0	0	4,667,005	0.0
<p>Increase Spending Authority from Four Cash Funds</p> <p>Probation and Related Services. The Department requests increased spending authority from four cash funds: (a) \$300,000 from the <i>Drug Offender Surcharge Fund</i>, including \$250,000 for treatment services and \$50,000 for multi-agency substance abuse training; (b) \$1,000,000 from the <i>Court Security Cash Fund</i> for grants to counties; (c) \$3,325,000 from the <i>Offender Services Fund</i>, including an estimated \$2,000,000 for treatment services, \$525,000 for short-term community corrections beds for unstable adult probationers, \$500,000 to provide motivational interviewing training; and \$300,000 for probation officer travel and safety equipment costs; and (d) \$111,750 from the <i>Offender Identification Fund</i> (offset by a \$69,745 decrease in the General Fund appropriation) to cover costs related to DNA testing. <i>Statutory authority: Sections 18-19-103, 13-1-204, 16-11-214 (1) and 24-33.5-415.6, C.R.S.</i></p>						

Decision Item	GF	CF	RF	FF	Total	FTE
PD-1	2,431,049	0	0	0	2,431,049	36.8
<p>Address Caseload and Workload Growth</p> <p>Public Defender. The Public Defender requests \$2.4 million to add 36.8 FTE attorneys to partially address caseload and workload increases. In light of the fiscal challenges the State is facing this year, this request is submitted as an alternative to the funding and staff associated with the third year of implementing H.B. 07-1054 (\$4.4 million General Fund and 74.6 FTE). This request is part of an eight-year plan the Public Defender has proposed to address existing staffing deficits and projected caseload increases. <i>Statutory authority: Section 21-1-101, et seq. C.R.S.</i></p>						
PD-2	0	12,500	0	0	12,500	0.0
<p>Increase Training Cash Fund Spending Authority</p> <p>Public Defender. The Public Defender requests authority to spend an additional \$12,500 in fees received from training conference participants. <i>Statutory authority: Section 21-1-101, et seq., C.R.S.</i></p>						
PD-3	236,947	(236,947)	0	0	0	0.0
<p>Refinance Denver Drug Court Staff</p> <p>Public Defender. The Public Defender requests a General Fund increase to continue to support 4.0 FTE whose activities support Denver's Drug Court program. These staff are currently supported by cash revenues received from Denver; these funds will no longer be available in FY 2009-10. <i>Section 21-1-101, et seq., C.R.S.</i></p>						
PD-4	243,728	0	0	0	243,728	0.0
<p>Adjust Centrally-appropriated Line Items</p> <p>Public Defender. The Public Defender submitted anticipated adjustments to centrally appropriated line items (various employee benefits and vehicle lease payments) as a decision item.</p>						
ADC-1	474,002	0	0	0	474,002	0.0
<p>Address Caseload/Case Cost Increases</p> <p>Alternate Defense Counsel. The Office requests an increase of \$474,002, including \$316,646 for conflict of interest contracts and \$159,356 for mandated costs, to cover projected increases in caseload and the average cost per case (primarily related to increases in the number of attorney hours needed for felony cases). <i>Statutory authority: Section 21-2-101, et seq., C.R.S.</i></p>						
ADC-2	0	12,000	0	0	12,000	0.0
<p>Increase Training Cash Fund Spending Authority</p> <p>Alternate Defense Counsel. The Office requests authority to spend an additional \$12,000 in fees received from training participants. The additional funds would be used to cover increasing training costs associated with providing more training sessions and making training sessions more widely available via Webcast and DVD reproductions. <i>Statutory authority: Section 21-2-101, et seq., C.R.S.</i></p>						

Decision Item	GF	CF	RF	FF	Total	FTE
OCR-1	2,345,954	0	0	0	2,345,954	0.0
<p>Address Caseload and Workload Increases</p> <p>Office of the Child's Representative. The Office requests an increase of \$2.3 million to cover a projected 3.4 percent caseload increase and a 5.8 percent increase in the average cost per case. <i>Statutory authority: Section 13-91-101, et seq., C.R.S.</i></p>						
OCR-2	2,880	0	0	0	2,880	0.0
<p>Increase Mileage Reimbursement</p> <p>Office of the Child's Representative. The Office requests an increase of \$2,880 for mileage reimbursement for GAL staff in the El Paso County office and OCR staff. The request is based on an increase in both the mileage rate and the number of miles traveled. <i>Statutory authority: Section 13-91-101, et seq., C.R.S.</i></p>						
OCR-3	64,900	0	0	0	64,900	1.0
<p>Add Staff Attorney for El Paso GAL Office</p> <p>Office of the Child's Representative. The Office requests funds to add 1.0 staff attorney for the OCR Guardian ad litem office in El Paso County to address caseload and workload increases. <i>Statutory authority: Section 13-91-101, et seq., C.R.S.</i></p>						
Total	\$10,067,800	\$5,184,048	\$0	\$0	\$15,251,848	64.8

**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

OVERVIEW OF NUMBERS PAGES

The following table highlights changes contained in the Department's FY 2009-10 budget request, as compared with the FY 2008-09 appropriation. For additional detail, see the numbers pages in Appendix A.

Summary of Requested Changes, FY 2008-09 to FY 2009-10

Category	GF	CF	RF	FF	Total	FTE
FY 2008-09 Appropriation	\$327,715,384	\$95,532,107	\$6,074,622	\$2,290,265	\$431,612,378	4,082.9
FY 2009-10 Request	346,297,466	106,855,557	6,221,067	3,643,117	463,017,207	4,219.5
Increase / (Decrease)	\$18,582,082	\$11,323,450	\$146,445	\$1,352,852	\$31,404,829	136.6
Percentage Change	5.7%	11.9%	2.4%	59.1%	7.3%	3.3%

Requested Changes, FY 2008-09 to FY 2009-10

Description	GF	CF	RAF	FF	Total	FTE
Employee benefits ¹	\$8,972,649	\$874,377	\$0	\$0	\$9,847,026	0.0
Court appointed counsel caseload/cost increases (PD-DI #1; ADC-DI #1; OCR-DIs #1, #3)	5,315,905	0	0	0	5,315,905	37.8
Add judgeships and court staff* (H.B. 07-1054)	14,697	5,299,635	0	0	5,314,332	72.0
Increase spending authority from 4 cash funds (JUD-DI #4)	(69,745)	4,736,750	0	0	4,667,005	0.0
Furnish courthouses (JUD-DI #1)	3,100,000	0	0	0	3,100,000	0.0
Enhance/expand drug courts (JUD-DI #2; PD-DI #3)	606,494	422,798	0	0	1,029,292	13.0

¹ Includes changes related to the following employee benefits: Health, life, and dental; Short-term disability, Salary survey, Anniversary, Amortization equalization disbursement (AED), and Supplemental AED.

Description	GF	CF	RAF	FF	Total	FTE
Add probation staff (JUD-DI #3)	868,538	0	0	0	868,538	14.0
District Attorneys' mandated costs	200,991	0	0	0	200,991	0.0
Expand training (ADC-DI #2; PD-DI #2)	0	24,500	0	0	24,500	0.0
Eliminate one-time increase for CASA contracts (OCR)	(500,000)	0	0	0	(500,000)	0.0
Personal Services base reduction	(375,052)	(71,586)	0	0	(446,638)	0.0
Annualize FY 08-09 DIs & 08 legislation ²	54,210	(170,151)	0	0	(115,941)	(0.2)
Other ³	393,395	207,127	146,445	1,352,852	2,099,819	0.0
Total requested changes	18,582,082	11,323,450	146,445	1,352,852	31,404,829	136.6

* Please note that the State Public Defender has not requested additional funding and staff associated with the third year of implementing H.B. 07-1054. Instead, in light of the fiscal challenges the State is facing this year, the State Public Defender submitted decision item #1 to add \$2,431,049 General Fund and 36.8 FTE in FY 2009-10. This request is 55 percent of the third year cost to the Public Defenders' office of implementing H.B. 07-1054 (\$4,416,358 and 74.6 FTE).

² Includes out-year impacts of S.B. 08-54, H.B. 08-1010, H.B. 08-1082, and H.B. 08-1407, as well as several decision items.

³ Other changes include: leased space escalators; indirect cost adjustments; changes in grant funding, vehicle lease payments, fleet fuel, postage, mileage reimbursement, and fund mix adjustments.

**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

BRIEFING ISSUE

ISSUE: Developing In-house Public Access and E-Filing Systems

In response to a General Assembly request, the Department has studied the feasibility of providing its public access and e-filing programs in-house. The Department recommends that it be authorized to develop and deploy both systems in-house, beginning work on the public access system as soon as January 2009.

SUMMARY:

- ❑ Over the last decade, the Department has partnered with vendors to develop and implement a public access system and an e-filing system. These systems, which are supported entirely by user fees, provide cost-effective services to the general public and attorneys, respectively, and they have positively affected court staff workloads.
- ❑ Based on a feasibility study requested by the General Assembly, the Department recommends that it be authorized to develop and deploy both systems in-house. The Department recommends that it be authorized to begin work on the public access system as soon as January 2009, including an appropriation of the necessary funds and staff.
- ❑ The National Center for the State Courts critiqued the Department's feasibility study, and it supports the Department's recommendations.

RECOMMENDATION:

Staff recommends that the Committee authorize the Department to begin, as soon as possible, the development and implementation of in-house versions of both a public access system and an e-filing system. Staff further recommends:

- that the Committee introduce a supplemental bill that includes an appropriation from the Judicial Department Information Technology Cash Fund for FY 2008-09 sufficient to allow the Department to begin development of the public access system;
- that the Committee authorize the Department to use net revenues generated once the public access system is functional to cover the costs of developing the e-filing system, and to ensure the Department is in a position to maintain its existing IT infrastructure; and
- that the Committee direct the Department to plan on: (1) eliminating cost recovery fees associated with each system upon implementation; but (2) maintain existing user fees until

the costs of developing the associated in-house system are recouped and the Department has some direct experience on which to base its revenue projections.

Staff does not recommend that the Committee provide assurance that the Department will be allowed to retain all additional revenues generated by in-house systems (i.e., stating an intent to never use these funds to support IT functions that are currently supported by General Fund revenues). It would be reasonable and appropriate for the General Assembly to consider using revenues generated through public access and e-filing services to support the Department's IT unit.

DISCUSSION:

REQUEST FOR INFORMATION

The following request for information was included in Joint Budget Committee Chairman Buescher's April 21, 2008 letter to the Chief Justice:

- 1 Judicial Department, Integrated Information Services --** The Department is requested to contract with an outside party to study the feasibility of providing its public access and e-filing programs in-house and to report its findings to the Joint Budget Committee by November 1. It is the intent of the Committee that this effort be funded with existing appropriations.

The Judicial Department responded to this letter on May 1, indicating that the Department would not be able to absorb the estimated costs of engaging an outside contractor to conduct the feasibility study (\$250,000), as requested. The Department proposed conducting the study in-house and contracting with an outside vendor to review and certify the study. Absent a response from the Committee, the Department proceeded with the in-house study. Staff has summarized the contents of the resulting report, along with the critique provided by the National Center for State Courts, below. Staff's recommended response to the report is included at the end of this issue brief.

DEPARTMENT REPORT

Background Information - Development of Current Systems

Over the last ten years, the Judicial Department has partnered with vendors to develop and implement two information technology systems:

1. A web-based public access system (PAS) to all non-protected court data; and
2. A web-based e-filing system (EFS) for attorneys.

The costs associated with software development, database and application servers, help desk support, and training for over 20,000 attorneys, state agencies, and the general public have been absorbed by the vendors and supported by fees charged to users accessing the systems. The development of each system is described further below.

Public Access System

The Department deployed a unified, statewide court and probation case management system called ICON (i.e., the Integrated Colorado On-line Network) by the end of 1997. Prior to the deployment of ICON, the State Court Administrator's Office handled requests for data on a case-by-case basis. With the deployment of ICON, the number of requests from government agencies, background search companies, the public, and media increased substantially, quickly overwhelming the State Court Administrator's Office.

Lacking the resources and expertise to develop a web-based system to efficiently respond to these requests, the Department issued a request for proposal (RFP) for a vendor-based solution in October 1999. The project was awarded to Acxiom, and the CoCourts system went live in November 2000. This system provides access to court case data, but not to the associated documents. All judicial officers and Department staff, as well as approved governmental entities, were provided free access to the system; all other users pay a fee for access. A second RFP was issued in November 2004, and Lexis/CourtLink was awarded a five-year contract in August 2005; this contract expires June 30, 2009, with the possibility of one final year renewal until June 30, 2010. At that point, a new RFP will need to be issued.

The Department is in the process of developing a new case management system in-house to replace ICON. The new system is called jPOD (i.e., Judicial Paper On Demand). This system has been deployed in the Supreme Court and the Court of Appeals, and will be incrementally deployed statewide by the end of 2011.

In addition to providing more timely, accessible data to the public, the PAS has benefited the courts by reducing the number of inquiries received via phone calls and walk-in traffic, and reducing paper costs.

The current PAS is supported by user fees collected by the vendor. In addition, since FY 2003-04, the Department has required the vendor to collect a cost recovery fee on the Department's behalf. The Department is required to use this fee revenue to cover the direct and indirect costs of hardware replacement and other expenses required to maintain the equipment and network connections necessary for the use of the Department's computer information systems by the public and other agencies. Access fees, established through a Chief Justice Directive (CJD 08-02), are as follows:

- Individuals pay between \$5.00 and \$6.75 for single searches, including a \$0.75 cost recovery fee for Judicial. In addition, other vendors (e.g., Background Information Systems and Acxiom) pay LexisNexis approximately \$2.50 per name search to allow their customers system access; this fee is negotiated between the exclusive agent (LexisNexis) and the third party vendor.
- Private probation agencies pay a set up fee of \$750, and \$2.50 per month per active client under supervision.

- Other agencies pay an annual fee of \$750 for up to three devices, and \$250 for each additional device.

E-Filing System

For the last two decades, courts have been aware of the high costs of receiving, storing, retrieving, copying, and mailing documents. Lacking the resources and expertise to develop an electronic document management system, the Department issued an RFP for a vendor-based solution in December 1998. The project was awarded to Law Plus (which subsequently merged with JusticeLink, and then CourtLink). The EFS was piloted in July 2000, and implemented statewide in district courts by February 2001. Shortly after the first vendor contract renewal in September 2001, LexisNexis acquired CourtLink. The EFS was implemented statewide for county courts (for limited case types) in early 2007. Most recently, the EFS was implemented for the Court of Appeals (in July 2008), and should be available to the Supreme Court by the end of 2009. The current contract with LexisNexis expires in August 2011.

While the Supreme Court did not require attorneys to use the EFS, it has allowed local district and county courts to mandate e-filing. As of September 2008, over 95 percent of all civil filings in district courts that could be e-filed were. The current system is supported by user fees paid directly to the vendor. In addition, since FY 2003-04, the Department has required the vendor to collect a cost recovery fee on the Department's behalf. Access fees, established through a Chief Justice Directive (CJD 08-02), are as follows:

- District Courts: \$6.00 per e-filing transaction, including a \$1.00 cost recovery fee to Judicial; \$7.50 per online service, including a \$1.00 cost recovery fee to Judicial.
- County Courts: \$6.85 per case, including a \$0.85 cost recovery fee to Judicial; \$6.35 per online service, including a \$0.85 cost recovery fee to Judicial.
- Court of Appeals: \$6.00 per e-filing transaction, including a \$1.00 cost recovery fee to Judicial; \$6.00 per online service, including a \$1.00 cost recovery fee to Judicial.

The Department indicates that Colorado has the only statewide EFS that is fully integrated with its case management system. The associated fees, detailed above, are among the lowest of those jurisdictions that charge a fee for such a service. This system has made it easier and cheaper for attorneys to file cases, reduced costs associated with managing paper, increased the speed and reliability of retrieving documents, reduced the number of lost documents, and reduced the time required to distribute court orders. The EFS has also reduced court staff workload, allowing them to focus on other operational needs of the courts.

Feasibility of Developing In-House Systems

The Department conducted cost-benefit analyses of the various alternatives to determine the feasibility of developing the PAS and EFS in-house. The study examined revenues associated with both systems, as well as costs (both tangible and intangible).

Public Access System

The easier of the two systems to develop, the Department anticipates that a web-based PAS could be implemented in-house within nine months. Due to the time frames associated with existing contracts, the Department's analysis assumes that implementation would begin January 2009. While the Department would require an estimated \$750,000 and 5.0 FTE (for six months) in the current fiscal year to implement the system, the Department projects that the PAS would generate net revenues of over \$900,000 in FY 2009-10, and nearly \$2.7 million in FY 2010-11.

The following table summarizes the Department's projections of revenues and expenditures associated with developing an in-house PAS. The analysis detailed below assumes: (a) that the new PAS would be the only one developed in-house (i.e., the Department would not be implementing an e-filing system as well); (b) the cost recovery fee would be eliminated upon implementation; and (c) the fee paid by individuals accessing the system directly would be reduced by 50 percent upon implementation.

Cost Benefit Analysis: Public Access System (developed as stand-alone system)						
Description	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
<u>Projected Revenues:</u>						
CoCourts (Acxiom, 3rd party vendor)	\$0	\$2,126,783	\$3,000,181	\$3,174,192	\$3,358,295	\$3,553,076
Background Information Services (3rd party vendor)	0	1,795,728	2,597,820	2,818,634	3,058,218	3,318,167
CourtLink (access via LexisNexis/Judicial)	0	169,147	242,669	261,112	280,957	302,309
Cost recovery fees	<u>1,528,279</u>	<u>280,184</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total revenues	1,528,279	4,371,842	5,840,670	6,253,938	6,697,470	7,173,552
<u>Projected Costs:</u>						
Staff salaries and benefits	216,780	613,051	933,411	961,413	990,256	1,019,963
FTE	5.0	9.0	9.0	9.0	9.0	9.0
Hardware acquisition	349,560	612,577	0	0	0	349,560
Software acquisition	55,956	153,984	0	0	0	0
Hardware maintenance	0	32,367	73,306	75,819	78,331	0
Software maintenance	0	9,705	32,060	39,860	39,860	32,060
Data center	0	30,018	26,538	26,538	26,538	26,538
Telecommunications services	0	30,000	30,300	30,603	30,909	31,218

Cost Benefit Analysis: Public Access System (developed as stand-alone system)						
Description	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
Consultant services	0	25,000	0	0	0	0
Furniture/equipment	17,500	14,000	0	0	0	0
Training and travel	60,000	66,000	72,600	79,860	87,846	96,631
Existing expenses funded through cost recovery fees	1,528,279	1,681,107	1,849,218	2,034,140	2,237,554	2,461,309
Leased space	38,500	38,500	38,500	38,500	38,500	38,500
Credit card fees	0	6,236	6,442	6,654	6,874	7,101
Operating	0	75,000	77,250	79,568	81,955	84,413
Supplies	<u>15,000</u>	<u>15,150</u>	<u>15,302</u>	<u>15,455</u>	<u>15,609</u>	<u>15,765</u>
Total costs	2,281,575	3,402,695	3,154,927	3,388,410	3,634,232	4,163,058
Net Revenues	(753,296)	969,147	2,685,743	2,865,528	3,063,238	3,010,494

The Department also describes several non-tangible benefits of developing an in-house PAS. Such a system is anticipated to allow the Department:

- to reduce user fees for the general public (the Department's cost-benefit analysis assumes elimination of cost recovery fees and a flat fee of \$2.50 per single name search);
- more control over the development and deployment of application fixes and presentation enhancements;
- an opportunity to provide more information on-line, further reducing phone calls and paper requests for information from court clerks and other staff;
- to improve PAS availability through a more stable technical infrastructure;
- to reduce system complexity by eliminating a vendor who serves as an exclusive agent for the Department;
- to implement a true disaster recovery methodology in the event of a primary system failure; and
- to improve the security of personal identifying information.

Although the Department's report includes information about the proposed in-house system architecture and a high level task list, the Department would prepare a thorough project management plan with a more in-depth project schedule if it is authorized to move forward.

E-Filing System

The more complex of the two systems, the Department anticipates that this system could be implemented in-house within three years. The complexity and duration of this project would require

a more significant up-front investment. Specifically, development of an EFS is projected to require nearly \$6 million over three years. Upon implementation, however, the EFS is anticipated to generate significantly more revenue. Specifically, even if fees are reduced by 50 percent, the Department anticipates generating net revenues of \$3.1 million in the first year.

The following table summarizes the Department's projections of revenues and expenditures associated with developing an in-house e-forms based EFS. The analysis detailed below assumes: (a) that the new system would be the only one developed in-house (i.e., the Department will not be implementing a PAS as well); (b) the cost recovery fee would be eliminated upon implementation; and (c) the fee paid by users would be reduced by 50 percent upon implementation.

Cost Benefit Analysis: E-Filing System (developed as stand-alone system)						
Description	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15
Projected Revenues:						
District courts	\$0	\$0	\$0	\$6,372,441	\$7,246,933	\$8,254,533
County courts	0	0	0	599,652	611,644	623,878
Court of Appeals	0	0	0	1,585	1,617	1,649
Cost recovery fees a/	<u>1,171,438</u>	<u>1,288,582</u>	<u>1,417,440</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total revenues a/	1,171,438	1,288,582	1,417,440	6,973,678	7,860,194	8,880,060
Projected Costs:						
Staff salaries and benefits	587,060	920,548	1,733,849	1,785,865	1,839,441	2,142,849
FTE	7.0	11.0	22.0	22.0	22.0	25.0
Hardware acquisition	349,560	0	612,577	0	0	349,560
Software acquisition	164,129	0	390,798	0	0	0
Hardware maintenance	0	32,367	32,367	75,819	75,819	0
Software maintenance	0	31,459	31,459	108,515	100,715	100,715
Data center	30,018	26,538	26,538	26,538	26,538	26,538
Telecommunication services	30,000	30,300	30,603	30,909	31,218	31,530
Consultant services	8,333	8,333	8,333	0	0	0
Furniture/equipment	24,500	14,000	38,500	0	0	0
Training and travel	60,000	66,000	72,600	79,860	87,846	96,631
Existing expenses funded through cost recovery fees	1,171,438	1,288,582	1,417,440	1,559,184	1,715,102	1,886,612
Leased space	110,000	110,000	110,000	110,000	110,000	110,000
Operating	75,000	77,250	79,568	81,955	84,413	86,946
Supplies	<u>15,000</u>	<u>15,150</u>	<u>15,302</u>	<u>15,455</u>	<u>15,609</u>	<u>15,765</u>
Total costs	2,625,038	2,620,527	4,599,934	3,874,100	4,086,701	4,847,146
Net Revenues a/	(1,453,600)	(1,331,945)	(3,182,494)	3,099,578	3,773,493	4,032,914

a/ Appendix C of the Department's report contains a formula error, which staff has corrected here. Specifically, the Department's total revenues exclude cost recovery fee revenue, which causes the net revenues in FYs 09-10, 10-11, and 11-12 to be understated.

The Department also describes several non-tangible benefits of developing an in-house EFS. Such a system is anticipated to allow the Department:

- to reduce attorney user fees (the Department's cost-benefit analysis assumes elimination of cost recovery fees and a 50 percent reduction in filing fees);
- to increase control over the development and deployment of application fixes and enhancements (e.g., adding criminal⁴, juvenile, and mental health cases);
- an opportunity to interface more directly with the new case management system (jPOD);
- to migrate from an image-based system to one that utilizes e-forms, thereby reducing the need for network capacity;
- to improve EFS availability through a more stable technical infrastructure; and
- to implement a true disaster recovery methodology in the event of a primary system failure.

Although the Department's report includes information about the proposed in-house system architecture and a high level task list, the Department would prepare a thorough project management plan with a more in-depth project schedule if it is authorized to move forward.

Migrating Both Systems In-House

The Department also prepared an analysis of the revenues and costs should it be allowed to develop and implement in-house versions of both systems. The Department would expect to achieve some economies of scale if it develops both systems, particularly in terms of hardware and staffing costs. The following table summarizes the Department's projections of revenues and expenditures associated with developing both a web-based PAS and an e-forms based EFS. The analysis detailed below assumes: (a) the Department would develop PAS first, beginning in January 2009; (b) the Department would develop EFS once the PAS system is fully implemented (October 2009), using net revenues generated by PAS to support the costs of developing EFS; (c) the cost recovery fees would be eliminated upon implementation of each system; and (d) both direct PAS access fees and e-filing fees would be reduced by 50 percent upon implementation.

⁴ Please note that e-filing is free for government agencies. Thus, a private vendor has little incentive to enhance the system to include criminal cases.

Cost Benefit Analysis: Public Access System and E-Filing System						
Description	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
<u>Projected Revenues:</u>						
Public Access System	\$1,528,279	\$4,371,842	\$5,840,670	\$6,253,938	\$6,697,470	\$7,173,552
E-Filing System	<u>0</u>	<u>1,171,438</u>	<u>1,288,582</u>	<u>1,417,440</u>	<u>6,973,678</u>	<u>7,860,194</u>
Total revenues	1,528,279	5,543,280	7,129,252	7,671,378	13,671,148	15,033,746
<u>Projected Costs:</u>						
Public Access System	2,281,575	3,332,695	3,154,927	3,388,410	3,634,232	4,163,058
E-Filing System	<u>0</u>	<u>1,854,910</u>	<u>2,056,825</u>	<u>3,312,165</u>	<u>3,095,017</u>	<u>3,289,950</u>
Total costs	2,281,575	5,187,605	5,211,752	6,700,575	6,729,249	7,453,008
Net Revenues	(753,296)	355,675	1,917,500	970,803	6,941,899	7,580,738

As indicated above, the financial benefit of developing both systems sequentially is that the net revenues generated by the PAS could eliminate the need for new resources to develop the EFS. In addition, the Department points out that this approach would allow them to combine the records access and e-filing services into a single application, thereby allowing an individual to review data on a register of actions and then be directed to the relevant documents (rather than requiring two separate searches).

Department Recommendation

The Department recommends that it be authorized to develop and deploy both a PAS and an EFS in-house. To minimize risks, the Department recommends that it be authorized to begin work on the PAS in January 2009 (requiring a mid-year appropriation of funds and FTE). The Department recommends that it be authorized to begin work on the EFS once the PAS is launched statewide (as early as October 2009). The Department recommends that it be authorized to utilize net revenues generated from the PAS to support the development of the EFS.

The Department requests that the Joint Budget Committee indicate as soon as possible (mid-November) whether it intends to support the Department's recommendation. Should the Committee support the recommendation, the Department would like to begin preliminary planning and project scope and design work as soon as possible, with the project commencing as soon as a supplemental appropriation is available.

While the Department would like to reduce user fees for both public access and e-filing, it suggests that it may be prudent to wait to do so until after both projects have been successfully implemented and actual revenues can be projected with more certainty.

Finally, the Department indicates that it "would need assurances that if implemented, TABOR would not affect the remaining Judicial Department budget items".

NATIONAL CENTER FOR STATE COURTS CRITIQUE

The Department requested that the National Center for State Courts (NCSC) review its feasibility study and cost-benefit analyses. The NCSC indicated that it disagreed with a few specific points of the analysis, and the study lacked sufficient information to form a conclusion on other points. However, the NCSC indicated that these differences, if completely substantiated, would not have materially affected its opinion that the Department's proposal to bring both systems in-house is "clearly and completely" superior to continuing to contract with outside vendors to operate both systems. The NCSC indicated that the Department was able to clear up misunderstandings on some points, and provide further explanation on others, so that "no concerns with the feasibility study remain".

The NCSC provides the following comments with respect to its conclusions:

- *Management Feasibility.* The Colorado Judicial Department has a long history of, and good reputation for, managing technology development, implementation, and operation. The Department has had success in deploying and operating both a case management system and an integrated justice system. The PAS and EFS functions are inherently simpler, so the NCSC has no doubts about the ability of the Department to develop, deploy, operate, and maintain these systems.
- *Operational Feasibility.* First, Colorado is currently in a position of risk with respect to its relationship with LexisNexis. The vendor's inability to develop applications and its lack of adequate safeguards for court documents must be addressed before a crisis occurs. Second, the Department will face a greater need to support users outside normal business hours. The staffing models developed by the Department appear to address this issue adequately.
- *Financial Feasibility.* First, the Department's long-term forecasts for increases in system use do not seem sustainable. However, the revenue forecasts used in the study are much more conservative and appear to be reasonable. In addition, if user fees are reduced, utilization may increase beyond historical patterns. Second, if the Department does expand the EFS to include criminal, juvenile, and mental health cases, it will face the same issue as the current vendor (i.e., the inability to require filing fees from government agencies and some pro se litigants). Thus, civil case litigants will be paying fees that are used to support e-filing in criminal, juvenile, and other case types.

With respect to cost projections, the NCSC believes that future infrastructure costs may be understated, but not significantly. Specifically, while the Department's projections appear adequate to account for a higher volume of storage, processing power, and network traffic, they may not adequately address the need to increase the speed and reliability of the environment beyond the current standard.

- *Technical Feasibility.* The recommendation to bring both systems in-house seems to be technically feasible, so long as the legal community and other users are on board as far as the business issues are concerned. The two existing issues of excessive unscheduled downtime and the lack of disaster planning alone justify a change in direction.

The NCSC concludes that it supports the Department's recommendation that it begin immediately to bring both systems in-house. This conclusion "seems clear, obvious, and difficult to dispute".

STAFF ANALYSIS AND RECOMMENDATION

The Committee should consider whether the Department should move one or both systems in-house, or continue utilizing outside vendors. If the Committee is interested in having the Department move forward on one or both systems, it should consider the following questions:

1. How soon should the Department begin work?
2. Where should the seed money required to fund development costs come from?
3. Should the Department plan on reducing user fees as soon as a system is implemented? after development costs are recouped? never?
4. Once one or both systems are implemented, and the development costs are recouped, how should the "excess" revenues be used?

1. Staff recommends that the Committee authorize the Department to begin, as soon as possible, the development and implementation of in-house versions of both PAS and EFS. As the contract with Lexis/CourtLink expires June 30, 2009, with the possibility of one final year renewal until June 30, 2010, it is critical that the Department implement the new PAS in FY 2009-10. One of the risks identified by the Department is the potential that LexisNexis would cancel the existing PAS contract if it learns that Judicial plans to develop an in-house system. The existing contract allows this to occur, as long as LexisNexis provides 180 days notice. The Department indicates that the likelihood of such an event is relatively low, however (two on a scale of one to five).

2. Staff recommends that the Committee provide a clear indication to the Department as soon as possible concerning its intentions, and subsequently introduce a supplemental bill that includes an appropriation from the Judicial Department Information Technology Cash Fund (IT Cash Fund) for FY 2008-09 sufficient to allow the Department to begin development of the PAS as soon as possible. The IT Cash Fund, established through a JBC-sponsored bill last Session, allows the Department to retain fees and cost recoveries related to IT services, including providing public access to court records and e-filing services. The Department planned to use moneys in this fund for routine asset maintenance activities, including building up the fund balance to cover costs of significant infrastructure investments (e.g., an estimated \$700,000 to replace a mainframe computer in FY 2010-11). Pursuant to Section 13-32-114 (2), C.R.S., moneys in this fund may be appropriated to the Department "for any expenses related to the department's information technology needs".

Based on projected revenues to this fund, about \$870,000 will be available in the current fiscal year for IT needs over and above the amounts currently appropriated. Thus, staff recommends allowing the Department to use this fund to launch the new PAS. Once this system is implemented, revenues are projected to exceed ongoing operating costs. The net revenues from this project could then be used to cover the costs of developing a new EFS, and to "pay back" the seed money so that the Department is in a position to maintain its existing IT infrastructure.

3. Staff recommends that the Committee direct the Department to plan on: (1) eliminating cost recovery fees associated with each system at the point the in-house system is implemented; but (2) maintain existing user fees until the costs of developing the associated in-house system are recouped and the Department has some direct experience on which to base its revenue projections. The following table summarizes the Department's projections of revenues and expenditures associated with developing both a web-based PAS and an e-forms based EFS. However, this analysis assumes that the only reductions in PAS access fees and e-filing fees would be the elimination of the cost recovery fee. This approach would reduce the financial risks associated with these projects, and allow the IT Cash Fund to be repaid more quickly should current projections prove accurate.

Cost Benefit Analysis: Public Access System <u>and</u> E-Filing System (no fee reduction)						
Description	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
<u>Projected Revenues:</u>						
Public Access System	\$1,528,279	\$4,490,244	\$6,010,539	\$6,436,717	\$6,894,139	\$7,385,169
E-Filing System	<u>0</u>	<u>1,171,438</u>	<u>1,288,582</u>	<u>1,417,440</u>	<u>10,133,727</u>	<u>11,403,605</u>
Total revenues	1,528,279	5,661,682	7,299,121	7,854,157	17,027,866	18,788,774
<u>Projected Costs:</u>						
Public Access System	2,281,575	3,332,695	3,154,927	3,388,410	3,634,232	4,163,058
E-Filing System	<u>0</u>	<u>1,854,910</u>	<u>2,056,825</u>	<u>3,312,165</u>	<u>3,095,017</u>	<u>3,289,950</u>
Total costs	2,281,575	5,187,605	5,211,752	6,700,575	6,729,249	7,453,008
Net Revenues	(753,296)	474,077	2,087,369	1,153,582	10,298,617	11,335,766

4. Staff agrees with the Department that additional revenues that are generated through the development of an in-house system should first be used to pay for system development costs and to ensure that the Department has the equipment and staff resources to maintain these, and other existing IT systems. However, **staff does not recommend that the Committee provide assurance that the Department will be allowed to retain all additional revenues generated by in-house systems** (i.e., stating an intent to never use these funds to support IT functions that are currently supported by General Fund revenues). It would be reasonable and appropriate for the General Assembly to consider using revenues generated through public access and e-filing services to support the Department's IT unit.

**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

BRIEFING ISSUE

ISSUE: Implementing Adult Drug Courts Statewide

In response to a General Assembly request, the Department has prepared a plan concerning the provision of drug courts statewide. The Department has submitted a budget request for FY 2009-10 to enhance and expand existing drug court operations.

SUMMARY:

- Drug courts coordinate the activities of the courts and various agencies to actively and forcefully intervene and break the cycle of substance abuse, addiction, and crime. Evidence indicates that drug courts, when implemented properly, can be effective in reducing crime rates among high need/ high risk drug abusing offenders.
- Colorado's 18 operational drug courts currently serve 1,400 of the estimated 6,000 adults who would qualify to participate in drug court programs. The Department indicates that an additional 78.0 FTE and \$8.8 million would be required to fund existing adult drug courts at 100 percent of the staffing need.
- The Department recommends that adult drug courts be taken to scale over the course of five years. The Department has requested 17.2 FTE and \$1.3 million in FY 2009-10 to staff operational drug courts at 35 percent of the calculated staffing need.
- The State Public Defender has also submitted a budget request for \$237,000 General Fund to fund 4.0 existing FTE who support Denver's adult drug court.

DISCUSSION:

REQUEST FOR INFORMATION

The following request for information was included in Joint Budget Committee Chairman Buescher's April 21, 2008 letter to the Chief Justice:

- 2 Judicial Department, Trial Courts, Trial Court Programs** -- The Department is requested to develop a general strategy and plan regarding the provision of drug courts statewide, including in rural areas, and to provide a report on this plan to the Judiciary Committees of the House and Senate by December 31, 2008.

Although the Department is requested to provide the information to the Judiciary Committees by December 31, the Department elected to submit the report early to facilitate discussions with the Joint Budget Committee concerning related funding requests. Staff has summarized the contents of the report below.

DEPARTMENT REPORT - BACKGROUND INFORMATION

What Are Problem Solving Courts?

A variety of specialized courts have been developed in recent years to address the underlying issues of individuals appearing in court using a collaborative, multi-disciplinary approach. These courts are called "problem solving courts". A total of 56 problem solving courts exist in Colorado, including 20 in rural jurisdictions. These courts focus on offenders with a variety of underlying issues, including the following:

- Adult drug courts (18 currently in Colorado)
- Family/Dependency and neglect courts (11)
- Juvenile drug courts (9)
- Driving Under the Influence (DUI) courts (4)
- Juvenile delinquency and truancy courts (4)
- Adult and juvenile mental health courts (3)
- Prostitution/Drug court (1)
- Other types of problem solving courts (6)

As indicated above, about half (27) of existing problem solving courts in Colorado focus on drug abusing offenders.

What is a Drug Court?

Drug courts coordinate the efforts of the judiciary, prosecution, defense bar, probation, law enforcement, mental health, social services, and treatment communities to actively and forcefully intervene and break the cycle of substance abuse, addiction, and crime. Drug court emphasizes accountability and intensive monitoring for drug abusing criminal offenders. Drug court places these defendants in a new type of courtroom environment where they undergo treatment and counseling, submit to frequent and random drug testing, make regular appearances before the judge, and are monitored closely for program compliance. In addition, drug courts may provide ancillary services such as mental health treatment, family/group counseling, job skills training, and other life skill enhancement services if necessary to increase the probability of defendants' success.

As illustrated in the diagram below, the target population for adult drug courts has been defined as substance abusing or dependent offenders who are determined to be in high need of treatment and

at high risk for recidivating⁵. Offenders excluded from this target population are violent offenders, sex offenders, offenders who pose too large of risk to the community, and lower risk individuals who are better served through other programming.

Risk and Needs Matrix		
<i>High Needs</i>	Accountability and Treatment (i.e., Drug Court)	Treatment
<i>Low Needs</i>	Accountability	Prevention
	<i>High Risk</i>	<i>Low Risk</i>

Juvenile drug courts differ from adult drug courts in that parents are involved in court proceedings and treatment is centered around the family while holding both the juvenile and parent(s) accountable to the court.

Who is Involved in the Operations of a Drug Court Program?

Successful drug courts rely upon the combined expertise and collaboration of many disciplines. The following representatives from various agencies work together to provide the support, accountability and services that are conducive to positive behavior change.

- ▶ The Judge presides over the court proceedings and monitors appropriate application of sanctions and incentives while maintaining the integrity of the court. The Judge regularly reviews case status reports detailing each participant's compliance with the treatment mandate, drug test results, cooperation with the treatment provider, and progress towards abstinence and law-abiding behavior. During regular court appearances, the Judge administers a system of graduated sanctions⁶ and incentives⁷ to increase each participant's accountability and to enhance the likelihood of recovery. Finally, the Judge decides the ultimate program outcome of graduation or incarceration.

⁵ An offender's treatment need is determined based on the Adult Substance Use Survey (ASUS), followed by a clinical assessment conducted by a licensed treatment provider. An offender's risk level is established by Probation, using the Level of Supervision Inventory (LSI). The LSI determines an offender's needed level of supervision by assessing ten life areas (criminal history; education/employment; financial; family/marital; accommodation; leisure/recreation; companions; alcohol/drug problems; emotional/personal; and attitude/orientation).

⁶ Tangible sanctions might include short-term jail sentences, work crews, detox, community service, work release, day reporting, curfew, and electronic home monitoring.

⁷ Tangible incentives might include bus passes, small prizes, coupons, gift cards, and the waiver of court fees. Intangible incentives might include praise, applause, and recognition by the court of the client's achievements.

- ▶ The Coordinator serves as the "hub" of the drug court program, and is responsible for program development, program enhancement, and day to day operations. Duties generally include: managing the budget and resources; grant writing; maintaining individual files on participants; compiling statistical data and guiding or participating in program evaluation; contract management; preparation and management of drug court dockets; and soliciting community support.
- ▶ The Prosecutor/ County Attorney reviews all potential participants for eligibility, actively participates in staffing of cases, and interacts with the staffing team to address revocations, pleas, and the application of sanctions and incentives. The prosecutor's role is less adversarial than in a typical criminal proceeding, as the prosecutor and the defense attorney share a common goal of successful treatment completion.
- ▶ The Public Defender actively participate as defense counsel by advocating for the participant during staffing and court proceedings in a non-adversarial manner, assisting with the negotiation of plea agreements, and completing necessary documents to facilitate the treatment process for the participant. The defense attorney represents and counsels the defendant in all court proceedings, promoting both the legal rights and the health and well-being of the defendant.
- ▶ The designated Chemical Health and Mental Health Staff participate in weekly staffings, make treatment recommendations to the court, and as appropriate, will identify and/or provide a continuum of care for participants while advocating on behalf of the client and for the integrity of the court. Treatment services could include hospital-based detoxification, short-term residential treatment, long-term residential treatment, and outpatient treatment. Staff refer participants to specific programs based on their clinical suitability, the program's ability to comply with reporting requirements, and the program's capacity to meet any special needs that may exist (e.g., mental or physical health, language barriers).
- ▶ The Case Manager, typically a probation officer, is responsible for direct supervision of the drug court participant's compliance with the program, including: implementing the appropriate supervision level based on established measures; providing community linkages and referrals to appropriate agencies; and monitoring the day-to-day activities and home environment of the participant. The Case Manager is responsible for ensuring that pertinent information gathered during assessment and monitoring is provided to all team members in real time. Although caseloads for adults on regular probation are currently 100 offenders per probation officer, the Probation Services Division has concluded that 40 offenders per probation officer is a more appropriate caseload ratio for adult offenders participating in drug court.
- ▶ The Law Enforcement Officer acts as a liaison between the program and their respective department and is responsible for dissemination of information to officers that come in contact with drug court participants to assure reasonable and appropriate measures are used when checking the participants for compliance.

- ▶ The Evaluator is responsible for developing reliable and valid methodologies to study the effectiveness of the drug court. To maintain objectivity, the Evaluator does not participate in drug team review. The Evaluator may be employed by the court, or may be provided at the state, regional, or local level.

Are Drug Courts Successful?

On a national level, over the past two decades there have been multiple studies and analyses drug courts. According to Doug B. Marlowe, J.D., Ph.D, when it comes to efficacy, adult drug court meets the highest standards of proof. Specifically, at least three randomized, controlled, experimental studies published in peer-reviewed journals report superior results for drug courts over traditional probationary conditions. Among other positive findings, these studies revealed significant reductions in post-program criminal recidivism for drug-court participants lasting up to two and three years post-admission⁸.

The documented benefits of drug courts include the following:

- offenders remain in the community
- drug courts provide a greater level of supervision
- offenders remain in treatment longer
- drug courts encourage and require systems collaboration
- drug courts provide an immediate response to behaviors
- drug courts can reduce the usage of jail/prison beds

The effectiveness of drug courts can vary, however, depending on how the program is implemented. Thus, drug courts should regularly evaluate their effectiveness, including process, outcome, and cost-benefit.

In Colorado, some drug courts appear to be effective in reducing an offender's likelihood of re-offending and being incarcerated. For example, the 20th Judicial District's Integrated Drug Court participants had a mean LSI score of 31.5, which indicates a 50 percent chance of recidivism in one year. This mean score is higher than probation, parole, and community corrections populations. [Source: 20th Judicial District Integrated Treatment Court and Family Integrated Treatment court: FY 2007-2008 Annual Report, page 7.] Of the 10 program graduates to date, eight (80 percent) continue to be successful, one had a "lapse" (but no charges), and one required subsequent incarceration due to new charges. This same report indicates that the Integrated Treatment Court reduced the number of jail bed-days used by program participants by 89 percent, equivalent to about \$900,000 in cost savings.

⁸ Source: Commentary by Douglas Marlowe, PhD, Director of Law and Ethics Research at the Treatment Research Institute at the University of Pennsylvania, available through <http://www.drugprevent.org.uk>.

Colorado's Problem Solving Court Advisory Committee

Historically, problem solving courts in Colorado have been created at the local level with little coordination with other judicial districts regarding staffing models, funding models, treatment, case management, and other policy and practice issues that impact the sustainability and effectiveness of these courts. In April, 2008, Chief Justice Mullarkey signed an order establishing the Problem Solving Court Advisory Committee (Advisory Committee). The Advisory Committee was charged with the following tasks:

- Study and attempt to address the concerns that not all drug treatment courts conform to recommended guidelines⁹. Develop an effective staffing model for treatment courts that reflects the needs of the Trial Court, Probation, District/County Attorneys, Public Defenders, and treatment organizations consistent with these guidelines.
- Assist in the development of a strategic plan that will lead to the sustainability of problem solving courts in terms of judicial, community, and adequate financial support. Develop a funding model reflective of an approved staffing model and all other expenses associated with the operations of problem solving courts.
- Assist in the development and design of an evaluation strategy including design of a statewide automated Drug Treatment Court management information system for both day to day management of drug treatment courts and long-term outcome evaluation. Assist in the development of a benefit-cost evaluation model that will assist in assessing the effectiveness of problem solving courts in improving outcomes for court clients, the judicial branch, and the justice system as a whole.
- Provide guidance and support for problem solving courts through identification of best practices, identification of training and education needs, and the formulation of a problem solving court professional organization to facilitate communication and ideas among interagency stakeholders. Promote and coordinate the development and implementation of problem solving courts.

The Advisory Committee elected to focus on problem solving courts that are most prevalent and serve the greatest number of offenders in the state, those that are best supported by state and national

⁹ The ten key components of effective drug courts include: (1) Integrate drug treatment services with justice system case processing; (2) Using nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights; (3) Eligible participants are identified early and promptly placed in drug court program; (4) Provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services; (5) Abstinence is monitored by frequent testing; (6) A coordinated strategy governs responses to participants' compliance; (7) Ongoing judicial interaction with each participant is essential; (8) Monitoring and evaluation measure program effectiveness; (9) Continuing interdisciplinary education promotes effective planning, implementation, and operations; and (10) Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances program effectiveness. [source: www.drugcourt.org]

research, those that will most likely produce the greatest return on state resources. The Advisory Committee thus chose to focus first on adult drug courts, followed by family / dependency & neglect treatment courts; DUI courts, juvenile drug courts, and mental health courts.

DEPARTMENT REPORT - RECOMMENDATIONS

Statewide Implementation of Adult Drug Courts

The 18 operational adult drug courts currently serve 1,400 (37.8 percent) of the 3,700 drug offending criminal population that would qualify to participate in a drug court program. The Department estimates that, statewide, 6,000 adults would qualify to participate in drug court programs. Additional staff are needed in existing adult drug courts to serve more offenders and to provide services that are supported by nationally established best practices. Specifically, the Department indicates that an additional 78.0 FTE and \$8.8 million would be needed to fund existing adult drug courts at 100 percent of the staffing need.

Many jurisdictions are not in a position to serve the full target population and will need time to build an infrastructure that will accommodate the estimated target population. Thus, the Department recommends that the adult drug court be taken to scale over the course of five years:

Year 1: Fund existing adult drug courts at up to 35 percent of the calculated FTE need

Year 2: Increase funding to 50 percent of the calculated FTE need

Year 3: Increase funding to 65 percent of the calculated FTE need

Year 4: Increase funding to 85 percent of the calculated FTE need

Year 5: Increase funding to 100 percent of the calculated FTE need

The Department would allocate funds based upon individual jurisdictions demonstrating compliance to the Colorado Drug Court Model by serving the identified target population while complying with the ten key components of drug court. Jurisdictions would receive funding in proportion to the number of offenders served. Jurisdictions wanting to implement new adult drug courts would be funded at up to 35 percent of the identified population in the first year of operation with the potential of increasing their annual allocation in years to follow based on the number of offenders served.

The Department identifies three other issues to consider:

- **Training** will be provided through statewide conferences where local and national experts on effective, evidence based drug court practices will provide education on topics such as motivational interviewing, drug testing, treatment, community supervision, etc. The first annual statewide training in Colorado is tentatively scheduled for March 2009. Technical assistance is available at the local level through the Office of the State Court Administrators Office and through the National Drug Court Institute. These training sessions will be tailored to meet the specific needs of the respective drug court and can be requested on an ongoing basis.

- Drug and alcohol treatment and mental health treatment are essential to drug court outcomes. As the number of drug court participants increases, the need for treatment resources will increase. The Problem Solving Court Advisory Committee and the State Court Administrator's Office will need to work with the Division of Behavioral Health to develop a strategy of identifying the availability and quality of treatment services available to serve the drug court populations. It is possible that a lack of adequate treatment services may become a barrier to expanding drug courts.
- In order to ensure that drug courts are effective, the Problem Solving Court Advisory Committee plans to assist in identifying key data elements for evaluation, as well as the development of a benefit-cost evaluation model that will assist the State Court Administrator's Office in assessing the effectiveness of problem solving courts in Colorado.

Funding Requests for FY 2009-10

Judicial

In response to the Joint Budget Committee's request for information concerning a statewide plan for drug courts, the Judicial Branch submitted a request to add 17.2 FTE in FY 2009-10 at a cost of approximately \$1.3 million for adult drug courts. This request is aimed at staffing currently operational adult drug courts at 35 percent of the calculated staffing need. Funding would be used to enhance current adult drug court operations by staffing the drug courts with adequate judicial staff, drug court coordinators, and probation staff.

State Public Defender

The State Public Defender also submitted a budget request concerning adult drug courts. Specifically, the State Public Defender requests approximately \$237,000 General Fund to fund 4.0 existing FTE who support Denver's drug court. These staff are currently supported by cash funds provided by Denver; these funds will no longer be available in FY 2009-10.

**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

BRIEFING ISSUE

ISSUE: U.S. Supreme Court *Rothgery* Decision

The State Public Defender has expressed concern that a recent U.S. Supreme Court decision calls into question the constitutionality of two existing Colorado statutory provisions.

SUMMARY:

- ❑ The U.S. Supreme Court has previously held that under the Sixth Amendment to the U.S. Constitution the indigent accused must be provided counsel by the government in any prosecution where incarceration is being sought. In a recently issued opinion, the Court further held that the right to counsel attaches at the time a criminal defendant first appears before a judicial officer.
- ❑ The State Public Defender has expressed concern that this recent Court decision calls into question the constitutionality of two existing Colorado statutory provisions.
- ❑ The State Public Defender indicates that if the State is successfully sued under this recent decision, his office' misdemeanor caseload -- and the associated staffing need -- will increase significantly. However, estimates of the potential magnitude of such a caseload increase are not currently available.

RECOMMENDATION:

Staff recommends that the Joint Budget Committee discuss this issue with the House and Senate Judiciary Committees. If it appears that statutory changes are warranted, the Joint Budget Committee should coordinate with the Judiciary Committees and plan for any necessary budget changes.

DISCUSSION:

U.S. Supreme Court Decision

The U.S. Supreme Court has previously held that under the Sixth Amendment to the U.S. Constitution the indigent accused must be provided counsel by the government in any state or federal prosecution where incarceration is being sought¹⁰. On June 23, 2008, the U.S. Supreme Court issued

¹⁰ The following citations were provided by the Public Defender's Office: *Gideon v. Wainwright*, 372 U.S. 335 (1963) and *Alabama v. Shelton*, 535 U.S. 654 (2002)

an opinion in *Rothgery v. Gillespie County*, holding that the right to counsel attaches at the time a criminal defendant first appears before a judicial officer where he is informed of the criminal charges and restrictions are imposed on his freedom.

State Public Defender's Concerns Related to Rothgery Decision

The State Public Defender has prepared a memorandum to the Joint Budget Committee [see Appendix D] expressing concern that the *Rothgery* decision calls into question the constitutionality of two existing provisions of the Colorado Revised Statutes.

First, Section 16-7-301, C.R.S., authorizes a district attorney to engage in plea discussions with a defendant "only through or in the presence of defense counsel", with the following exceptions:

1. Where the defendant is not eligible for appointment of counsel.
2. Where the defendant refuses appointment of counsel and has not retained counsel.
3. In the case of a misdemeanor, petty offense, or traffic offense, a defendant's application for appointment of counsel is deferred until after the prosecuting attorney has spoken to the defendant. If a plea agreement is reached, and the court determines that the proposed plea agreement is acceptable, the court is required to advise the defendant of the right to a court-appointed attorney prior to the acceptance of the defendant's plea. If a plea agreement has not been reached, the court is required to appoint counsel (if the defendant is indigent) and "all discussions with the defendant outside the presence of counsel shall cease".

The third exception, above, was added through H.B. 92-1060 (Grampsas/Bird), a bill that was sponsored by the Joint Budget Committee (JBC) [see Section 16-7-301 (4) (a), C.R.S.]. This bill was introduced in response to a request from the State Public Defender for additional staff due to an increase in the number of misdemeanor cases (primarily domestic violence and drug cases).

The provision concerning this exception was subsequently modified, adding language stating that the defendant is under no obligation to talk to the prosecuting attorney, and requiring the prosecuting attorney to advise the defendant that he has the right to retain counsel or seek appointment of counsel [see S.B. 93-81, another JBC-sponsored bill].

Second, Section 16-2-207, C.R.S., requires the judge, at a defendant's first appearance in court or first arraignment (whichever was first), to inform the defendant that he: (a) need not make a statement, and any statement made can and may be used against him; (b) has a right to counsel; and (c) if indigent, the defendant may apply for a court-appointed attorney and one will be appointed. House Bill 92-1060 added language to this provision creating an exception. Specifically, if the defendant is charged with a misdemeanor, petty offense, or traffic offense, and if the prosecuting attorney files a written statement that incarceration is not being sought, counsel shall not be provided to the defendant.

The State Public Defender indicates that in the *amicus* briefs and the *Rothgery* decision, Colorado is openly criticized for its practice requiring indigent, *pro se* defendants to meet with the prosecution prior to the appointment of counsel.

The State Public Defender and State Court Administrator sent a letter to Attorney General Suthers requesting a legal opinion concerning the constitutionality and viability of Sections 16-7-301 (4) (a) and 16-7-207 (1) (c), C.R.S., in light of the *Rothgery* decision. As the Attorney General had submitted a brief in the *Rothgery* case (contrary to the ultimate ruling), he declined to issue a formal opinion.

Potential Impact of Rothgery Decision

The State Public Defender indicates that *pro se* misdemeanants are informed that they must first meet with the prosecution without counsel. The Public Defender's Office currently handles an estimated 37.5 percent of misdemeanor cases statewide, excluding traffic cases. The State Public Defender indicates that if the State is successfully sued under the *Rothgery* decision, the Public Defender's misdemeanor caseload (and the associated staffing needs) will increase significantly. The Public Defender's Office does not know the number of *pro se* defendants that meet with the prosecution, so it is unable to calculate the magnitude of the likely increase.

**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

BRIEFING ISSUE

ISSUE: Repeal of Provisions Authorizing Transfers and Over Expenditures

Several statutory provisions that authorize state agencies to make transfers between appropriations or over expend an appropriation are scheduled to repeal in 2009.

SUMMARY:

- ❑ Four provisions of Title 24 that authorize agencies to make transfers between line items or over expend an appropriation are scheduled to repeal in 2009. These provisions apply to Executive Branch agencies as well as the Judicial Branch.
- ❑ The Judicial Branch has indicated that it would like the General Assembly to extend the repeal dates on these provisions.

RECOMMENDATION:

Staff recommends that the Committee consider introducing legislation to extend the repeal dates for these statutory provisions. With respect to the Judicial Branch, staff does not recommend any other statutory changes related to these provisions.

DISCUSSION:

Several provisions of Title 24 concerning transfers of appropriations and over expenditures are scheduled to repeal in 2009. These provisions are listed below, with brief descriptions:

- *Section 24-75-105, C.R.S.:* Authorizes transfers required to implement appropriations conditioned on the distribution of the appropriation among departments or programs (including centralized appropriations). Scheduled to repeal September 1, 2009.
- *Sections 24-75-108, C.R.S.:* Authorizes a department, upon approval by the Governor and between April 30 and the 45th day after the close of the fiscal year, to transfer moneys from one of the department's Long Bill line items to another. Requires that such transfers only be made between appropriations for like purposes. Limits the total amount transferred by the Executive Branch to \$2 million. Provides the same transfer authority to the Judicial Department, upon approval by the Chief Justice (limited in Section 24-75-110, C.R.S.). Scheduled to repeal September 1, 2009.

- *Section 24-75-109, C.R.S.:* Authorizes the State Controller, upon approval by the Governor and between April 30 and the 45th day after the close of the fiscal year, to allow state agencies to make an expenditure in excess of the amount authorized by an item of appropriation for such fiscal year under certain circumstances, including:
 - (a) Certain Medicaid and Children's Basic Health Plan program over expenditures;
 - (b) Over expenditures by the Department of Human Services (limited to \$1 million);
 - (c) Over expenditures of Executive Branch agencies other than the Department of Human Services (limited to \$1 million);
 - (c.5) Over expenditures for the workers' compensation self-insurance program of the Department of Human Services; or
 - (d) Over expenditures for any purpose of the Judicial Department (limited in Section 24-75-110, C.R.S.).

Scheduled to repeal July 1, 2009.

- *Section 24-75-110, C.R.S.:* Limits the total amount transferred and over expended by the Judicial Department pursuant to Sections 24-75-108 and 109, C.R.S., to \$1 million per fiscal year. Scheduled to repeal September 1, 2009.

The Judicial Department has indicated that it would like the General Assembly to extend the repeal dates on these provisions. The following table provides a history of fiscal year-end transfers and over expenditures by the Judicial Branch for the last decade.

Judicial Department: Recent History of Transfers and Over expenditures			
Fiscal Year	Transfers	Over Expenditures	Total
1998-99	\$1,000,000	\$0	\$1,000,000
1999-00	789,624		
2000-01	196,605	0	196,605
2001-02	1,000,000	0	1,000,000
2002-03	258,432	0	258,432
2003-04	152,052	0	152,052
2004-05	642,856	0	642,856
2005-06	727,022	0	727,022
2006-07	554,051	0	554,051
2007-08	877,235	118,687	995,922

The existing \$1.0 million limitation on transfers and over expenditures represents 0.2 percent of the Department's FY 2008-09 appropriations. The Judicial Department has transferred an average of about \$620,000 annually over the last decade. The amount annually transferred has varied, ranging from \$152,052 to the maximum amount allowed (\$1.0 million). Fiscal year 2007-08 was the only fiscal year in which the Judicial Department used its authority to over expend. This \$118,687 over expenditure was on behalf of the Office of the Child's Representative, allowing for the payment of court-appointed counsel.

In addition to the statutory authorization described above, the General Assembly provides further authority for the Judicial Department to make transfers through Long Bill footnotes. Specifically, footnotes #43, #44, and #45 in the FY 2007-08 Long Bill authorized each of Judicial's independent agencies to transfer up to 2.5 percent of its total appropriation between its line items; these footnotes were continued in the FY 2008-09 Long Bill. These independent agencies regularly utilize this flexibility to manage their annual appropriations. [For details concerning transfers made pursuant to this additional authority, see Appendix C, pages 9 and 10.]

The Judicial Department's use of its authority to transfer funds among line items and over expend appropriations appears appropriate and reasonable. Staff recommends that the Committee consider introducing legislation to extend the repeal dates for these statutory provisions. With respect to the Judicial Branch, staff does not recommend any other statutory changes related to these provisions.

**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

BRIEFING ISSUE

ISSUE: Colorado State Museum and State Justice Center Project Status

This issue brief provides background information concerning the Judicial Heritage Complex, summarizes legislation passed last session to replace the Complex, and describes the current status of the project.

SUMMARY:

- ❑ Senate Bill 08-206 authorized the construction of a new Colorado History Museum as well as a new Justice Center. The act authorizes the State to enter into lease-purchase agreements for the development and construction of both facilities; these agreements are to be paid using moneys from the State Historical Fund, civil filing fee revenues, and lease payments received from agencies ultimately occupying the new Justice Center.
- ❑ Development costs are estimated to total \$408 million, including \$113 million for the Museum and \$295 million for the Justice Center.
- ❑ The design phase for the Museum has begun, and land for the Museum is currently under contract. It is anticipated that certificates of participation will be issued for this project by next May, just prior to construction beginning.

DISCUSSION:

Background Information: Judicial Heritage Complex

The Judicial Branch and the Colorado History Museum currently share the Judicial Heritage Complex (bordered by 13th and 14th Streets, Broadway, and Lincoln), which was constructed in 1977. A number of studies have been conducted concerning the facility needs for both entities. In November 2005, the Urban Land Institute (ULI) was engaged to conduct a review of all previous studies and render an independent conclusion. The ULI concluded the following:

- The Judicial Heritage Complex has never functioned adequately for either the Judicial Department or the Museum.
- The programmatic site needs of each operation oppose one another in many ways (mission, public access, security needs, etc.).
- The Judicial Building is not adequate to meet the space needs of its current operation, let alone accommodate for future growth.

- The Museum needs more space to accommodate visitors and the installation of more and larger exhibitions and educational programs.
- The unique site design of the Complex lends itself to a high level of vulnerability.
- The Judicial Building has a number of life, health, safety, and Americans with Disabilities Act issues that affect the operation of the courts.

The ULI recommended that the judicial facilities be expanded and remain on the Judicial Heritage Complex site, and the Museum be moved to a new site.

In March 2006, the Judicial Department and the Colorado Historical Society issued a request for proposal for management services related to their facility needs, including: feasibility studies, site procurement, financing alternatives, space programs, design and renovation or new construction management services as required, and move management. Trammell Crow Company and a team of consultants entered into a contract to provide these management services in July 2006.

In December 2006, Trammell Crow Company submitted a report concerning the feasibility of constructing a new Justice Center on the site of the Judicial Heritage Complex, and procuring a new site and building for the Colorado History Museum. The study included: a review of current and future space needs for the state's legal-related agencies and the Colorado History Museum; alternative acceptable sites for the museum; project schedules for financing, design, and construction for both projects; estimates of project management, design, and construction costs for each project; and alternative financing strategies.

The feasibility study estimated total development costs of \$385.1 million, including \$112.2 million for a 241,000 GSF museum building and \$272.9 million for a 560,000 GSF justice center. These estimates assumed that the Museum would be relocated to a new site, the Supreme Court and the Court of Appeals would be relocated to an interim leased space for 28 months, and the existing judicial and museum buildings would be demolished. The feasibility report recommended financing the projects through a series of certificates of participation (COPs).

Senate Bill 08-206

Senate Bill 08-206 (Shaffer; Penry/ T. Carroll; Marostica) authorizes the construction of a new Colorado History Museum using moneys in the State Historical Fund and \$25 million transferred from the Judicial Department. The act authorizes the Judicial Branch to increase various civil filing fees to help fund the consolidation of all justice-related state agencies into a single complex at the current Judicial Heritage Complex site. The act's legislative declaration states that the new justice center shall initially include the following agencies:

- Colorado Supreme Court (currently located in the Judicial Heritage Complex at 14th and Broadway/Lincoln)

- Colorado Court of Appeals (also located in the Judicial Heritage Complex)
- Judicial Department administrative offices (currently located in leased space at 1301 Pennsylvania Street)
- Alternate Defense Counsel (currently located in leased space at 1580 Logan Street)
- Office of the Child's Representative (also leasing space at 1580 Logan Street)
- Office of the State Public Defender (central administrative and appellate offices are currently located in leased space at 1290 Broadway; Denver trial office is currently in leased space in the Denver Post building)
- Department of Law (currently leasing space within the Capitol Complex at 1525 Sherman Street; also rents private storage space)

The project will address both the lack of adequate space and the lack of adequate safety and security measures in the current buildings. The project is also expected to benefit the State financially by allowing the State to avoid ongoing payments for privately owned leased space, and achieving greater programmatic efficiencies and decreased operating costs.

The act authorizes the State to enter into lease-purchase agreements for the development and construction of a new state museum and a state justice center (to be known as the "Ralph L. Carr Justice Complex"). The total amount of the principal component of the lease-purchase agreements concerning the Museum may not exceed \$85 million¹¹, the annual rental and lease-purchase payments may not exceed \$5 million, and the term may not exceed 37 years. The total amount of the principal component of the lease-purchase agreements concerning the Justice Complex may not exceed \$275 million², the annual rental and lease-purchase payments may not exceed \$19 million, and the term may not exceed 38 years.

Revenues from various filing fees and any lease payments received from agencies occupying the Justice Complex are to be credited to the newly created Justice Center Cash Fund. Moneys in the Fund are subject to annual appropriation for expenses related to the design, construction, maintenance, operation, and interim accommodations for the Justice Complex. The act requires the Judicial Branch to transfer a total of \$25 million from the Justice Center Cash Fund to the newly

¹¹ These amounts exclude "reasonable and necessary administrative, monitoring, and closing costs and interest".

created State Museum Cash Fund to compensate the State Historical Society for the land on which the Colorado History Museum currently resides¹².

Beginning in FY 2014-15, the act requires the Executive Director of the Department of Personnel and Administration to calculate the net savings to the State by locating the Department of Law and any other executive branch agency in the new Justice Complex, and requires the General Assembly to appropriate from the General Fund to the Justice Center Cash Fund the amount of net savings to repay any lease purchase obligations.

Current Status of the Project

Trammell Crow Company provided updated information related to the Museum and Justice Center projects last March, as the General Assembly considered S.B. 08-206. These updated estimates anticipate total development costs of \$408.3 million, including \$112.9 million for the Museum and \$295.4 million for the Justice Center. Based on this updated information, as well as more recent conversations with project management staff, the following table sets forth the anticipated project time line.

Project Milestones Time line	
Fiscal Year	Milestones
FY 2008-09	<ul style="list-style-type: none"> • Museum design phase begins (July 2008) • Museum COPs issued (April - May 2009) • Museum financing completed (4th quarter) • Museum construction begins (May - June 2009)
FY 2009-10	<ul style="list-style-type: none"> • Museum construction continues
FY 2010-11	<ul style="list-style-type: none"> • Justice center design phase begins (1st quarter) • Justice center COPs issued (1st quarter) • Museum construction completed (4th quarter) • Museum moves to new facility (beginning in May 2011)
FY 2011-12	<ul style="list-style-type: none"> • Museum COP payments begin (1st quarter) • Justice center financing completed (1st quarter) • Museum move continues (through September 2011) • Judicial Branch temporarily relocates (2nd quarter) • Current museum and judicial facility demolition (2nd quarter) • Justice center construction begins (28 months beginning 3rd quarter)
FY 2012-13	<ul style="list-style-type: none"> • Justice center construction continues
FY 2013-14	<ul style="list-style-type: none"> • Justice center construction continues

¹² The act requires a transfer of up to \$15 million in FY 2008-09, up to \$10 million in FY 2009-10, and an remaining moneys necessary to transfer a cumulative total of \$25 million in FY 2010-11.

Project Milestones Time line	
Fiscal Year	Milestones
FY 2014-15	<ul style="list-style-type: none"> • Justice center construction completed (1st quarter) • Justice center moves into new facility (2nd quarter) • Justice center COP payments begin (3rd quarter)

Staff understands that the land for the Museum is currently under contract, and the purchase will close in the Spring of 2009 when the financing is completed. The project managers intend to wait to sell the initial COPs until the design work is complete for the Museum and a guaranteed maximum price on the project is established. They currently anticipate an issue date of April or May, 2009.

Filing fee revenue that is credited to the Justice Center Cash Fund was estimated to total \$11.8 million in FY 2008-09, and \$12.7 million in FY 2009-10. Through November 14, 2008, the Department has collected \$4.8 million (\$246,000 per week). Thus, it appears that the Department is on track to collect about \$12.7 million in FY 2008-09, about eight percent more than anticipated.

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests

JUDICIAL BRANCH
Chief Justice Mary Mullarkey

(1) SUPREME COURT/COURT OF APPEALS

The primary functions of the Supreme Court include: general supervisory control of lower courts; appellate review of lower court judgements; original jurisdiction for certain constitutional and other cases; and rule-making for the state court system. The Court of Appeals is the initial jurisdiction for appeals from district courts and certain state agencies. Cash fund sources include various fees and cost recoveries.

Appellate Court Programs			11,217,738	11,958,419	
FTE			<u>146.0</u>	<u>146.0</u>	
General Fund			10,150,431	10,862,129	
FTE			146.0	132.5	
Cash Funds			1,067,307	1,096,290	
FTE			0.0	13.5	
Personal Services	9,277,099	9,482,068	Included in		
FTE	<u>126.5</u>	<u>129.9</u>	Appellate Court		
General Fund	9,277,099	9,482,068	Programs line		
FTE	126.5	129.9	item (above)		
Cash Funds	0	0			
Operating Expenses	<u>213,271</u>	<u>207,290</u>	Included in		
General Fund	152,832	147,630	Appellate Court		
Cash Funds	60,439	59,660	Programs line item		

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Capital Outlay	241,937	0	229,662	0	
General Fund	241,937	0	0	0	
Cash Funds	0	0	229,662	0	
Attorney Regulation Committees - CF	6,326,619	6,083,891	4,700,000	4,700,000	
FTE	40.5	40.5	40.5	40.5	
Continuing Legal Education - CF	350,689	369,682	325,000	325,000	
FTE	4.0	4.0	4.0	4.0	
Law Examiner Board - CF	801,207	895,662	850,000	850,000	
FTE	8.2	8.2	8.2	8.2	
Law Library - CF	426,260	440,131	500,000	500,000	
					<i>Request v. Approp.</i>
TOTAL - Supreme Court/ Court of Appeals	17,637,082	17,478,724	17,822,400	18,333,419	2.9%
FTE	179.2	182.6	198.7	198.7	0.0%
General Fund	9,671,868	9,629,698	10,150,431	10,862,129	7.0%
FTE	126.5	129.9	146.0	132.5	-9.2%
Cash Funds	7,965,214	7,849,026	7,671,969	7,471,290	-2.6%
FTE	52.7	52.7	52.7	66.2	25.6%

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
(2) COURTS ADMINISTRATION					
(A) Administration					
This subdivision supports the Office of the State Court Administrator, which coordinates and controls budgeting, research, data processing and management services for the Judicial Department, and provides training, technical assistance and other support services. Cash fund sources include various fees and cost recoveries. Reappropriated funds include indirect cost recoveries and a transfer from the Department of Higher Education.					
Personal Services	4,443,273	4,935,270	5,217,789	5,525,225	
FTE	<u>59.2</u>	<u>60.7</u>	<u>64.1</u>	<u>64.1</u>	
General Fund	3,406,377	3,823,254	4,102,540	4,199,313	
FTE	59.2	60.7	64.1	64.1	
Cash Funds Exempt/ Reappr. Funds	1,036,896	1,112,016	1,115,249	1,325,912	
Operating Expenses	<u>366,799</u>	<u>368,135</u>	<u>371,106</u>	<u>371,106</u>	
General Fund	366,152	367,984	370,106	370,106	
Cash Funds	647	151	1,000	1,000	
Capital Outlay - GF	6,010	7,042	6,220	0	
Judicial/Heritage Program	716,189	588,441	746,769	749,176	
FTE	<u>3.0</u>	<u>3.0</u>	<u>3.0</u>	<u>3.0</u>	
General Fund	471,679	317,852	504,903	503,260	
FTE	3.0	3.0	3.0	3.0	
Cash Funds Exempt/ Reappr. Funds	244,510	270,589	241,866	245,916	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Family Friendly Courts	324,582	366,217	375,000	375,000	
FTE	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	
Cash Funds	323,561	339,668	375,000	375,000	
FTE	0.5	0.5	0.5	0.5	
Cash Funds Exempt/ Reappr. Funds	1,021	26,549	0	0	
FTE	0.0	0.0	0.0	0.0	
Judicial Performance Program	See Judicial	808,810	889,437	920,955	
FTE	Performance	<u>1.0</u>	<u>2.0</u>	<u>2.0</u>	
Cash Funds	subdivision	808,810	889,437	920,955	
FTE	(below)	1.0	2.0	2.0	
Cash Funds Exempt/ Reappr. Funds		0	0	0	
Courthouse Capital/ Infrastructure					
Maintenance - GF	1,103,359	948,680	1,000,000	4,100,000	JUD DI #1
Courthouse Security - CF	n/a	344,307	2,194,622	3,194,622	JUD DI #4b
FTE		1.0	1.0	1.0	
Family Violence Grants - GF	475,008	495,000	750,000	750,000	
Statewide Indirect Costs Assessment	<u>111,668</u>	<u>104,846</u>	<u>128,946</u>	<u>83,253</u>	
Cash Funds	105,244	99,438	124,593	75,364	
Cash Funds Exempt/ Reappr. Funds	6,424	5,408	0	2,469	
Federal Funds	0	0	4,353	5,420	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Departmental Indirect Cost Assessment - CF	925,228	1,007,170	986,303	1,242,659	<i>Request v. Approp.</i>
SUBTOTAL - Administration	8,472,116	9,973,918	12,666,192	17,311,996	36.7%
FTE	<u>62.7</u>	<u>66.2</u>	<u>70.6</u>	<u>70.6</u>	<u>0.0%</u>
General Fund	5,828,585	5,959,812	6,733,769	9,922,679	47.4%
FTE	62.2	63.7	67.1	67.1	0.0%
Cash Funds	1,354,680	2,599,544	4,570,955	5,809,600	27.1%
FTE	0.5	2.5	3.5	3.5	0.0%
Cash Funds Exempt/ Reappr. Funds	1,288,851	1,414,562	1,357,115	1,574,297	16.0%
FTE	0.0	0.0	0.0	0.0	n/a
Federal Funds	0	0	4,353	5,420	24.5%

(B) Administrative Special Purpose

This subdivision includes centrally appropriated line items (which generally exclude funding associated with the three independent agencies) and ancillary programs. Cash fund sources include various court fees and fines, royalties from the sale of pattern jury instructions, and employee parking fees. Reappropriated funds include Victims and Witnesses Assistance and Law Enforcement funds transferred from the Trial Courts division, and federal funds transferred from the Department of Human Services.

Health, Life and Dental	<u>10,239,651</u>	<u>12,399,519</u>	<u>17,806,295</u>	<u>18,515,933</u>
General Fund	9,718,227	11,708,733	15,605,933	16,302,590
Cash Funds	521,424	690,786	2,200,362	2,213,343

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Short-term Disability	<u>141,748</u>	<u>209,399</u>	<u>249,386</u>	<u>263,190</u>	
General Fund	132,516	186,059	215,112	232,458	
Cash Funds	9,232	23,340	34,274	30,732	
S.B. 04-257 Amortization Equalization					
Disbursement	<u>1,055,252</u>	<u>1,885,200</u>	<u>3,014,203</u>	<u>4,186,953</u>	
General Fund	993,977	1,669,756	2,592,370	3,697,510	
Cash Funds	61,275	215,444	421,833	489,443	
S.B. 06-235 Supplemental Amortization					
Equalization Disbursement	n/a	<u>343,055</u>	<u>1,369,816</u>	<u>2,616,846</u>	
General Fund		298,170	1,172,082	2,310,944	
Cash Funds		44,885	197,734	305,902	
Salary Survey	<u>4,652,652</u>	<u>9,530,403</u>	<u>10,635,054</u>	<u>6,799,863</u>	
General Fund	4,447,399	8,998,492	9,466,617	6,061,700	
Cash Funds	205,253	531,911	1,168,437	738,163	
Anniversary Increases	<u>0</u>	<u>1,958,269</u>	<u>2,052,664</u>	<u>0</u>	
General Fund	0	1,847,001	1,828,268	0	
Cash Funds	0	111,268	224,396	0	
Workers' Compensation - GF	1,348,485	1,624,563	2,071,929	2,075,074	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Legal Services - GF	195,912	195,616	317,448	317,448	
<i>Hours</i>	2,890.8	2,715.8	4,227.0	4,227.0	
Payment to Risk Management - GF	425,823	272,001	341,001	341,001	
Vehicle Lease Payments - GF	32,743	33,363	44,932	57,492	
Leased Space	<u>697,437</u>	<u>789,737</u>	<u>828,175</u>	<u>828,175</u>	
General Fund	663,042	754,032	788,935	788,935	
Cash Funds	34,395	35,705	39,240	39,240	
Lease Purchase - GF	112,766	112,766	119,878	119,878	
Administrative Purposes	<u>154,015</u>	<u>178,613</u>	<u>195,554</u>	<u>195,554</u>	
General Fund	103,440	128,804	130,554	130,554	
Cash Funds	50,575	49,809	65,000	65,000	
Retired Judges - GF	1,530,382	1,695,955	1,384,006	1,384,006	
Appellate Reports Publication - GF	31,988	45,535	37,100	37,100	
Child Support Enforcement	59,086	71,610	90,900	90,900	
FTE	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	
General Fund	20,054	24,254	30,904	30,904	
Cash Funds Exempt/ Reappr. Funds	39,032	47,356	59,996	59,996	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
FTE	1.0	1.0	1.0	1.0	
Collections Investigators	3,923,925	4,379,225	4,681,009	4,886,321	
FTE	<u>69.0</u>	<u>74.7</u>	<u>83.2</u>	<u>83.2</u>	
Cash Funds	3,347,694	3,735,388	4,018,468	4,223,780	
FTE	69.0	74.7	83.2	83.2	
Cash Funds Exempt/ Reappr. Funds	576,231	643,837	662,541	662,541	
					<i>Request v. Approp.</i>
SUBTOTAL - Administrative Special					
Purpose	24,601,865	35,724,829	45,239,350	42,715,734	-5.6%
FTE	<u>70.0</u>	<u>75.7</u>	<u>84.2</u>	<u>84.2</u>	<u>0.0%</u>
General Fund	19,756,754	29,595,100	36,147,069	33,887,594	-6.3%
Cash Funds	4,229,848	5,438,536	8,369,744	8,105,603	-3.2%
FTE	69.0	74.7	83.2	83.2	0.0%
Cash Funds Exempt/ Reappr. Funds	615,263	691,193	722,537	722,537	0.0%
FTE	1.0	1.0	1.0	1.0	0.0%

Judicial Performance

This subdivision was responsible for Judicial Performance evaluations.

Personal Services - CF	89,700		See Administration
FTE	1.0		subdivision (above).
Operating Expenses - CF	55,460		

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
SUBTOTAL - Judicial Performance -					
CF	145,160				
FTE	1.0				

(C) Integrated Information Services

This subdivision provides funding to develop and maintain information technology systems used by the courts (including ICON and CICJIS), provide associated staff training, and assure data integrity. Cash fund sources include various fees and other cost recoveries. Reappropriated funds are federal funds transferred from the Department of Public Safety.

Personal Services	2,923,189	3,044,022	3,404,723	3,542,370	
FTE	<u>40.8</u>	<u>40.3</u>	<u>44.9</u>	<u>44.9</u>	
General Fund	2,876,413	3,011,093	3,187,013	3,324,660	
FTE	40.8	40.3	44.9	44.9	
Cash Funds	0	0	0	0	
Cash Funds Exempt/ Reappr. Funds	46,776	32,929	217,710	217,710	
Operating Expenses	<u>224,569</u>	<u>226,444</u>	<u>227,604</u>	<u>227,604</u>	
General Fund	174,569	176,444	177,604	177,604	
Cash Funds	50,000	50,000	50,000	50,000	
JAVA Conversion - GF	258,570	305,037	311,054	0	
FTE	4.0	4.7	5.0	0.0	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Capital Outlay	<u>15,025</u>	<u>7,042</u>	<u>2,765</u>	<u>0</u>	
General Fund	15,025	7,042	2,765	0	
Cash Funds	0	0	0	0	
Purchase of Services from Computer Center - GF	130,103	102,454	268,774	268,774	
Multiuse Network Payments - GF	270,689	285,787	334,800	334,800	
Telecommunications Expenses	<u>383,169</u>	<u>479,627</u>	<u>533,392</u>	<u>533,392</u>	
General Fund	309,777	256,235	310,000	310,000	
Cash Funds	73,392	223,392	223,392	223,392	
Communication Services Payments - GF	11,708	10,266	10,938	10,938	
Hardware Replacement	<u>2,217,517</u>	<u>2,250,000</u>	<u>2,250,000</u>	<u>2,250,000</u>	
General Fund	2,597	0	0	0	
Cash Funds	2,214,920	2,250,000	2,250,000	2,250,000	
Hardware/Software Maintenance	<u>1,063,035</u>	<u>1,174,424</u>	<u>1,178,094</u>	<u>1,178,094</u>	
General Fund	1,028,035	1,039,424	1,043,094	1,043,094	
Cash Funds	35,000	135,000	135,000	135,000	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
SUBTOTAL - Integrated Information					
Services	7,497,574	7,885,103	8,522,144	8,345,972	-2.1%
FTE	<u>44.8</u>	<u>45.0</u>	<u>49.9</u>	<u>44.9</u>	<u>-10.0%</u>
General Fund	5,077,486	5,193,782	5,646,042	5,469,870	-3.1%
FTE	44.8	45.0	49.9	44.9	-10.0%
Cash Funds	2,373,312	2,658,392	2,658,392	2,658,392	0.0%
Cash Funds Exempt/ Reappr. Funds	46,776	32,929	217,710	217,710	0.0%
					<i>Request v. Approp.</i>
TOTAL - Courts Administration	40,571,555	53,583,850	66,427,686	68,373,702	2.9%
FTE	<u>178.5</u>	<u>186.9</u>	<u>204.7</u>	<u>199.7</u>	<u>-2.4%</u>
General Fund	30,662,825	40,748,694	48,526,880	49,280,143	1.6%
FTE	107.0	108.7	117.0	112.0	-4.3%
Cash Funds	7,957,840	10,696,472	15,599,091	16,573,595	6.2%
FTE	70.5	77.2	86.7	86.7	0.0%
Cash Funds Exempt/ Reappr. Funds	1,950,890	2,138,684	2,297,362	2,514,544	9.5%
FTE	1.0	1.0	1.0	1.0	0.0%
Federal Funds	0	0	4,353	5,420	24.5%

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
(3) TRIAL COURTS					
Trial courts consist of district courts (including water courts) and county courts. District courts have general jurisdiction over domestic, civil, and criminal cases, as well as appellate jurisdiction for decisions of county and municipal courts. County courts have jurisdiction over traffic cases and minor criminal and civil cases, as well as appellate jurisdiction for municipal courts. Cash fund sources include various court fees and cost recoveries, Crime Victim Compensation funds, and Victims and Witnesses Assistance and Law Enforcement funds. Reappropriated funds are federal funds transferred from the Departments of Public Safety and Human Services.					
Trial Courts Programs			118,305,643	132,951,161	JUD DI #2
FTE			<u>1,873.2</u>	<u>1,967.2</u>	JUD DI #2
General Fund			96,036,905	103,056,785	
FTE			1,628.1	1,637.6	9.5
Cash Funds			22,268,738	28,542,591	
FTE			245.1	329.6	84.5
Federal Funds			0	1,351,785	
Personal Services	95,598,093	101,784,289	Included in		
FTE	<u>1,608.5</u>	<u>1,682.5</u>	Trial Courts		
General Fund	88,539,062	90,138,995	Programs line		
FTE	1,521.6	1,550.6	item (above)		
Cash Funds	5,860,931	10,293,509			
FTE	86.9	131.9			
Federal Funds	1,198,100	1,351,785			

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Operating Expenses	<u>7,545,228</u>	<u>6,646,246</u>	Included in Trial		
General Fund	223,951	150,877	Courts Programs		
Cash Funds	7,321,277	6,495,369	line item (above)		
Capital Outlay	<u>1,029,387</u>	<u>866,829</u>	<u>738,117</u>	<u>1,404,339</u>	JUD DI #2
General Fund	0	141,023	0	146,643	
Cash Funds	1,029,387	725,806	738,117	1,257,696	
Court Costs, Jury Costs, and Court- appointed Counsel (previously "Mandated Costs")	<u>12,104,758</u>	<u>13,426,103</u>	<u>14,234,352</u>	<u>14,234,352</u>	
General Fund	11,940,646	13,249,563	13,749,352	13,749,352	
Cash Funds	164,112	176,540	485,000	485,000	
Language Interpreters - GF	3,181,249	3,520,983	2,892,427	2,956,562	
FTE	<u>25.0</u>	<u>25.0</u>	<u>25.0</u>	<u>25.0</u>	
General Fund	3,138,162	3,511,231	2,842,427	2,906,562	
FTE	25.0	25.0	25.0	25.0	
Cash Funds	43,087	9,752	50,000	50,000	
District Attorney Mandated Costs	<u>2,027,885</u>	<u>2,223,648</u>	<u>1,926,052</u>	<u>2,127,043</u>	
General Fund	1,928,795	2,092,974	1,801,052	2,002,043	
Cash Funds	99,090	130,674	125,000	125,000	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Sex Offender Surcharge Fund Program - GF	21,021	24,988	23,559	21,635	
Victim Compensation - CF	9,316,013	10,314,242	12,120,121	12,120,121	
Victim Assistance - CF	13,032,626	14,314,518	15,095,039	15,095,039	
Federal Funds and Other Grants	1,292,011	1,085,401	2,296,627	2,296,627	
FTE a/	<u>8.5</u>	<u>8.5</u>	<u>8.5</u>	<u>8.5</u>	
Cash Funds	797,282	419,650	989,579	989,579	
Cash Funds Exempt/ Reappr. Funds	37,379	85,095	256,890	256,890	
FTE a/	6.0	6.0	6.0	6.0	
Federal Funds	457,350	580,656	1,050,158	1,050,158	
FTE a/	2.5	2.5	2.5	2.5	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
TOTAL - Trial Courts	145,148,271	154,207,247	167,631,937	183,206,879	9.3%
FTE	<u>1,642.0</u>	<u>1,716.0</u>	<u>1,906.7</u>	<u>2,000.7</u>	<u>4.9%</u>
General Fund	105,791,637	109,309,651	114,453,295	121,883,020	6.5%
FTE	1,546.6	1,575.6	1,653.1	1,662.6	0.6%
Cash Funds	37,663,805	42,880,060	51,871,594	58,665,026	13.1%
FTE	86.9	131.9	245.1	329.6	34.5%
Cash Funds Exempt/ Reappr. Funds	37,379	85,095	256,890	256,890	0.0%
FTE	6.0	6.0	6.0	6.0	0.0%
Federal Funds	1,655,450	1,932,441	1,050,158	2,401,943	128.7%
FTE	2.5	2.5	2.5	2.5	0.0%

a/ FTE figures for FY 2006-07 and 2007-08 reflected appropriated, rather than actual, levels.

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
(4) PROBATION AND RELATED SERVICES					
This division provides supervision of offenders sentenced to probation, presentence investigations for the courts, victim notification and assistance, and community outreach programs. Cash funds are from fees paid by offenders for supervision and restitution, and various cost recoveries. Reappropriated funds include Victims and Witnesses Assistance and Law Enforcement funds transferred from the Trial Courts division, and funds transferred from other departments.					
Personal Services	49,504,928	60,889,029	68,868,726	72,938,680	
FTE	<u>835.7</u>	<u>1,031.3</u>	<u>1,129.8</u>	<u>1,139.6</u>	
General Fund	45,676,920	51,535,119	59,565,464	63,399,402	JUD DI #3
FTE	768.0	877.4	975.9	989.9	JUD DI #3
Cash Funds	3,828,008	9,353,910	9,303,262	9,539,278	JUD DI #2 a/
FTE	67.7	153.9	153.9	149.7	JUD DI #2
Operating Expenses	<u>2,081,402</u>	<u>2,594,272</u>	<u>2,738,962</u>	<u>3,136,711</u>	
General Fund	1,963,799	2,244,603	2,331,863	2,317,862	JUD DI #3; 4d
Cash Funds	117,603	349,669	407,099	818,849	JUD DI #4c, 4d
Capital Outlay - GF	123,872	381,564	168,604	101,192	JUD DI #3
Offender Treatment and Services	<u>5,062,494</u>	<u>5,769,105</u>	<u>8,607,023</u>	<u>11,932,023</u>	
General Fund	487,193	487,193	487,193	487,193	JUD DI #4a; 4c
Cash Funds	3,663,767	3,656,855	7,807,097	11,132,097	a/
Cash Funds Exempt/ Reappr. Funds	911,534	1,625,057	312,733	312,733	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Alcohol/Drug Driving Safety Contract - CF	4,825,499	See Personal Services and Operating Expenses line items (above)			
FTE	70.7				
Victims Grants - CFE/RF	315,591	333,988	400,000	400,000	
FTE	17.3	17.3	17.3	17.3	
S.B. 91-94 - CFE/RF	1,438,814	1,663,595	1,906,837	1,906,837	
FTE	25.0	25.0	25.0	25.0	
S.B. 03-318 Community Treatment Funding - GF	0	2,200,000	2,200,000	2,200,000	
Federal Funds and Other Grants	2,248,717	2,895,079	4,663,739	4,663,739	
FTE b/	<u>32.3</u>	<u>32.3</u>	<u>32.3</u>	<u>32.3</u>	
Cash Funds	982,088	1,330,103	2,605,422	2,605,422	
FTE b/	2.0	2.0	2.0	2.0	
Cash Funds Exempt/ Reappr. Funds	471,968	532,778	822,563	822,563	
FTE b/	17.8	17.8	17.8	17.8	
Federal Funds	794,661	1,032,198	1,235,754	1,235,754	
FTE b/	12.5	12.5	12.5	12.5	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
TOTAL - Probation	65,601,317	76,726,632	89,553,891	97,279,182	8.6%
FTE	<u>981.0</u>	<u>1,105.9</u>	<u>1,204.4</u>	<u>1,214.2</u>	<u>0.8%</u>
General Fund	48,251,784	56,848,479	64,753,124	68,505,649	5.8%
FTE	768.0	877.4	975.9	989.9	1.4%
Cash Funds	13,416,965	14,690,537	20,122,880	24,095,646	19.7%
FTE	140.4	155.9	155.9	151.7	-2.7%
Cash Funds Exempt/ Reappr. Funds	3,137,907	4,155,418	3,442,133	3,442,133	0.0%
FTE	60.1	60.1	60.1	60.1	0.0%
Federal Funds	794,661	1,032,198	1,235,754	1,235,754	0.0%
FTE	12.5	12.5	12.5	12.5	0.0%

a/ The Department's budget request included \$225,000 of the amount requested through decision item #4a in the Personal Services line item. The Department has since indicated that the full amount (\$300,000) should have been requested for the Offender Services and Treatment line item. Staff has reflected the intended request, above.

b/ FTE figures for FY 2006-07 and 2007-08 reflected appropriated, rather than actual, levels.

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
(5) PUBLIC DEFENDER					
Douglas Wilson, State Public Defender					
This agency provides legal counsel for indigent defendants in criminal and juvenile delinquency cases where there is a possibility of being jailed or imprisoned. Cash funds consist of training fees paid by private attorneys, and funds received from the City of Denver for contract services related to its drug court. Reappropriated funds are federal funds transferred from the Department of Public Safety.					
Personal Services	28,460,797	32,776,520	35,529,848	38,925,065	PD DI #1; 3 a/
FTE	<u>367.0</u>	<u>424.9</u>	<u>534.1</u>	<u>570.9</u>	PD DI #1; 3 a/
General Fund	28,303,657	32,551,520	35,304,848	38,925,065	
FTE	364.6	420.9	530.1	570.9	
Cash Funds	157,140	225,000	225,000	0	
FTE	2.4	4.0	4.0	0.0	
Health, Life, and Dental - GF	1,436,316	1,806,462	2,642,260	2,939,489	PD DI #1 b/
Short-term Disability	<u>26,253</u>	<u>31,517</u>	<u>40,831</u>	<u>45,390</u>	PD DI #1; 3
General Fund	26,253	31,517	40,814	45,390	
Cash Funds	0	0	17	0	
S.B. 04-257 Amortization					
Equalization Disbursement	<u>164,566</u>	<u>282,846</u>	<u>492,072</u>	<u>693,363</u>	PD DI #1; 3
General Fund	164,566	282,846	491,865	693,363	
Cash Funds	0	0	207	0	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
S.B. 06-235 Supplemental Amortization					
Equalization Disbursement	0	<u>50,508</u>	<u>222,483</u>	<u>210,739</u>	PD DI #1; 3
General Fund	0	50,508	222,386	210,739	
Cash Funds	0	0	97	0	
Salary Survey	<u>843,026</u>	<u>934,562</u>	<u>1,342,685</u>	0	b/
General Fund	843,026	934,562	1,331,059	0	
Cash Funds	0	0	11,626	0	
Anniversary Increases	0	<u>403,490</u>	<u>477,544</u>	0	
General Fund	0	403,490	473,418	0	
Cash Funds	0	0	4,126	0	
Operating Expenses	<u>1,095,764</u>	<u>1,531,800</u>	<u>1,143,882</u>	<u>1,229,301</u>	
General Fund	1,080,014	1,514,300	1,126,382	1,199,301	PD DI #1
Cash Funds	15,750	17,500	17,500	30,000	PD DI #2
Purchase of Services from Computer Center - GF	12,633	18,453	19,579	19,579	
Multiuse Network Payments - GF	209,236	235,797	0	0	
Vehicle Lease Payments - GF	47,121	35,189	55,465	50,609	
Capital Outlay - GF	97,081	243,405	62,760	193,436	PD DI #1

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Leased Space/Utilities - GF	2,572,318	3,312,971	4,305,439	5,177,879	PD DI #1
Automation Plan - GF	863,391	1,087,746	894,768	894,768	
Contract Services - GF	8,000	462	18,000	18,000	
Mandated Costs - GF	2,541,618	3,143,259	3,567,671	3,567,671	
Grants - CFE/RF	84,040	81,788	78,237	7,500	
					<i>Request v. Approp.</i>
TOTAL - Public Defender	38,462,160	45,976,775	50,893,524	53,972,789	6.1%
FTE	<u>367.0</u>	<u>424.9</u>	<u>534.1</u>	<u>570.9</u>	6.9%
General Fund	38,205,230	45,652,487	50,556,714	53,935,289	6.7%
FTE	364.6	420.9	530.1	570.9	7.7%
Cash Funds	172,890	242,500	258,573	30,000	-88.4%
FTE	2.4	4.0	4.0	0.0	-100.0%
Cash Funds Exempt/ Reappr. Funds	84,040	81,788	78,237	7,500	-90.4%

a/ Please note that the Public Defender has *not* requested additional funding and staff associated with the third year of implementing H.B. 07-1054. Instead, the Public Defender has submitted as his top funding priority for FY 2009-10 an increase of \$2.4 million and 36.8 FTE (DI #1). The third year cost of implementing H.B. 07-1054 would be \$4,416,358 and 74.6 FTE.

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests

b/ Please note that due to a misunderstanding about the Executive budget instructions, the November 2008 request from the State Public Defender *excludes* funding for salary increases or for increases in health, life, and dental benefits. The Public Defender anticipates submitting amendments in January to request increases of \$1,028,010 for salary survey and \$518,346 for insurance benefits, consistent with Executive budget instructions. However, the Public Defender places the lowest priority on funding for salary increases (even below funding for H.B. 07-1054).

(6) ALTERNATE DEFENSE COUNSEL

Lindy Frolich, State Alternate Defense Counsel

This agency provides legal representation for indigent defendants in cases where the Public Defender is precluded from doing so because of an ethical conflict of interest. Cash funds are received from private attorneys and investigators for training.

Personal Services - GF	452,719	561,708	663,976	707,765	
FTE	5.0	6.5	7.5	7.5	
Health, Life, and Dental - GF	20,693	34,369	45,809	62,947	
Short-term Disability - GF	455	643	707	845	
S.B. 04-257 Amortization Equalization Disbursement - GF	2,849	5,674	8,523	13,002	
S.B. 06-235 Supplemental Amortization Equalization Disbursement - GF	0	1,040	3,854	8,212	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Salary Survey - GF	10,983	18,422	29,321	27,975	
Performance-based Pay Awards - GF	0	4,701	8,382	10,721	
Operating Expenses	<u>96,837</u>	<u>75,857</u>	<u>67,030</u>	<u>67,030</u>	
General Fund	89,080	75,857	67,030	67,030	
Cash Funds	7,757	0	0	0	
Capital Outlay - GF	0	6,008	3,455	0	
Purchase of Services from Computer Center - GF	950	1,537	1,203	1,203	
Leased Space - GF	40,382	32,772	35,991	38,140	
Training and Conferences	<u>0</u>	<u>28,000</u>	<u>28,000</u>	<u>40,000</u>	
General Fund	0	20,000	20,000	20,000	
Cash Funds	0	8,000	8,000	20,000	ADC DI #2
Conflict of Interest Contracts - GF	16,201,867	17,925,541	20,826,885	21,141,531	ADC DI #1
Mandated Costs - GF	1,240,579	1,549,840	1,504,483	1,663,839	ADC DI #1

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
TOTAL - Alternate Defense Counsel	18,068,314	20,246,112	23,227,619	23,783,210	2.4%
FTE	<u>5.0</u>	<u>6.5</u>	<u>7.5</u>	<u>7.5</u>	<u>0.0%</u>
General Fund	18,060,557	20,238,112	23,219,619	23,763,210	2.3%
FTE	5.0	6.5	7.5	7.5	0.0%
Cash Funds	7,757	8,000	8,000	20,000	150.0%

(7) OFFICE OF THE CHILD'S REPRESENTATIVE

Theresa Spahn, Executive Director

This agency provides 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.

Personal Services - GF	1,527,643	1,588,608	1,736,920	1,901,243	OCR DI #3
FTE	4.0	25.8	26.8	27.8	
Health, Life, and Dental - GF	74,600	97,102	129,401	163,296	OCR DI #3
Short-term Disability - GF	1,516	1,828	2,086	2,298	OCR DI #3
S.B. 04-257 Amortization Equalization Disbursement - GF	12,321	16,559	25,136	35,355	OCR DI #3
S.B. 06-235 Supplemental Amortization Equalization Disbursement - GF	0	2,942	11,365	9,656	OCR DI #3

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
Salary Survey - GF	40,544	53,159	87,642	37,954	
Anniversary Increases - GF	0	20,344	26,554	27,772	
Operating Expenses - GF	167,164	189,705	148,162	151,042	OCR DI #2
Capital Outlay - GF	0	0	3,455	3,998	OCR DI #3
Purchase of Services from Computer Center - GF	1,040	1,464	1,553	1,553	
Leased Space - GF	130,949	136,876	137,880	142,738	
CASA Contracts - GF	20,000	20,000	520,000	20,000	
Training - GF	27,963	37,753	38,000	38,000	
Court Appointed Counsel - GF	10,617,761	12,428,206	13,160,939	15,506,893	OCR DI #1
Mandated Costs - GF	26,342	41,080	26,228	26,228	

**Fiscal Year 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Branch**

APPENDIX A: NUMBERS PAGES

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2008-09	Change
	Actual	Actual	Appropriation	Request	Requests
					<i>Request v. Approp.</i>
TOTAL - Office of the Child's Representative - GF	12,647,843	14,635,626	16,055,321	18,068,026	12.5%
FTE	4.0	25.8	26.8	27.8	3.7%
					<i>Request v. Approp.</i>
JUDICIAL GRAND TOTAL	338,136,542	382,854,966	431,612,378	463,017,207	7.3%
FTE	<u>3,356.7</u>	<u>3,648.6</u>	<u>4,082.9</u>	<u>4,219.5</u>	<u>3.3%</u>
General Fund	263,291,744	297,062,747	327,715,384	346,297,466	5.7%
FTE	2,921.7	3,144.8	3,456.4	3,503.2	1.4%
Cash Funds	67,184,471	76,366,595	95,532,107	106,855,557	11.9%
FTE	352.9	421.7	544.4	634.2	16.5%
Cash Funds Exempt/ Reappr. Funds	5,210,216	6,460,985	6,074,622	6,221,067	2.4%
FTE	67.1	67.1	67.1	67.1	0.0%
Federal Funds	2,450,111	2,964,639	2,290,265	3,643,117	59.1%
FTE	15.0	15.0	15.0	15.0	0.0%

**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

APPENDIX B: SUMMARY OF MAJOR LEGISLATION

- ❑ **S.B. 08-54 (Shaffer/T. Carroll): Judicial Performance Evaluations.** Establishes the Office of Judicial Performance Evaluation within the Judicial Department, and requires the Office to: staff the state and district commissions, and train their members; collect and distribute data on judicial performance evaluations; conduct public education efforts concerning the performance evaluation process; and measure public awareness of the process through regular polling.

- ❑ **S.B. 08-206 (Shaffer; Penry/ T. Carroll; Marostica): Justice Center and State Museum.** Authorizes the Judicial Branch to increase various civil filing fees to help fund the consolidation of all justice-related state agencies (all Judicial Department divisions and agencies, plus the Attorney General's office) into a single complex at the current site of the Colorado Supreme Court and the Colorado History Museum (at 13th and Broadway/Lincoln). Authorizes the construction of a new Colorado History Museum at 12th and Broadway/Lincoln using a limited amount from the State Historical Fund and moneys transferred from the Judicial Department.

Authorizes the State to enter into lease-purchase agreements for the development and construction of a state justice center (to be known as the "Ralph L. Carr Justice Complex") and the new museum. The total amount of the principal component of the lease-purchase agreements concerning the Justice Complex may not exceed \$275 million, annual payments may not exceed \$19 million, and the term may not exceed 38 years.

Creates the Justice Center Cash Fund, to consist of revenues from various filing fees and any lease payments received from agencies occupying the Justice Complex. Moneys in the Fund are subject to annual appropriation for expenses related to the design, construction, maintenance, operation, and interim accommodations for the Justice Complex. In addition, requires the Judicial Branch to transfer a total of \$25 million from the Justice Center Cash Fund to the newly created State Museum Cash Fund to compensate the State Historical Society for the land on which the Colorado History Museum currently resides.

Beginning in FY 2014-15, requires the Executive Director of the Department of Personnel and Administration to calculate the net savings to the State by locating the Department of Law and any other executive branch agency in the new state justice center, and requires the General Assembly to appropriate from the General Fund to the Justice Center Cash Fund the amount of net savings to repay any lease purchase obligations.

- ❑ **H.B. 08-1082 (Ferrandino/Bacon): Sealing Criminal Justice Records.** Reduces the waiting time required for petitioning the court to seal records for an offense that was not charged or was dismissed due to a plea agreement in a separate case from 15 to 10 years; expands the provisions for sealing criminal justice records to certain conviction records; and requires a probation

department in certain circumstances to advise a defendant of his or her right to seal criminal justice records.

- ❑ **H.B. 08-1253 (White/Morse): Create Technology Cash Fund.** Creates the Judicial Department Information Technology Cash Fund, consisting of all fees and cost recoveries related to electronic filings, network access and searches of court databases, electronic searches of court records, and any other information technology services. Moneys in the Fund are subject to annual appropriation for any expenses related to the Department's information technology needs. Excludes the Fund from the 16.5 percent statutory limitation on uncommitted cash fund reserves. Has the effect of eliminating fiscal year-end reversions fees and cost recoveries to the General Fund.
- ❑ **H.B. 07-1054 (T. Carroll/Shaffer): Increase the Number of Court of Appeals, District, and County Court Judges.** In FY 2007-08, creates nine new district court judgeships. Subject to available appropriations, also creates three new judgeships on the Colorado Court of Appeals, 22 new district court judgeships, and eight new county court judgeships to be phased in during FY 2008-09 and FY 2009-10.
- ❑ **H.B. 07-1343 (King/S. Mitchell): Expand DNA Testing.** Expands statutory DNA testing requirements to include all offenders in the custody of the Department of Corrections and certain juvenile and adult offenders in community corrections or county jail on July 1, 2007, for a sentence imposed before that date. For FY 2007-08, increases the appropriation to the Department of Corrections by \$4,960 cash funds (Offender Identification Fund).
- ❑ **S.B. 06-150 (Grossman/Hefley): Expand DNA Testing.** Expands DNA testing requirements to include all persons who are sentenced for a felony conviction on or after July 1, 2007; requires DNA testing of juveniles if the offense would constitute a felony if committed by an adult.
- ❑ **H.B. 06-1028 (T. Carroll/Mitchell): Increase the Number of Court of Appeals and County Judges.** Creates three new Colorado Court of Appeals judgeships and four new county court judgeships (located in Jefferson, Douglas, Mesa, and Weld counties).

**FY 2009-10 Joint Budget Committee Staff Budget Briefing
Judicial Department**

**APPENDIX C: UPDATE OF FY 2008-09
LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION**

Long Bill Footnotes

- 2 Department of Corrections, Management, Executive Director's Office Subprogram; Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Alcohol and Drug Abuse Division; and Division of Youth Corrections; Judicial Department, Probation and Related Services; and Department of Public Safety, Division of Criminal Justice --** State agencies involved in multi-agency programs requiring separate appropriations to each agency are requested to designate one lead agency to be responsible for submitting a comprehensive annual budget request for such programs to the Joint Budget Committee, including prior year, request year, and three year forecasts for revenues into the fund and expenditures from the fund by agency. The requests should be sustainable for the length of the forecast based on anticipated revenues. Each agency is still requested to submit its portion of such request with its own budget document. This applies to requests for appropriation from the Drug Offender Surcharge Fund, the Sex Offender Surcharge Fund, the Persistent Drunk Driver Cash Fund, and the Alcohol and Drug Driving Safety Fund, among other programs.

Comment: Of the funds listed, the Judicial Branch is designated as the lead agency for the Drug Offender Surcharge Fund, it receives an allocation from the Sex Offender Surcharge Fund, and it administers the Alcohol and Drug Driving Safety Program and the associated Fund. The Judicial Department does not administer or receive appropriations from the Persistent Drunk Driver Cash Fund. The Branch's budget also includes appropriations from the Offender Identification Fund, so staff has included information concerning this fund below as well.

Drug Offender Surcharge Fund [Section 18-19-103 (4), C.R.S.] - This fund consists of 90 percent of drug offender surcharge revenues. These surcharges range from \$100 to \$4,500 for each conviction or deferred sentence. Moneys in the Fund are subject to annual appropriation to the Judicial Department, the Department of Corrections, the Department of Public Safety's Division of Criminal Justice, and the Department of Human Services to cover the costs associated with substance abuse assessment, testing, education, and treatment. Pursuant to Section 16-11.5-102 (3), C.R.S., these four departments are required to cooperate and develop a plan for the allocation of moneys deposited in this fund. The Judicial Department is required to submit this plan with its annual budget request.

The following table details the allocation plan submitted with the Department's FY 2009-10 budget request:

Drug Offender Surcharge Fund Allocation Plan: FY 2009-10			
Program/Line Item	Purpose	Amount	% of Total
Corrections:			
DRDC and TASC	Assessment	\$177,393	4.1%
DRDC and TASC Staff	Assessment	250,000	4.7%
RSAT TC Match and TC Program	Treatment	325,127	7.1%
Alcohol and Drug Services	Treatment	412,607	7.7%
Research Services	Program Review/ Research	<u>80,000</u>	1.5%
Subtotal: Corrections		1,245,127	23.2%
Human Services, Alcohol and Drug Abuse Division:			
Outpatient	Treatment	837,168	16.5%
STIRRT	Treatment	383,316	7.1%
Haven (ARTS)	Treatment	46,132	0.9%
Regional Training	Training	<u>4,000</u>	0.1%
Subtotal: Human Services		1,270,616	23.7%
Judicial, Probation and Related Services:			
Assessment Staff	Assessment	895,289	16.7%
Annual Licensing Fees	Assessment	12,500	0.2%
Indirect Costs	Assessment	51,767	1.0%
Substance Abuse Treatment (DI #4a)	Treatment	735,923	13.7%
Multi-agency Training (DI #4a)	Training	<u>50,000</u>	4.5%
Subtotal: Judicial		1,745,479	32.5%
Public Safety:			
Div IRT (31.4 beds)	Treatment	204,855	3.8%
Female Transition Program	Treatment	87,291	1.6%
T.C. Peer1/ Haven	Treatment	405,077	7.5%
TC Day Treatment	Treatment	97,628	1.8%
Personal Services, Operating, and Indirect Costs	Program Review/ Research	105,586	2.3%
90-Day IRT Pilot	Program Review/ Research	197,076	2.3%
SOA-R Training	Training	<u>10,300</u>	0.2%
Subtotal: Public Safety		1,107,813	20.6%

Drug Offender Surcharge Fund Allocation Plan: FY 2009-10			
Program/Line Item	Purpose	Amount	% of Total
TOTALS	Total Allocated	5,369,035	100.0%
	Assessment	1,386,949	25.8%
	Treatment	3,535,124	65.8%
	Program Review/ Research	382,662	7.1%
	Training	64,300	1.2%

As detailed in the above table, departments are requesting appropriations totaling \$5,369,035 for FY 2009-10, which represents an increase of \$827,324 (18.2 percent). Please note, however, that the Judicial Department is restricting its expenditures in the current fiscal year by \$203,947 even though the Fund balance is anticipated to increase by \$627,904. Requested appropriations for FY 2009-10 are anticipated to exceed projected fund revenues by \$304,054, which is anticipated to reduce the fiscal year-end fund balance from \$3,478,962 to \$3,174,908. While this fund is not subject to the 16.5 percent statutory target reserve, the projected fund balance equals 80.2 percent of annual expenditures. Thus, the departments' plan of reducing the fund balance in FY 2009-10 seems appropriate. The following table provides Fund cash flow trend data.

Drug Offender Surcharge Fund: Revenue and Expenditure Trends					
Description	FY 06-07 Actual	FY 07-08 Actual	FY 08-09 Proj.	FY 09-10 Proj.	FY 10-11 Proj.
Beginning Fund Balance	\$1,768,861	\$3,005,884	\$2,851,059	\$3,478,962	\$3,174,908
Revenue:					
Surcharges	4,515,517	4,715,062	4,809,363	4,905,551	5,052,717
Interest	<u>120,044</u>	<u>147,348</u>	<u>156,304</u>	<u>159,430</u>	<u>164,213</u>
Total Revenues	4,635,561	4,862,410	4,965,667	5,064,981	5,216,930
Expenditures:					
Corrections	636,867	995,127	995,127	1,245,127	1,245,127
Human Services	752,616	1,609,616	1,002,616	1,270,616	1,270,616
Judicial	1,245,060	1,584,958	1,649,426	2,029,779	2,029,779
Judicial - Spending Restriction			(203,947)	(284,300)	
Public Safety	<u>763,995</u>	<u>827,534</u>	<u>894,542</u>	<u>1,107,813</u>	<u>1,107,813</u>
Total Expenditures	3,398,538	5,017,235	4,337,764	5,369,035	5,653,335

Drug Offender Surcharge Fund: Revenue and Expenditure Trends					
Description	FY 06-07 Actual	FY 07-08 Actual	FY 08-09 Proj.	FY 09-10 Proj.	FY 10-11 Proj.
Ending Fund Balance	3,005,884	2,851,059	3,478,962	3,174,908	2,738,503
Annual Change in Fund Balance		(154,825)	627,903	(304,054)	(436,405)
<i>Fund Balance as Percent of Annual Expenditures</i>	88.4%	56.8%	80.2%	59.1%	48.4%

Sex Offender Surcharge Fund [Section 18-21-103 (3), C.R.S.] - This fund consists of 95 percent of sex offender surcharge revenues. These surcharges range from \$75 to \$3,000 for each conviction or adjudication. Moneys in the Fund are subject to annual appropriation to the Judicial Department, the Department of Corrections, the Department of Public Safety's Division of Criminal Justice, and the Department of Human Services to cover the direct and indirect costs associated with the evaluation, identification, and treatment and the continued monitoring of sex offenders. Pursuant to Section 16-11.7-103 (4) (c), C.R.S., the Sex Offender Management Board (SOMB) is required to develop a plan for the allocation of moneys deposited in this fund, and submit the plan to the General Assembly.

The following table details the allocation plan submitted by the SOMB on October 9, 2008:

Sex Offender Surcharge Fund Allocation Plan: FY 2009-10			
Department	Description	Amount	% of Total
Corrections	Management of sex offender data collection, including: entry of ViCAP; psychological and risk assessment test results; and demographics for use in treatment planning and research.	\$29,311	5.5%
Human Services	Training and technical assistance to county departments, the Division of Youth Corrections, and the Division of Child Welfare.	38,250	7.2%
Judicial, Probation and Related Services	Direct services, beginning with the funding for sex offender evaluations, assessments and polygraphs required by statute during the pre-sentence investigation.	302,029	56.6%
Public Safety, Division of Criminal Justice	Administration and implementation of standards. Of the total allocation, \$7,000 will be used to provide cross-system training	163,591	30.7%
TOTAL		533,181	100.0%

As detailed in the following table, the SOMB is requesting the same overall level of appropriations for FY 2009-10 (\$533,181). However, requested appropriations are anticipated to exceed projected fund revenues in both the current fiscal year and in FY 2009-10, by \$102,628

and \$100,476, respectively. The SOMB has thus directed departments to restrict spending in the current fiscal year (by a total of \$95,972, including \$54,365 for Judicial) in order to avoid exceeding available funds. Despite this projected shortfall, the SOMB is requesting the same level of appropriations for FY 2009-10. As indicated in the table below, the Judicial Department anticipates that the SOMB will again direct departments to restrict spending in FY 2009-10 (by a total of \$95,000, including \$55,000 for Judicial).

Sex Offender Surcharge Cash Fund: Revenue and Expenditure Trends					
Description	FY 06-07 Actual	FY 07-08 Actual	FY 08-09 Proj.	FY 09-10 Proj.	FY 10-11 Proj.
Beginning Fund Balance	\$138,335	\$94,147	\$81,178	\$74,522	\$69,046
Revenues	448,218	434,902	430,553	432,705	434,869
Expenditures:					
Corrections	29,311	24,621	29,311	29,311	29,311
Human Services	34,822	32,130	38,250	38,250	38,250
Judicial	275,029	253,704	302,029	302,029	302,029
Public Safety	153,244	137,416	163,591	163,591	163,591
Spending Restrictions			<u>(95,972)</u>	<u>(95,000)</u>	<u>(95,000)</u>
Total Expenditures	492,406	447,871	437,209	438,181	438,181
Ending Fund Balance	94,147	81,178	74,522	69,046	65,734
Annual Change in Fund Balance		(12,969)	(6,656)	(5,476)	(3,312)
<i>Fund Balance as Percent of Annual Expenditures</i>	<i>19.1%</i>	<i>18.1%</i>	<i>17.0%</i>	<i>15.8%</i>	<i>15.0%</i>

Drug Driving Safety Fund [Section 42-4-1301.3 (4) (a), C.R.S.] - Section 42-4-1301.3, C.R.S., sets forth sentencing guidelines for persons convicted of Driving Under the Influence (DUI), persons convicted of Driving While Ability Impaired (DWAI), and persons who are habitual users of a controlled substance who are convicted of driving a vehicle. The Judicial Department is required to administer an Alcohol and Drug Driving Safety (ADDS) Program in each judicial district. This program is to provide: (1) pre-sentence and post-sentence alcohol and drug evaluations of all persons convicted of driving violations related to alcohol or drugs; and (2) supervision and monitoring of those persons whose sentences or terms of probation require completion of a program of alcohol and drug driving safety education or treatment.

The Alcohol and Drug Driving Safety Program Fund consists of assessments designed to ensure that the ADDS Program is self-supporting. Assessments include fees paid by individuals for alcohol and drug evaluations, as well as inspection fees paid by approved alcohol and drug treatment facilities. The evaluation fee was increased from \$181 to \$200 in FY 2007-08. Moneys in the Fund are subject to annual appropriation to the Judicial Department and the

Department of Human Services, Division of Alcohol and Drug Abuse for the administration of the ADDS Program. These two departments are required to propose changes to these assessments as required to ensure that the ADDS Program is financially self-supporting. Any adjustment in the assessments approved by the General Assembly is to be "noted in the appropriation...as a footnote or line item related to this program in the general appropriations bill". Please note that the FY 2008-09 Long Bill does not include a footnote concerning this fee.

As detailed in the following table, departments are requesting appropriations totaling \$5,966,393 for FY 2009-10 -- a decrease of \$99,950 (1.6 percent). Please note, however, that the Judicial Department is restricting its expenditures in the current fiscal year by \$300,000, and anticipates restricting expenditures in FY 2009-10 by \$400,000. The Department anticipates that absent these spending restrictions, the fund balance will decline annually.

Alcohol and Drug Driving Safety Cash Fund: Revenue and Expenditure Trends					
Description	FY 06-07 Actual	FY 07-08 Actual	FY 08-09 Proj.	FY 09-10 Proj.	FY 10-11 Proj.
Beginning Fund Balance	\$717,613	\$557,143	\$746,859	\$509,039	\$614,910
Revenues	4,959,025	5,315,887	5,528,523	5,672,264	5,785,710
Expenditures:					
Human Services (via transfer from Judicial)	440,993	440,993	440,993	440,993	440,993
Judicial (excluding portion transferred to DHS)	4,678,502	4,685,178	5,625,350	5,525,400	5,525,400
Judicial Program Reductions			(300,000)	(400,000)	
Total Expenditures	5,119,495	5,126,171	5,766,343	5,566,393	5,966,393
Ending Fund Balance	557,143	746,859	509,039	614,910	434,227
Annual Change in Fund Balance		189,716	(237,820)	105,871	(180,683)
<i>Fund Balance as Percent of Annual Expenditures</i>	<i>10.9%</i>	<i>14.6%</i>	<i>8.8%</i>	<i>11.0%</i>	<i>7.3%</i>

Persistent Drunk Driver Cash Fund [Section 42-3-301 (1), C.R.S.] - This fund consists of penalty surcharge fees paid by persons convicted of DUI, DUI per se, or DWAI, as well as a person who is a habitual user of a controlled substance who is convicted of a misdemeanor for driving a vehicle. These surcharges range from \$50 to \$500 for each conviction. Moneys in the Fund are subject to annual appropriation to:

- to pay the costs incurred by the Department of Revenue concerning persistent drunk drivers;

- to pay for costs incurred by the Department of Revenue for computer programming changes related to treatment compliance for persistent drunk drivers; and
- to support programs that are intended to deter persistent drunk driving or intended to educate the public, with particular emphasis on the education of young drivers, regarding the dangers of persistent drunk driving.

The Judicial Department does not administer this Fund, nor does it expend moneys from the Fund. While fees are collected by the courts, budget instructions issued by the Office of State Planning and Budgeting identify the Department of Human Services as the lead agency for reporting purposes.

Offender Identification Fund [Section 24-33.5-415.6, C.R.S.] - This fund consists of payments for genetic testing received from adult and juvenile offenders, including: certain convicted adult offenders [as required by Section 16-11-102.4, C.R.S.]; certain juveniles who are sentenced to the youthful offender system [as required by Section 18-1.3-407 (11.5, C.R.S.); and certain adjudicated offenders [as required by Section 19-2-925.6, C.R.S.]. The fee is currently \$128¹². The Judicial Department is responsible for collecting biological substance samples from offenders who are sentenced to Probation. The Department of Corrections, the Department of Human Services (Division of Youth Corrections), county sheriffs, and community corrections programs are responsible for collecting biological substance samples from offenders in their custody. The Colorado Bureau of Investigation (within the Department of Public Safety) is responsible for conducting the chemical testing of the samples, storing and preserving the samples, filing and maintaining test results, and furnishing test results to law enforcement agencies upon request.

Moneys in the Fund are subject to annual appropriation to the Judicial Department (the State Court Administrator) and the Department of Public Safety (the Executive Director) to pay for genetic testing of offenders. Per budget instructions issued by the Office of State Planning and Budgeting, the Judicial Department is the lead agency for reporting purposes.

Offender Identification Fund: Requested Appropriations for FY 2009-10			
Department	Line Item and Description	Amount	% of Total
Corrections	Management, Inspector General Subprogram, Operating Expenses (third of three fiscal years pursuant to H.B. 07-1343)	\$4,960	2.2%

¹² This fee was established in 1996 when the DNA database for sex offenders was established. At that time, the fee was based on a cost of \$15 to \$25 for sample collection, with the remainder to cover CBI lab costs to develop the DNA profile. The Department indicates that collection costs have decreased by approximately \$5, but this decrease has likely been offset by increases in CBI lab costs.

Offender Identification Fund: Requested Appropriations for FY 2009-10			
Department	Line Item and Description	Amount	% of Total
Judicial	Probation and Related Services, Operating Expenses: Used to pay for DNA test kits (which cost \$5 per kit) for offenders sentenced to probation and for test kits provided to local jails and community corrections programs. Through decision item #4d, Judicial is seeking to increase its appropriation from \$8,250 to \$120,000 in FY 2009-10. Also includes \$510 for indirect costs.	120,510	53.2%
Public Safety	Colorado Bureau of Investigation, Laboratory and Investigative Services, Operating Expenses	101,125	44.6%
TOTAL		226,595	100.0%

As detailed in the above table, departments are requesting appropriations totaling \$226,595 for FY 2009-10, which represents an increase of \$112,260 (98.2 percent). Even if the Judicial Department's requests to increase appropriations in FY 2008-09 and FY 2009-10 are approved, the fund balance is anticipated to increase from \$303,454 at the end of FY 2007-08 to \$648,430 at the end of FY 2009-10. Thus, the Departments' request seems appropriate.

42 Judicial Department, Supreme Court/Court of Appeals, Appellate Court Programs; Trial Courts, Trial Court Programs; Public Defender, Personal Services; Alternate Defense Counsel, Personal Services; Office of the Child's Representative, Personal Services -- In accordance with Section 13-30-104 (3), C.R.S., funding is provided for a one-year increase in judicial compensation, as follows:

	<u>Current Salary</u>	<u>Increase</u>	<u>FY 2008-09</u>
Chief Justice, Supreme Court	132,027	10,681	142,708
Associate Justice, Supreme Court	129,207	10,453	139,660
Chief Judge, Court of Appeals	126,932	10,269	137,201
Associate Judge, Court of Appeals	124,089	10,039	134,128
District Court Judge	118,973	9,625	128,598
County Court Judge	113,856	9,211	123,067

The salary increases provided for FY 2008-09 include the statewide salary survey percentage increase for professional employees, the statewide performance-based pay percentage increase, and a 3.0 increase as part of an effort to make judge salaries more competitive. Funding is also provided in the Long Bill to maintain the salary of the Public Defender at the level of an associate judge of the Court Appeals, and to maintain the salaries of the Alternate Defense Counsel and the Executive Director of the Office of the Child's Representative at the level of a district court judge.

Comment: Sections 13-30-103 and 104, C.R.S., establish judicial salaries for various fiscal years during the 1990s. These provisions state that any salary increases above those set forth in statute "shall be determined by the general assembly as set forth in the annual general appropriations bill." The General Assembly annually establishes judicial salaries through a footnote in the Long Bill.

43 Judicial Department, Public Defender -- In addition to the transfer authority provided in Section 24-75-108, C.R.S., up to 2.5 percent of the total Public Defender appropriation may be transferred between line items in the Public Defender's Office.

Comment: The Public Defender's Office (PDO) is in compliance with this footnote. This footnote provided the PDO with the authority to transfer up to 2.5 percent (\$1,148,027) of its total FY 2007-08 appropriation (\$45,921,073) between line items. In FY 2007-08, a total of \$1,005,547 (2.2 percent) was transferred between line items. The following table details the line items affected by such transfers.

Long Bill Line Item	Transfers In/ (Out)
Personal Services	(\$863,293)
Operating Expenses	405,000
Leased Space/ Utilities	(142,255)
Vehicle Lease Payments	2,547
Automation Plan	598,000
Net Transfers*	(1)

* \$1 difference due to rounding.

44 Judicial Department, Alternate Defense Counsel -- In addition to the transfer authority provided in Section 24-75-108, C.R.S., up to 2.5 percent of the total Alternate Defense Counsel appropriation may be transferred between line items in the Alternate Defense Counsel's Office.

Comment: The Alternate Defense Counsel (ADC) is in compliance with this footnote. This footnote provided the ADC with the authority to transfer up to 2.5 percent (\$541,007) of its total FY 2007-08 appropriation (\$21,640,265) between line items. In FY 2007-08, a total of \$64,913 (0.3 percent) was transferred between line items. The following table details the line items affected by such transfers.

Long Bill Line Item	Transfers In/ (Out)
Operating Expenses	\$9,778
Court Appointed Counsel	(55,135)
Mandated Costs	45,357
Net Transfers	0

45 Judicial Department, Office of the Child's Representative -- In addition to the transfer authority provided in Section 24-75-108, C.R.S., up to 2.5 percent of the total Office of the Child's Representative's appropriation may be transferred between line items in the Office of Child's Representative.

Comment: The Office of Child's Representative is in compliance with this footnote. This footnote provided the OCR with the authority to transfer up to 2.5 percent (\$345,770) of its total FY 2007-08 appropriation (\$13,830,806) between line items. In FY 2007-08, a total of \$73,383 (0.5 percent) was transferred between line items. The following table details the line items affected by such transfers.

Long Bill Line Item	Transfers In/ (Out)
Personal Services	(\$45,748)
Operating Expenses	42,493
Leased Space	1,037
Training	(246)
Court Appointed Counsel	(27,389)
Mandated Costs	29,853
Net Transfers	0

Requests for Information

1 Judicial Department, Integrated Information Services -- The Department is requested to contract with an outside party to study the feasibility of providing its public access and e-filing programs in-house and to report its findings to the Joint Budget Committee by November 1. It is the intent of the Committee that this effort be funded with existing appropriations.

Comment: The Department submitted a report concerning the feasibility of migrating both of the current vendor supported systems in-house, as requested. Please see the briefing issue that begins on page 14 for a summary and discussion of the report findings.

2 Judicial Department, Trial Courts, Trial Court Programs -- The Department is requested to develop a general strategy and plan regarding the provision of drug courts statewide, including in rural areas, and to provide a report on this plan to the Judiciary Committees of the House and Senate by December 31, 2008.

Comment: The Department submitted a plan to expand drug courts statewide, as requested. The Department and the State Public Defender also submitted decision items (priorities #2 and #3, respectively) to continue, expand, and enhance existing adult drug court programs in 13 judicial

districts. Please see the briefing issue that begins on page 26 for a summary of the Department's plan and the associated funding requests.

3 Judicial Department, Trial Courts, Court Costs, Jury Costs, and Court-appointed Counsel

-- The Department is requested to pilot alternative methods of providing respondent parent counsel services in dependency and neglect cases and to report to the Joint Budget Committee on the progress of such pilots in the Department's annual budget request.

Comment: The Department included a response to this request in its FY 2009-10 budget request. Below, staff has provided background information concerning respondent parents' council and the Department's work that preceded this request for information¹³, followed by a summary of the Department's response to the request.

Background Information. Respondent parents' counsel (RPC) provide legal representation to parents in dependency and neglect proceedings. RPC play a critical role in dependency and neglect proceedings by: (1) protecting parents' fundamental and constitutional rights; (2) involving parents in appropriate treatment and services; (3) instituting necessary checks on State involvement in families; and (4) providing balanced information to the courts that promotes effective decision-making on behalf of children and their families. The Judicial Department is required to provide RPC for indigent parents for the duration of a dependency and neglect case. In FY 2005-06, Colorado courts heard 4,136 dependency cases; in those cases, courts made 5,464 RPC appointments. While privately paid attorneys represent some parents in dependency and neglect cases, the majority of parents are represented by state-paid RPC (e.g., in FY 2005-06, 79.6 percent of dependency and neglect cases required the appointment of a state-paid attorney to represent at least one parent).

In order to effectively represent parents or any party in a case, attorneys must have access to adequate compensation, resources, and support. As early as 1996, the Judicial Branch recognized that RPC is an area in need of improvement. This concern has been raised and discussed in a number of forums since 1996, and in October 2005 the Chief Justice convened the RPC Task Force to assess the current state of legal representation for respondent parents in dependency and neglect proceedings. The Task Force was comprised of approximately thirty members, including state representatives (Representatives Liston and McGihon), judicial officers, RPC, Guardians ad Litem, county attorneys, law school professors, and representatives of the Office of the Child's Representative and the Institute for the Advancement of the American Legal System at the University of Denver.

The Task Force studied the issues and took a number of steps to improve RPC, including providing training, drafting practice guidelines, establishing a listserv, and providing a motions

¹³ This information is largely taken from the Respondent Parents' Counsel *Task Force' Final Report to the Chief Justice of the Colorado Supreme Court* (September 2007).

bank. Based on its review, the Task Force made the following recommendations to improve Colorado's RPC system:

1. Centralize the oversight, administration, and support of RPC in an independent office similar to the Alternate Defense Counsel or the Office of the Child's Representative.
2. Promulgate practice guidelines for RPC in dependency and neglect cases through a Chief Justice Directive, and make compliance with the guidelines a term of the contract for state-appointed RPC.
3. Provide relevant, accessible, and role-specific training for all RPC, as well as a mentoring program for new RPC.
4. Establish a compensation structure that achieves parity among parties in dependency and neglect proceedings and enables a thorough and adequate preparation of cases by RPC. As a first step, convert from a flat rate to an hourly rate compensation in all judicial districts. In addition, pilot a staff office model in select areas.
5. Establish uniform access to experts, investigators, and other forms of representation support.
6. Consider rules, policies, and procedures that provide RPC with access to information and facilities commensurate with other attorneys in dependency and neglect cases.

The Task Force acknowledged that resources will be required to implement some of the above recommendations (e.g., changing the compensation structure). However, the Task Force noted that at least one other state has experienced improvements in child and family outcomes, as well as financial savings when it improved its RPC system.

Request for Information/ Department Response. As indicated above, the RPC Task Force recommended that the Judicial Department pilot alternative RPC delivery methods to: improve accountability and effectiveness of RPC; predict costs and cost effectiveness of various compensation structures; and determine the possibility for expanding alternatives to a statewide basis. The Department requested the inclusion of a footnote in the FY 2008-09 Long Bill similar to the one that authorized a pilot for Guardian ad Litem (GAL) services in 2000. The Joint Budget Committee approved the request, and included this request for information in its April 2008 letter to the Chief Justice. The Department included a response to this request for information in its budget request.

Pursuant to Chief Justice Directive 04-05, each judicial district is allowed to choose to compensate RPC based on a flat fee or fee-for-service. However, the Department has historically encouraged the use of flat fee contracts where feasible. Most rural districts compensate RPC using an hourly rate, and most metro area districts use the flat fee system. The Department indicates that, "Given budgetary limitations and difficulties projecting and controlling the cost

of hourly compensation on a statewide basis, the Department has decided to proceed cautiously in implementing the Task Force's recommendation to abandon the flat fee billing system." The Department has recently begun exploration of three alternatives to the flat fee compensation system:

- *Fee-for-Service (hourly) Compensation:* This model compensates attorneys for the time they spend on each case, rather than receiving a flat fee for each case appointment. This model promotes parity with other attorneys, and it is hypothesized to lead to more thorough representation and the provision of better information to the court.

The Department began piloting this model in the 1st Judicial District (Jefferson and Gilpin) in July 2008. The Department is using on-line billing to minimize court staff time requirements. The Department hopes to continue this model over a multi-year period to provide meaningful evaluative data. The Department notes that the 19th Judicial District (Weld) also converted to a fee-for-service model this fiscal year due to difficulties in recruiting RPC attorneys. The Department intends to work with this district to provide a similar evaluation of the use of hourly compensation.

- *Washington Model:* Washington State has demonstrated considerable success and improved outcomes for families with a model it began using in 2000. A select group of independent contractor attorneys are required to dedicate their practice exclusively to the representation of parents. Under this model, attorneys are compensated between \$102,000 and \$122,000 per year to take no more than 80 active cases at one time. Attorneys pay for their own overhead costs, including malpractice insurance and a full-time staff to answer telephone calls from clients. Attorneys are provided with 0.25 FTE social worker to assist them with their representation of clients.

Attorneys in the 4th Judicial Districts (El Paso and Teller) were receptive to piloting this model, and Department staff met with several stakeholders to discuss potential implementation. However, the projected costs of implementing this pilot, even at a rate lower than the Washington model, exceeded the current budget for RPC services in this district. Given budgetary limitations, the Department is considering planning for a conversion to this model over a longer term, rather than implementing a short-term pilot.

- *Staff Office Model:* This model is promising in its ability to provide cost-effective services at a stable and efficient rate. This model is currently used by the Public Defender's Office, and the El Paso County office of the Office of the Child's Representative. This model pays staff attorneys an annual salary plus benefits to handle cases within a certain jurisdiction. Contract attorneys may still be necessary to handle conflict cases (such as when each parent needs an attorney) or overflow cases.

The Department would like to pilot this model in some metro-area districts. However, it has been unable to find a district where it could be implemented within existing resources. The

Department is also concerned that the efficiencies of this type of model may be difficult to achieve in a single district due to the number of conflict of interest appointments that would likely be necessary.

Finally, the Department notes that the 4th Judicial District also received a federal grant to hire a social worker to assist them in their representation of clients. The Department plans to continue to work with stakeholder groups in this district to assess the use of a social worker, and it will consider replicating this model in other districts.

In summary, funding limitations constrict the number and types of pilots that the Department can implement this fiscal year. However, the Department remains committed to developing ways to support best practices in parent representation and will continue to explore methods to do so within existing resources or through a potential budget request.

- 4 Judicial Department, Trial Courts, District Attorney Mandated Costs** -- District Attorneys in each judicial district shall be responsible for allocations made by the Colorado District Attorney's Council's Mandated Cost Committee. Any increases in this line item shall be requested and justified in writing by The Colorado District Attorney's Council, rather than the Judicial Department, through the regular appropriation and supplemental appropriation processes. As part of its annual budget request, the Judicial Department is requested to include a report by the Colorado District Attorney's Council detailing how the Mandated Costs appropriation is spent, how it is distributed, and the steps taken to control these costs.

Comment: The Judicial Department's budget request includes information provided by the Colorado District Attorneys' Council (DAC)¹⁴, as requested. This line item provides state funding to reimburse district attorneys (DA's) for costs incurred in prosecuting state matters, as required by state statute. Specifically, 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.¹⁵, when the defendant is acquitted or when the defendant is convicted and the court determines he is unable to pay them." These "mandated costs" include reimbursement for a variety of expenditures, including witness fees and travel costs, transcript fees, and fees for service of process.

The DAC allocates funds among judicial districts based on historical spending (using a three-year average). However, the DAC holds back \$300,000 of appropriation. District Attorneys submit information quarterly concerning costs incurred, as well as projections of annual expenditures. The DAC has a special process for requesting additional funds above the allocated amount.

¹⁴ The DAC is a quasi-government agency, supported by assessments charged to each DA's office (through an intergovernmental agreement). Denver is not currently a member of the DAC.

¹⁵ 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".

For FY 2009-10, the DAC is requesting a \$200,991 (10.4 percent) increase in the appropriation for this line item. The request is based on actual expenditures incurred in the last two fiscal years. The DAC specifically identifies increases in mileage reimbursement rates and travel-related costs as the primary factor increasing DA's costs. The following table provides a history of appropriations and actual expenditures for this line item.

District Attorneys Mandated Costs							
Fiscal Year	Appropriation			Actual Expenditures			Over/ (Under) Budget
	General Fund	Cash Funds	Total	General Fund	Cash Funds	Total	
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	40,239
2002-03	2,025,199	125,000	2,150,199	1,833,410	71,117	1,904,527	(245,672)
2003-04	2,025,199	125,000	2,150,199	1,847,369	59,334	1,906,703	(243,496)
2004-05	1,911,899	0	1,911,899	1,911,970	0	1,911,970	71
2005-06	1,911,899	0	1,911,899	1,772,849	106,325	1,879,174	(32,725)
2006-07	1,841,899	125,000	1,966,899	1,928,795	99,090	2,027,885	60,986
2007-08	1,837,733	125,000	1,962,733	2,092,974	130,674	2,223,648	260,915
2008-09	1,801,052	125,000	1,926,052				
2009-10 Request	2,002,043	125,000	2,127,043				

5 Judicial Department, Probation and Related Services -- The Judicial Department is requested to provide by November 1 of each year a report on pre-release rates of recidivism and unsuccessful terminations and post-release recidivism rates among offenders in all segments of the probation population, including the following: adult and juvenile intensive supervision; adult and juvenile minimum, medium, and maximum supervision; the female offender program; and the specialized drug offender program. The department is requested to include information about the disposition of pre-release failures and post-release recidivists, including how many offenders are incarcerated (in different kinds of facilities) and how many return to probation as the result of violations.

Comment: The Department submitted the information, as requested. This is the 13th year it has produced a report on recidivism among probationers. Key findings included in the report, comparing data from FY 2006-07 and FY 2005-06, are summarized below:

- The percentage of probationers successfully completing probation increased in all supervision categories.
- The increases in successful terminations were largely due to reductions in the proportion of probationers who were terminated for a technical violation.
- The overall success rate, defined as individuals who successfully completed probation and did not commit a new crime within one year of leaving probation supervision, increased in all supervision categories.

The following table summarizes recidivism data, by supervision level, for the last three fiscal years.

Probation Recidivism Rates: FY 2006-07 Terminations						
Supervision Level	Fiscal Year	Successful Termination	Pre-release Failures		Post-Release Failure^b	Overall Success^c
			Technical Violation	New Crime^a		
Juvenile - Regular	2004-05	68.1%	25.7%	6.2%	16.6%	58.2%
	2005-06	69.6%	23.8%	6.6%	15.4%	58.9%
	2006-07	71.7%	21.5%	6.8%	16.2%	60.1%
Juvenile - Intensive	2004-05	48.7%	39.1%	12.2%	10.0%	46.8%
	2005-06	44.6%	43.8%	11.6%	25.6%	40.0%
	2006-07	47.8%	40.7%	11.5%	24.5%	43.2%
Adult - Regular	2004-05	61.3%	32.6%	6.1%	8.0%	56.4%
	2005-06	60.7%	33.0%	6.3%	8.2%	55.7%
	2006-07	61.1%	31.8%	7.1%	8.5%	55.9%
Adult - Intensive	2004-05	52.0%	34.4%	13.6%	1.4%	51.9%
	2005-06	53.9%	31.4%	14.7%	17.1%	52.9%
	2006-07	56.0%	33.1%	10.9%	2.7%	55.9%
Adult - Female Offender Program^d	2004-05	57.9%	31.6%	10.5%	0.0%	57.9%
	2005-06	56.7%	37.2%	6.2%	12.5%	54.9%
	2006-07	62.7%	28.0%	9.3%	8.3%	61.6%

^a Adjudication or conviction for a felony or a misdemeanor while under probation supervision.

^b A filing for a felony or misdemeanor within one year of termination from program placement for a criminal offense.

^c A positive termination from probation and no post-release recidivism within one year.

^d Please note that the relatively small number of individuals participating in the Female Offender Program can cause recidivism rates to differ significantly from year to year. For example, the post-release failure rates of 8.3 percent (in FY 2006-07) and 12.5 percent (in FY 2005-06) both correspond to two offenders.

6 Judicial Department, Probation and Related Services, Offender Treatment and Services --

The Judicial Department is requested to provide by November 1 of each year a detailed report on how this appropriation is used, including the amount spent on testing, treatment, and assessments for offenders.

Comment: The Department provided the information requested. In FY 2006-07, the Joint Budget Committee approved a request to combine various appropriations from the General Fund, Offender Services Cash Fund, Drug Offender Surcharge Fund, and the Sex Offender Surcharge Fund, to create a single line item entitled "Offender Treatment and Services." The purpose of this organizational change was to: (a) provide increased flexibility to local probation departments to allocate funds for treatment and services for indigent offenders or those otherwise unable to pay; and (b) reduce year-end reversions of unspent cash funds.

The Offender Treatment and Services appropriation is now divided among the 22 judicial districts as "block grants" based on the number of FTE and the number of probationers under supervision in each district. Each probation department then develops a local budget for each of the approved treatment and service areas. The local allocation of funds depends on the availability of treatment and services and the particular needs of the local offender population. A summary of allocations and expenditures for FY 2007-08, as well as allocations for FY 2008-09, is provided in the table on the following page.

FY 2007-08 Budget and Expenditures from the Offender Treatment and Services Line Item					
Treatment or Service	FY 2007-08			FY 2008-09	
	Allocation	Expenditures	% of Total	Allocation	% of Total
Substance Abuse Treatment	\$1,935,220	\$1,585,632	27.5%	\$1,744,958	22.5%
Drug Testing	<u>649,712</u>	<u>758,644</u>	<u>13.2%</u>	<u>888,865</u>	<u>11.5%</u>
Subtotal: Substance Abuse Services	2,584,932	2,344,276	40.6%	2,633,823	34.0%
Adult Sex Offender Assessment	757,885	888,393	15.4%	945,201	12.2%
Adult Sex Offender Treatment	445,345	576,477	10.0%	586,882	7.6%
Adult Sex Offender Polygraphs	215,131	194,709	3.4%	235,300	3.0%
Juvenile Sex Offender Treatment & Assessment	124,333	130,818	2.3%	164,983	2.1%
Juvenile Sex Offender Polygraphs	<u>101,363</u>	<u>70,774</u>	<u>1.2%</u>	<u>99,313</u>	<u>1.3%</u>
Subtotal: Sex Offender Services	1,644,057	1,861,171	32.3%	2,031,679	26.2%
Mental Health Treatment	434,917	387,604	6.7%	565,664	7.3%
Domestic Violence Treatment	335,538	320,360	5.6%	392,485	5.1%
Electronic Home Monitoring	219,082	209,633	3.6%	227,040	2.9%
Transportation Assistance	112,400	107,745	1.9%	153,927	2.0%
Emergency Housing	100,361	110,452	1.9%	133,000	1.7%
Educational/Vocational Assistance	101,577	97,075	1.7%	125,308	1.6%
Global Positioning Satellite Tracking (GPS)	120,454	101,292	1.8%	120,520	1.6%
Restorative Justice	138,741	76,567	1.3%	119,047	1.5%
Interpreter Services	62,292	102,346	1.8%	118,398	1.5%
General Medical Assistance	79,940	31,237	0.5%	69,389	0.9%
Incentives	0	19,437	0.3%	58,802	0.8%
Subtotal: Funds Allocated to/Expended by Districts	5,934,291	5,769,195	100.0%	6,749,082	87.1%
Initiative to Build Capacity in Rural/Underserved Areas				750,000	
Evidence-based Practices Research				<u>250,000</u>	
Total	5,934,291	5,769,195	100.0%	7,749,082	100.0%

OFFICE OF THE STATE PUBLIC DEFENDER

MEMORANDUM

Date: October 31, 2008
To: Joint Budget Committee of the Colorado General Assembly
From: Douglas K. Wilson
Subject: United States Supreme Court *Rothgery* Decision

The Office of the Colorado State Public Defender was established in 1970 as a separate and independent agency of the Colorado Judicial Branch as a result of a Federal Constitution mandate to provide counsel to the poor. *Gideon v. Wainwright*, 372 U.S. 335 (1963). See also, *Alabama v. Shelton*, 535 U.S. 654 (2002). In *Gideon* and now *Shelton*, the United States Supreme Court held that in any state or federal prosecution where incarceration is being sought, the indigent accused must be provided counsel by the government. This holding under the Sixth Amendment to the United States Constitution applies to the States via the Fourteenth Amendment to the United States Constitution.

In 1993, the Colorado Legislature amended CRS 16-7-301 to require indigents accused of misdemeanors, petty offenses and traffic cases, to meet with the prosecuting attorney to attempt to resolve the case before applying for a public defender. Additionally, CRS 16-5-501 states that if the prosecution is not seeking incarceration for any criminal offenses that are charged as class 2 or 3 misdemeanors, petty offenses and class 1 or 2 traffic offenses, then court appointed counsel and supporting services need not be provided at state expense.

As explained below, the continued constitutionality of these procedures is now in question.

On June 23, 2008, the United States Supreme Court issued an opinion in *Rothgery v. Gillespie County*, 554 U.S. ____ (6/23/08). The *Rothgery* Court held that the Sixth Amendment's right to counsel attaches at the time a criminal defendant first appears before a judicial officer where he is informed of the criminal charges and restrictions are imposed upon his freedom. CRS 16-7-301(4) (a) requires an indigent defendant in misdemeanors, petty offenses and traffic offenses to pre-try his case with the prosecutor before he is entitled to apply for a public defender. CRS 16-7-207(1)(c) references the same procedure, but goes further by denying counsel to indigent defendants if the prosecution stipulates that they will not seek jail.

In the *amicus* briefs and the opinion, Colorado is openly criticized for its practice of requiring indigent, *pro se* defendant's to meet with the prosecution prior to the appointment of counsel. The Court indicates that Colorado is in the minority with

the current practice of appointing counsel for the poor in criminal misdemeanor cases. (See *Rothgery* at pages 10-13).

Presently, if a *pro se* misdemeanant goes to court or comes to one of our offices to apply for counsel on a misdemeanor, the court or our staff will inform them that they must first meet with the prosecution without counsel. At this time, our office handles approximately 37.5% of the misdemeanor cases statewide, not including traffic court cases. If the State is successfully sued under the constitutional mandate of *Rothgery*, the misdemeanor caseload of the Public Defender, and thus our staffing needs, will increase significantly as a result of a Federal mandate.

Since we do not know the number of *pro se* defendants that meet with the prosecution each year, the increase is impossible to determine. Ultimately, once the mandate reaches the Colorado Court, the Public Defender will be at significant odds to meet an unstaffed mandate, especially considering the current deficit of staffing resources the Public Defender currently maintains. The results of a Colorado *Rothgery* mandate would supplement the Public Defender's already great resource need.