

**JUDICIAL BRANCH  
FY 2009-10 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, December 10, 2008  
9:00 pm – 12:00 noon**

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

**9:00-9:20      INTRODUCTIONS AND OPENING COMMENTS**

**9:20-9:40      QUESTIONS COMMON TO ALL DEPARTMENTS**

1. What are your department's three top goals for the current year? How will they be achieved?

In keeping with our strategic plan, our top goals work toward the goals of the strategic plan. The final judgeships from HB07-1054 are scheduled to be filled in July, 2009. One of the goals over this period of time and continuing this year is to coordinate plans for judicial officer need with the other departments and agencies to prepare for necessary expansion. In anticipation of the new judicial positions in the last two years and the positions scheduled to be filled in July, the counties have prepared space for the additional positions and budgeted staff as necessary to appear in the additional court rooms. As a result, our top decision item, to furnish the court house expansions, is designed to fulfill the three year effort to add staff necessary to complete the case driven work load of the court system in a timely manner. In addition to the decision item, the addition of the judicial positions is critical to ensuring high quality of decision making and improve access to the courts.

Similarly, the goal to build more effective responses to substance abuse and mental health issues is realized by maximizing current efforts in the area of problem solving courts. The Judicial Department recognizes the application of evidence based practices in using different court and supervision models in certain courts has an effect of improving systems statewide. However, the efforts along these lines need to be brought in line with best practices and funded to continue the status quo while replicating the very best examples of these practices throughout the state.

Finally, the Judicial Department has a goal of improving and ensuring community safety. With the addition of probation officers, the case load can be maintained at current levels, not losing ground to the rising number of cases for supervision. While this is an on-going goal, this goal is prominent in this year because of the danger, with the hiring freeze, of losing ground in supervision of offenders. Any ground lost in this area greatly impacts the other systems in the state, including counties, Department of Corrections, and Department of Human Services. In addition to the decision item, the probation department is continuing to utilize the pilot for responding to technical violations of probation in a consistent and cost effective way.

2. How do your requested decision items tie to your goals?
  1. **The County courthouse capital request ensures \$191 million in county funded courthouse projects have the State's contribution for capital necessary for occupancy and operation.**
  2. **Drug Court request begins the five-year statewide drug court expansion.**
  3. **Probation Officer request solely addresses caseload growth in the past year so as to not lose ground.**
3. If you have submitted a General Fund decision item, justify why it must be funded in FY 2009-10 and why it cannot be postponed until FY 2010-11.

**Judicial has three general fund decision items;**

- **County Courthouse Capital**
- **Drug Courts**
- **Probation Officers**

#### County Courthouse Capital

**The FY2010 general fund furnishings request cannot be postponed until FY2011 because the courthouses are reaching completion in FY2010 and need to be furnished in order to be operational. The Counties around the state have incurred large capital costs (estimated at \$190 million) to provide adequate court and probation space and it is the state's statutory responsibility then to furnish the facility so it can be used. There is also a large FY2011 need for furniture, so putting off the FY2010 need will only create a larger general fund need in FY2011 as well as delaying the occupancy of these new facilities and potentially driving additional costs and delays for the Counties.**

#### Drug Court

**This decision item is in response to a request for information that came from the General Assembly through the Long Bill caucus process. While this could certainly be delayed, the State would not see any of the cost savings and improved outcomes identified by the study.**

#### Probation Officers

**The total need for probation officers is 245 officers. The FY2010 request for 14 reflects the minimum necessary to not lose ground due to case load growth which could result in lower success rates and increased DOC incarcerations.**

4. Could your department shift to a four day work week that begins on Wednesday and ends on Saturday? If not, why not? If only a portion of the department can go to a four day week, what portion can and what portion cannot and why?

**Parts of our business already have flexible schedules to better perform our business. Many probation officers perform night and week end site visits, some staff attorneys work 4, 10 hour days, and larger court locations use flex time to provide service to the public for more than eight hours per day. However, the more challenging area would be for the courts which just this year have been able to restore full public operating hours to the clerks' offices since the cuts in FY03. Additionally, government offices, specifically including offices**

in the judicial department, are required by statute to be open for business daily from 8:30 a.m. to 5:00 p.m. §24-50-401, C.R.S.

By court rule, the courts are always open. The court receives filings through electronic filing, mail and hand delivery. The service of a pleading often triggers the time for a response or hearing, usually based on a statute or rule limiting the response time to a certain number of business or calendar days. Going to a four day work week would throw this timing of legal proceedings into confusion. In addition, the court would have to remain available to hear certain matters that could not be delayed from Saturday to Wednesday. These include matters of public safety; issuing protection orders, arrest warrants, and emergency injunctions. Additionally, the court would still need to have hearings after arrest and detention of adults and juveniles, as required by constitutional law, statutes and rules. The court process would also have to adjust to longer days, especially as it relates to juror fatigue and the fatigue relating to interpreting and reporting proceedings.

Counties are responsible for providing and operating all court and probation facilities. This includes utilities, security, and maintenance. Adding Saturday hours would add additional cost for most counties that would still be open Monday through Friday for county business as well as necessitate the provision of other county provided services for longer hours and, if Saturday hours were required, for the additional non-traditional work day. These county-provided positions include court house security, transportation of prisoners to and from court and correctional facilities, and court appearances by county attorneys and case workers.

While the move to a four day work week including Saturdays could improve the ability of the public to access the court for records and information, the court system depends on citizens to assist by appearing as jurors, witnesses and litigants. These citizens often rely on public transportation, less available at certain times of the day and weekends, as well as child care, often available only during certain days of the weeks and hours of the day. Should the state mandate a four day work week, that decision would affect cases currently set for court. Court cases are routinely set months or even years in advance of the court date.

5. Has your department been able to fill new or vacant positions? Can your department quantify the benefits it has seen as a result of adding additional FTE or filling vacant positions?

All new judgeships and many of our new probation positions were filled prior to the hiring freeze. Constitutionally, judgeships must be filled within a prescribed timeframe, so the hiring freeze has no impact on filling vacant judicial positions.

The benefits of new judgeships take a while to be realized. Past influxes of judgeships have made quantifiable improvements in case processing time. However, the current hiring freeze has the potential to mask much of the improvement expected from the positions filled in the last two years.

6. How many employees, especially among upper management, are assigned a state vehicle to travel between home and work? How many state vehicles does your department use to transport staff? Would it be more cost effective to reimburse employees for using their personal vehicles for these purposes?

**The Judicial Branch has 25 vehicles funded through the vehicle lease line which are shared by district probation and trial court staff and are used primarily for travel within the district. These vehicles travel a little over 475,000 miles per year, which represents a fraction of the total miles driven by the branch. Most of the miles driven for judicial business (travel between courts by rural judges, probation home visits, juror travel, etc) are personal vehicles.**

**The biggest users of the State vehicles are rural judges traveling to courthouses within their judicial district, computer technicians and some probation officers performing home visits. Given that the mileage reimbursement rate continues to increase it is not cost-effective to reimburse all high travel employees the cost of their travel done in their own personal vehicles. Per the calculations below, the state is saving \$143,192 by using fleet vehicles rather than reimbursing employees for travel in their own cars. None of Judicial's cars are assigned to upper management or any other employee for the purpose of travel to and from work/home and none are provided as employment incentives. Occasionally due to parking issues or other special circumstances, state fleet vehicles may be kept overnight at an employee's residence where it benefits the Department.**

#### Calculations

**475,890 miles traveled in state cars in FY2008**

**Fleet variable rate of \$0.159/mile = \$75,667**

**FY2008 fixed vehicle expenditure = \$33,363**

**Total Fleet Cost for FY2008 = \$109,030**

**If no fleet and reimbursed at the statutory rate of 90% of the federal mileage reimbursement rate of \$0.53/mile (as determined by the I.R.S.)**

**475,890 miles \* \$0.53.mile = \$252,222**

#### **9:40-9:55      DEVELOPING IN-HOUSE PUBLIC ACCESS AND E-FILING SYSTEMS**

7. Given that the State does not have a very good track record related to developing large information technology systems, why should we develop these two systems in-house? Why should we expect these systems to be successful, and to stay within budget, given the State's experience on other projects?

**The National Center for State Courts' assessed the Department's projections as to the feasibility of the two projects. In their assessment, the NCSC reported, "The Colorado Judicial Department has a long history of, and a good reputation for, managing technology development, implementation, and operation. It is among the nation's leaders in this regard." Appendix A of report to the JBC on November 1, 2008. The Judicial Department**

has a reputation for delivering on all of automation projects over the past 10-15 years with minimal investment of new general funds at a fraction of the cost of a private sector solution (please see pp. 63-64 of the report that discusses staffing capabilities). Most importantly, the Judicial Department made a conscious decision to avoid taking these two projects in house until it fully understood the business, the risks and the benefits. After ten years of experience with both of these projects, Department staff is confident that they can now design, develop and maintain these projects with significant financial benefit for the State.

8. Has the Department explored the idea of working with other states to develop one or both of these systems in-house? Is there an opportunity to share risks and reduce the development costs by doing so?

**The Department agrees that serious consideration of sharing the applications and development with other states and urban jurisdictions should be afforded these two projects. If the Department opts not to share development with other jurisdictions, Department staff will certainly share their experiences with other jurisdictions. Since the Department is not asking for general funds to do these revenue generating projects, sharing costs is not as much of a benefit as the costs of slowing down development time.**

**The Judicial Department has played a major role in setting national standards for cross jurisdictional data exchanges and software development, a model replicated in other states. While the Department welcomes the opportunity to work with other states and pursue cross jurisdictional development with these projects, the benefits of such development efforts come with certain risks, such as slowing down development as the needs of other jurisdictions are also satisfied with this effort, as well as interoperability issues associated with various technical infrastructures.**

9. If the Department is authorized to proceed with developing in-house systems, does the Department plan to work with or through the Governor's Office of Information Technology?

**As always, the Judicial Department plans to continue working with OIT on all of its automation efforts. The Department's CIO continues to meet with and seek the advice of the Executive Branch CIO on automation projects.**

10. Please explain why in-house systems would give the Department more control over the development and deployment of application fixes and enhancements. Why can't these be accomplished through the existing vendor?

**The next phase of deployment is into areas where there is little or no revenue opportunities to a private vendor. By contract, the vendor cannot charge governmental entities for e-filing service. The areas at issue are vitally important to the courts in the e-filing arena, such as criminal, juvenile, mental health, small claims, and cases with self-represented litigants. At the same time, providing e-filing in these case types will greatly enhance the ability of the Judicial Department to maximize technology and improve service. If the Department has control over the application's development, it can better prioritize the modules to be developed since "profit" would not be a motive for development. In fact, the "profit" would be used to subsidize the development and deployment of modules that would**

not generate revenue.

**In addition, a national vendor must keep all of its customers happy by creating “generic” systems that meet common goals, where an in-house system can create a more robust and tailored system that more specifically satisfies the business needs of the Colorado Courts. There is always more accountability with an in-house solution to fix things quicker than with a private national vendor which has other clients to satisfy.**

11. Please discuss the statement that the Department would “need assurances that if [these in-house systems are] implemented, TABOR would not affect the remaining Judicial Department budget items.” [see the Public Access and E-Filing JBC Feasibility Study, page 8]. What assurances are you seeking?

**This statement was merely intended to open the TABOR conversation with the JBC. Judicial is not an expert on TABOR and was seeking assurances that should the Department embark on this effort that there are not unintended TABOR related consequences that would impact the Department and leave the Courts and Probation technology infrastructure financially worse off than the status quo.**

12. Related to the above question, could these systems be established as enterprises (as defined in Article X, Section 20 (2) (d) of the Colorado Constitution)?

**It appears the revenue would be sufficient to meet the TABOR definition of an enterprise (*government owned business authorized to issues revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined*). However, what is unclear, is can an enterprise receiving revenue from a fee source support a general government program like the courts and probation technology needs.**

13. Please discuss JBC staff’s recommendation to use moneys in the Department’s Information Technology Cash Fund to develop the Public Access System, and to subsequently use revenues generated by the Public Access System to develop the E-Filing System [see the FY 2009-10 Staff Budget Briefing: Judicial Department, page 24]. Does the Department agree with this approach? What impact, if any, would this approach have on the Department’s ability to maintain its existing information technology assets?

**The Judicial Department proposed this approach to the JBC on pp 6, and 67-70 of the report to the JBC. We agree with the JBC Analyst that the Public Access System is the easiest to design and deploy and would generate the revenue quickly that could be used to design and deploy the E-Filing System. The seed money for the Public Access System, however, would need to be authorized from the current balance in the Judicial Department’s Cash fund, plus additional funds from the Hardware/Software line item in the budget for FY09. This seed money “loan” would be replenished as revenue starts to flow from the in-house Public Access System by mid FY10. This self-funded loan would be paid back within a year without affecting the hardware spending plan or the existing technology assets for FY10. After both systems have been developed and deployed, the Judicial Department fully expects that the revenue will provide much stronger financial base for**

**maintaining and developing a technical infrastructure than it has now without expending any general funds and with the possibilities of reducing costs to the end users of both systems.**

14. Please explain your assumptions concerning the operating costs associated with project staff. Specifically, where would the project staff be located (both in the short-term and the long-term)?

**The additional project staff would be co-located with the current IT Division at their Denver West location, until such a time as the IT division is relocated downtown Denver with the remaining divisions of the SCAO. Space is available in both the current location as well as the new planned location.**

**9:55-10:10      IMPLEMENTING ADULT DRUG COURTS STATEWIDE**

15. Please discuss the target population for Colorado's adult drug courts and the potential financial benefits of expanding these courts. Specifically, how many of these individuals would otherwise be housed in local jails? the Department of Corrections?

**The appropriate target population for adult drug courts are drug dependent offenders who are in high need of treatment and are at high risk for recidivating. An offender's risk level and need for treatment are established through the use of standardized risk management tools administered by probation officers. Individuals excluded from this target population include violent offenders, sex offenders, and offenders who pose too large of risk to the community. Low risk and low need individuals are better served through standard probation services. Research indicates that placing low risk/low needs offenders in an intense program such as drug court results in low risk/low needs offenders failing probation at a greater rate.**

**One of the potential financial benefits of expanding Colorado's drug courts is a cost savings due to lower incarceration rates both at a state (Department of Corrections) and local (county jail) level. In FY 2008, there were at least 389 defendants whose probation was revoked for technical violations and sentenced to the Department of Corrections that would have met the entry criteria for drug courts. Technical violations are noncompliance with the conditions of probation such as a failure to complete drug treatment, continued drug use, or failure to keep probation appointments. If half of these defendants (195) successfully completed a drug court program instead of being sentenced to DOC, the cost avoidance to DOC would be approximately \$5.9 million (assuming \$30,388 per year to maintain a DOC bed).**

**The number of drug court eligible defendants who spend time in county jails statewide on an annual basis is currently unknown.**

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16. Please provide more detailed information concerning the projected costs of the Department's five year plan for funding existing adult drug courts at 100 percent of the calculated staffing needs (i.e., funding and staff requirements for each fiscal year).

Adult Drug Court 5 Year Plan												
	Year 1 (35%) (35%)		Year 2 (50%) (50%)		Year 3 (65%)		Year 4 (80%)		Year 5 (100%)		Totals	
<b>Judicial Officers</b>	2.0	\$ 315,454	1.2	\$ 193,749	1.5	\$ 237,934	1.3	\$ 199,442	2.3	\$ 362,826	8.3	\$ 1,309,405
<b>Judicial Assistant</b>	4.9	215,438	9.2	402,414	5.0	220,046	4.4	194,189	7.3	319,251	30.7	1,351,338
<b>Coordinator</b>	5.5	446,826	0.7	56,155	1.9	150,894	1.9	150,894	2.5	201,192	12.4	1,005,961
<b>Probation Officer</b>	2.8	181,750	15.7	1,039,405	8.7	571,621	11.9	786,623	17.5	1,155,899	56.5	3,735,298
<b>Probation Supervisor</b>	1.0	96,934	2.1	204,970	1.7	161,406	1.8	176,263	2.4	235,584	9.0	875,157
<b>Probation Sup. Staff</b>	1.0	43,941	3.4	150,120	2.6	116,220	2.6	116,220	3.5	154,960	13.2	581,461
<b>Annual Requests</b>	<b>17.2</b>	<b>1,300,343</b>	<b>32.3</b>	<b>2,046,812</b>	<b>21.3</b>	<b>1,458,121</b>	<b>23.9</b>	<b>1,623,631</b>	<b>35.5</b>	<b>2,429,712</b>	<b>130.2</b>	<b>8,858,620</b>
<b>Cumulative Total</b>	<b>17.2</b>	<b>1,300,343</b>	<b>49.5</b>	<b>3,347,155</b>	<b>70.8</b>	<b>4,805,276</b>	<b>94.7</b>	<b>6,428,907</b>	<b>130.2</b>	<b>8,858,619</b>		

**10:10-10:20 PROBATION AND RELATED SERVICES**

17. Please discuss the Department's request for 14.0 FTE additional probation staff (Judicial - Decision Item Priority #3). Specifically, how does this request relate to the Department's five year plan to reach full staffing?

**The Department's five-year plan, developed by the State Court Administrator's Management Advisory Committee (AMAC), is updated annually. The FY2010- FY2014 plan contained in the budget request projects a need for 245.0 FTE probation staff to reach full staffing in FY 2014. The total need was initially distributed evenly (49.0 FTE) for each of the five years. Due to budget constraints it was decided to reduce probation's request to 14.0 FTE. Despite the reduction in the request, the 14.0 FTE will benefit the probation function and help to balance the staffing levels across all districts of the state. The Departments decision item did include two alternatives for higher staffing levels that would improve probation outcomes. The balance of staff needed to achieve full staffing will be evenly distributed across the remaining four years of the plan and requested in out years.**

- 17.5. The General Assembly may consider increasing fees or surcharges to expand alcohol and drug abuse prevention and treatment services. Based on the courts' experience in both: (a) assessing and collecting existing fees and surcharges; and (b) supervising substance abusing offenders, what factors should the General Assembly take into consideration?

**The payment of costs associated with a conviction is a significant aspect of supervision of offenders. The more an offender has to pay the less funding they have to pay their own treatment costs, as required by statute. This can lead to non-compliance with the Court's orders if the offender is discharged from treatment for failure to pay or more commonly when they stop attending because of an inability to pay. This circumstance may lead to a revocation and potentially a sentence to jail for a misdemeanor or the DOC for a felony. To avoid revocation for treatment failure, Probation spends approximately \$2.6 million in cash funds per year assisting offenders in meeting their substance abuse treatment costs.**

**For projection purposes, the Branch has historically used a 30% indigence rate for offenders charged with higher offenses (felony) and 15% for lesser offenses. However, in today's economic climate, and considering the financially challenged nature of the offender population (i.e., difficulty obtaining and holding steady employment, managing money, etc.), those indigence rates probably need to be adjusted and could reasonably go as high as 50% felony and 25% traffic/misdemeanor.**

#### **10:20-10:30 RESPONDENT PARENTS' COUNSEL**

18. The Respondent Parents' Counsel (RPC) Task Force recommends centralizing 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. What management and administrative functions related to RPC are similar to those currently provided by these two agencies?

**The management and administrative functions related to RPC are: recruitment of RPC; establishment of consistent and continuous access of experts, investigators, and reimbursement of court costs; the creation of centralized expert and resource banks for RPC; centralized oversight and systematic reviews and audits of RPC compliance with contract provisions; employment of a formal complaint process separate and independent from the trial courts' oversight of RPC; and consistent application of the financial eligibility guidelines. All of these management and administrative functions are similar to those provided by both the Alternate Defense Counsel or the Office of the Child's Representative.**

19. Has the Department considered assigning responsibility for RPC to the Alternate Defense Counsel or the Office of the Child's Representative? What potential conflicts would arise under such an arrangement?

**Either the Alternate Defense Counsel or the Office of the Child's Representative, with a substantial change of focus, could potentially assume the RPC Program. That said, it is the Legislature who maintains authority to assign the administration of RPC to another agency.**

**The Office of the Child's Representative has always supported one party, the child's**

attorney, in dependency proceedings. A shift in focus may call into question the fairness with regard to other parties, if the contents of training, resource libraries, and list serves were not equal for both attorneys. Hosting trainings and other forms of litigation support for both child and parent attorneys could inhibit candid and open discussion about the issues the respective attorneys face in their practice.

With regards to the Alternate Defense Counsel, anecdotal information provided by some states that combine criminal defense with RPC work warns of the risk of undervaluing the work of RPC as compared to criminal defense attorneys. Additionally, while basic trial and courtroom skills are relevant to both areas of the law, the bodies of law governing criminal and dependency law are distinct, and the case management aspect of representing parents in a dependency case is different than the traditional criminal defense model of case management. The Task Force was concerned with the risk that unique needs of RPC and nuances in representing parents may be overlooked or ignored in a traditional criminal defense structure and that RPC's needs may not always receive equal consideration to those of criminal defense attorneys. The current director of ADC has experience and expertise representing parents, and the Task Force had no concerns regarding her administration of the program. However, the Task Force did have concerns about the future status of RPC within such a program. Additionally, given the Task Force recommendation to pilot staff office models and the ADC's responsibility for administering conflict counsel, the ADC may not be particularly well-suited to pilot a staff office model.

Finally, an important component in both OADC's and OCR's practice is engaging in systemic and legislative advocacy on behalf of their clients. Such an arrangement would require a significant change in either agency's mission statement, and in the agencies' systemic advocacy. If the Legislature does decide to pursue centralizing RPC administration within the OADC or OCR, the Department recommends significant restructuring to create a more inclusive identity for the host agency that would reflect the broader mission of also overseeing RPC. Further, members would need to be added to either agency's Commission to make it truly reflective of the new and expanded focus of the agency. Lastly, staff with experience and expertise in dependency law and the representation of parents should be considered in the event of such an arrangement.