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**Business and Licensing  
Section**

January 2, 2019

Commissioner April Jones, Chair  
Independent Ethics Commission  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, Suite 240  
Denver, Colorado 80203

RE: The Office of Public Guardianship Commission  
Questions Regarding Hiring a Lobbyist Pro Bono

Dear Chairman Jones and Commissioners:

I represent the Office of the Public Guardianship Commission ("OPG Commission"), a pilot program that was enacted by the Colorado General Assembly and passed into law as HB 17-1087. I have enclosed a copy of the Act, identified as **EXHIBIT 1**.

The OPG Commission seeks an advisory opinion pursuant to the IEC's Rules of Procedure 5. The below questions presented relate to the OPG Commission's desire to utilize the services of a pro bono lobbyist for the 2019 session of the General Assembly.

**QUESTIONS PRESENTED**

- 1. Do the provisions of Colo. Const., Art. XXIX, § 3 apply to the Office of Public Guardianship Commission members.**
- 2. If the IEC has jurisdiction over the Office of Public Guardianship Commission Members, can the OPG Commission utilize the services of a lobbyist on a pro bono basis for the 2019 session of the General Assembly?**

**SHORT ANSWER**

The IEC should issue an Advisory Opinion that the OPG Commission and its members are not subject to the IEC jurisdiction. The OPG Commission is housed as a public entity within the Judicial Department. The OPG Commission members serve without compensation. Accordingly, the members of the OPG Commission are

not considered a “public officer,” as defined in Colo. Const., Art. XXIX, § 2(6). Thus, prohibitions that are within the IEC jurisdiction that professional lobbyists cannot provide a gift or anything of value to any “public officer” do not apply to the OPG Commission. Specifically, the OPG Commission must fundraise through the receipt of gifts, grants, or donations to generate revenue to implement its pilot program. Unfortunately, fundraising has not resulted in the necessary revenue to fund the pilot program. Consequently, the OPG Commissioners can utilize the services of a professional lobbyist on a pro bono basis for the upcoming session of the General Assembly to assist with legislative amendments to obtain funding and extension of the pilot program deadlines.

Assuming the IEC has jurisdiction over the OPG Commission, the OPG Commission is not prohibited from receiving pro bono services from a lobbyist to assist with legislation in the 2019 legislative session. This is because the pro bono services are not a gift within the meaning of the IEC prohibitions, or alternatively, is not the type of gift the IEC’s prohibitions seek to regulate. But for its lack of funding, the OPG Commission is entitled to receive lobbyist services just like any other agency of government. The OPG Commission does not have funding to hire a staff to act as a legislative liaison, nor do they have funding to hire a lobbyist at market rates. The OPG Commission members do not benefit personally from the pro bono lobbyist services. And the pro bono lobbyist services do not create and conflict of interest or appearance of impropriety. The transaction will be transparent, and the professional lobbyist services will be treated as all other donations to the pilot program.

## **BACKGROUND**

### **I. HB 17-1087 established a pilot program for the Office of Public Guardianship.**

HB 17-1087 is a pilot program intended to provide public guardians for certain qualified indigent and incapacitated adults, as well as gather data on the feasibility of a statewide office of public guardianship. §§ 13-94-102(2)(a)(I) and 2(a)(II), C.R.S. (2017). The pilot program is intended to be evaluated and either continued, discontinued or expanded at the discretion of the General Assembly in 2021. § 13-94-102(2)(b), C.R.S. (2017).

Public guardianship proceedings determine when an indigent and incapacitated adult may need assistance in managing his/her personal affairs. Individuals involved in such a proceeding might include a guardian ad litem, who is a court-appointed representative to protect the interests of a person under a disability; legal counsel, who represents an individual’s legal interest; and a public guardian, a person appointed to manage the individual’s affairs outside of the courtroom. There must also be a court visitor for any person who serves as a public

guardian. *Fiscal Note for HB 17-1087* (Aug 8, 2017), attached as **EXHIBIT 2**, at 2-3; *see also* § 15-14-115, C.R.S. (appointment of guardian ad litem for persons under disability); §§ 15-14-314 and 315, C.R.S. (duties and powers of guardian for incapacitated persons); § 15-14-317(2), C.R.S. (the court may appoint a visitor to conduct “any other investigation the court directs.”).

The pilot program consists of a five-member commission, whose membership is appointed by the Colorado Supreme Court and the Governor (“OPG Commission”). §§ 13-94-104(1)(a) and (b), C.R.S. (2017). No later than one month after at least \$1.7 million is raised from gifts, grants, or donations, the Commission is required to appoint a Director for the Office. The Office and OPG Commission are housed within the Judicial Department. § 13-94-104(3), C.R.S. (2017). The pilot program is currently intended to be funded solely through gifts, grants, and donations raised by the OPG Commission or Director, once appointed. Limited general funds would be appropriated to the Judicial Department, if the pilot program is implemented, to support administrative costs for court visits, court-appointed counsel and guardian ad litem. **EXHIBIT 2** at 4.

Once appointed, the Director is required to “establish, develop and administer the Office to serve indigent and incapacitated adults in need of guardianship” in the Second, Seventh and Sixteenth Judicial Districts. The Director shall also coordinate efforts with the county departments of human and social services in those judicial districts. § 13-94-105(1), C.R.S. (2017). The Director shall at minimum:

- Provide a review of referrals to the Office;
- Adopt eligibility criteria and prioritization to serve the individuals with the greatest needs;
- Conduct appointment and post-appointment guardianship services of each indigent or incapacitated adult;
- Support for modification or termination of public guardianship services;
- Recruit, train and have oversight guardians;
- Develop processes for receipt and review of complaints against the Office;
- Implement a public guardianship database;
- Manage the office, financial planning and budgeting;

- Establish relationships with community stakeholders and local, state, and federal government agencies for any public assistance or services or funding;
- Engage in public education and outreach; and
- Develop professional standards of practice and code of ethics for guardians, including a policy concerning conflicts of interest.

§§ 13-94-105(2)(a) through 2(k), and (3), C.R.S. (2017). In addition, the Director shall adopt rules that, at minimum, address “[t]he solicitation and acceptance of gifts, grants, and donations pursuant to § 13-94-108(3), C.R.S.” § 13-94-107(1)(b), C.R.S. (2017).

**II. The OPG Commission’s activities since appointment have not yielded the necessary donations to appoint a Director, and therefore, the Commission members seek legislative amendments to the pilot program.**

The Commission members appointed by the Governor and Supreme Court are as follows:

- Shari Caton, Esq., Chair
- Dr. Deb Bennett-Woods, Vice-Chair
- Kelsey Lesco, Esq., Commissioner
- Marco Chayet, Esq., Commissioner
- Karen Kelley, Commissioner

Since their appointment in late 2017, the OPG Commission held its first meeting in October 2017, with regular meetings following on a monthly basis, and emergency meetings as needed. Because the OPG Commission must currently fund the Office solely through the receipt of gifts, grants, or donations, substantial energy and efforts have been undertaken by the Commissioners in fundraising efforts. But, despite those efforts, the OPG Commission has only raised to date approximately \$1,877.00.

Given the paucity of gifts, grants, or donations in receipt, the OPG Commission began in summer 2018 to explore options to request general appropriations to fund the pilot program. These efforts began with a supplemental request – known as a § 1331 Budget Request – to the Joint Budget Committee

(“JBC”) on September 8, 2018. With the budget request, the OPG Commission drafted an Interim Report that highlighted its activities to date, and its substantial fundraising efforts that had, unfortunately, resulted in minimal return. The Budget Supplemental and Interim Report are attached as **EXHIBIT 3**.

Specifically, the Interim Report detailed that the OPG Commissioners contacted eighty-seven statewide entities or individuals to provide information about and seek donations for the pilot program. The activities of the OPG Commission found that, “[c]ommunity stakeholders, while uniformly in support of the project, have consistently expressed the strong opinion that public guardianship services are a public need and should be publicly funded.” **EXHIBIT 3** at 10-11.

The § 1331 Budget Supplemental was denied by the JBC, but the OPG Commissioners are not deterred. The nature of a § 1331 Budget Supplemental is that such requests are made during the time when the General Assembly is out of session. Given HB 17-1087 contemplated funding of the pilot program through the receipt of gifts, grants, or donations, the OPG Commissioners understood the JBC’s hesitancy to expend general appropriations without consideration by the whole legislative body.

To that end, the OPG Commissioners look to the upcoming session of the General Assembly, and has submitted a budget request to the JBC with a draft redline of proposed legislative amendments to HB 17-1087. Specifically, the OPG Commissioners seek general appropriations to fund the pilot program for FY 2019-20 with a budget supplemental for FY 18-19, and legislative amendments that would extend the deadlines of the program given the delays to implementation due to lack of funding. The Budget Request, submitted as part of the Judicial Department, is attached as **EXHIBIT 4** at 10; and **EXHIBIT 3** at 18-24.

To assist with the legislative amendment and budgetary requests, the OPG Commissioners have explored whether it should hire a professional lobbyist. The OPG Commissioners, as volunteer members with part-time/full-time employment outside of their Commission roles, lack the expertise in the legislative arena. The OPG Commission has no staff, except for some administrative support from the Judicial Department under a Memorandum of Understanding and legal services that are provided by the Colorado Attorney General’s Office. *See* § 13-94-104(4), C.R.S. (MOU requirements between OPG Commission and Judicial Department); § 24-31-101(1), C.R.S. (the Attorney General is the legal counsel for all entities of state government, except of the legislative branch). The OPG Commission has less than \$2,000 raised from gifts, grants, or donations, so the ability to hire a professional lobbyist at market rates is impossible.

The OPG Commissioners, thus, request an advisory opinion as to whether it may engage a professional lobbyist on a pro bono basis to assist with the budgetary and legislative efforts as outlined herein.

## ANALYSIS

### **I. Do the provisions of Colo. Const., Art. XXIX, § 3 apply to the Office of Public Guardianship Commission members.**

The IEC has taken the view that there is an absolute ban on a professional lobbyist providing gifts or anything of value to a public officer or government employee. *Position Statement 09-01 (Gifts from Lobbyists and Organizations Represented by Lobbyist*, \*3-4 (Jan. 23, 2009); *see also* Colo. Const. Art. XXIX, § 3(4).<sup>1</sup> This absolute ban applies likewise to entities or organizations that are comprised of public officers or government employees. *Position Statement 09-01* at 6. But receipt of pro bono services from a professional lobbyist by the OPG Commission would not constitute a gift or anything of value to a “public officer” or “government employee,” as those terms are defined in Colo. Const., Art. XXIX, for two reasons.

*First*, the five-member OPG Commissioners are not “public officers,” as that term is defined in Colo. Const. Art. XXIX, § 2(6). That provision defines a “public officer” to include “elected and appointed members of state boards and commissions” but excludes “any member of a board, commission, council, or committee *who receives no compensation* other than a per diem allowance or necessary and reasonable expenses.” (emphasis added). The OPG Commission members serve at the pleasure of their appointing authority until 2021. § 13-94-104(2), C.R.S. (2017).

Although not explicitly stated in statute, the fiscal note assumes that the Commission members do not receive any compensation. **See EXHIBIT 2** at 3. No Commission member has received any reimbursement of out of pocket costs to date, and in fact, some members have provided donations for the work of the OPG Commission. This practice is consistent with the OPG Commission By-Laws, promulgated on January 12, 2018, attached as **EXHIBIT 5**. Those By-Laws indicate that the OPG Commissioners serve without compensation, and may only get reasonable out of pocket expenses, to the extent funding is available. Art. II, § 2.2 of the *By Laws*. Because the OPG Commissioners receive no compensation, they are not “public officers” for purposes of Colo. Const., Art. XXIX, § 2(6). Consequently, any services provided by the professional lobbyist that are pro bono,

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<sup>1</sup> Position Statement 09-01 is available at [https://www.colorado.gov/pacific/sites/default/files/PositionStatement\\_09-01\\_IEC.pdf](https://www.colorado.gov/pacific/sites/default/files/PositionStatement_09-01_IEC.pdf) (last accessed November 27, 2018).

and thus might be considered a gift or anything of value, do not implicate the jurisdiction of the IEC.

*Second*, because there is no Director currently appointed to the OPG Office or any other employees of that Office – as the OPG Commission is requesting appropriations from the General Assembly and a legislative amendment to accomplish this task – there is no “government employee” as defined in Colo. Const., Art. XXIX, § 2(1) who would be the recipient of the pro bono services of the professional lobbyist. Therefore, no “government employee” would be receiving a gift or anything of value from a professional lobbyist for purposes of the IEC jurisdiction.

**II. If the IEC has jurisdiction over the Office of Public Guardianship Commission Members, can the OPG Commission utilize the services of a lobbyist on a pro bono basis for the 2019 session of the General Assembly?**

Assuming the IEC determines that the OPG Commission falls under its jurisdiction, the services at issue here are either not a gift as contemplated by the IEC prohibitions, or not the type of gift meant to be regulated by Colo. Const., Art. XXIX, § 3(4). That provision prohibits a professional lobbyist from providing any gift or thing of value to a public officer or government employee. The IEC has taken a position that “lobbying as education and persuasion fulfills an important function in government, and that the free exchange of information and argument should be encouraged.” *Position Statement 09-01* at 3. But they draw the line to gift-giving activities “that can create conflicts of interest or appearance of impropriety.” *Id.* at 3-4. The pro bono professional lobbyist services contemplated here are consistent with the IEC’s expressed positions for three reasons.

*First*, the pro bono services here are not a gift at all, as they are the very “education and persuasion” function that a lobbyist does on behalf of state agencies all the time. The OPG Commission seeks to have a professional lobbyist assist with amendments to the pilot program to extend the deadlines given the paucity of gifts, grants, or donations received to implement the program. The OPG Commission also seeks a professional lobbyist to educate the General Assembly as to why general appropriations – as opposed to funding through gifts, grants, or donations – is necessary, and the only viable option for operation of a pilot program. If the OPG Commission had general appropriation funding, it could hire or appoint a staff member to act as a legislative liaison, as any other agency in government is entitled to do. *See* § 24-6-303.5, C.R.S. (Certain state officials and agencies may be able to act as lobbyists without having to comply with the registration requirements, or agencies can contract out for such services).

Members of a board or commission that are not compensated except for out of pocket costs may be able to act as lobbyists without registration. § 24-6-303.5(4)(b), C.R.S. But that arguably creates other issues in this context. For example, to the extent the Open Meetings Act applies to the OPG Commission, and two or more Commissioners attend a meeting with a legislator or attend committee meetings at the same time, those meetings would ostensibly need to be noticed, minutes taken, and other formalities of the law adhered to. These considerations are both impractical and unrealistic, where, as here, the OPG Commission has no administrative staff to assume those duties. Similarly, the OPG Commissioners are not experts in the legislative process, and they are all employed full or part-time. Asking volunteer Commissioners who serve without compensation to expend substantial resources of time to be at the Capitol for lobbying efforts from January to May 2019 is also impractical and unrealistic, especially when such duties generally fall to a contract professional lobbyist or legislative liaison.

*Second*, even assuming it is a gift, the pro bono services do not create an appearance of impropriety or conflict of interest. The IEC was created and the prohibitions it enforces were passed by voters to ensure that regulations were in place to prevent public officers and government employers to “gain improper personal financial benefit through their public employment.” *Gessler v. Smith*, 419 P.3d 964, 971 (Colo. 2018). Thus, such prohibitions seek to prevent a professional lobbyist from gifting club level seats to a professional sporting event to a government employee, paying for a meal at a restaurant for a public officer, or as in the *Gessler* case, having a public officer improperly use discretionary state funds for airfare to an event that was for personal and political purposes. *Id.* at 966.

Here on the other hand, the OPG Commissioners are not benefiting personally from or seeking financial gain for the pro bono services of the professional lobbyist. The services provided are simply allowing for a professional lobbyist to assist with legislative amendments and funding requests that would allow the pilot program to move forward. Indeed, the beneficiaries of the pro bono lobbying services would be citizens of Colorado, who are indigent and incapacitated adults, in need of public guardianship services if the pilot program were funded so that it could be implemented.

*Finally*, there is no conflict of interest or appearance of impropriety because the pro bono services of the registered lobbyist would be considered a donation consistent with how all other donors so far have been treated. The services and amount of the donation would be publicly available, and the professional lobbyist would be issued a donation receipt notifying the entity that its donation is tax deductible. Thus, the professional lobbyist would not receive special treatment because or as a result of the pro bono services it would render to the OPG Commission. And if funding is made available from the General Assembly, to the extent the services of a lobbyist are needed beyond this legislative session, the OPG



Commission or Director – once appointed – can either contract for such services of a lobbyist or hire a staff member to act as a legislative liaison. Any contract with a professional lobbyist in the future, to the extent general funding is available, would be done consistent with any fiscal and state contracting requirements.

## CONCLUSION

Based on the foregoing, the IEC should issue an advisory opinion that the OPG Commission members are not “public officers” for purposes of the IEC jurisdiction. Consequently, the prohibitions against a professional lobbyist providing a gift or anything of value, such as pro bono services, to the OPG Commission would be outside the jurisdiction of the IEC. Alternatively, even if the OPG Commissioners are subject to the IEC jurisdiction, the pro bono services of a professional lobbyist in this context as outlined herein is not a gift at all, or are not the type of gift intended to be regulated. The pro bono lobbyist services described herein are consistent with the duties of a professional lobbyist to educate and persuade without the result of a conflict of interest or appearance of impropriety.

On behalf of the OPG Commissioners, I request any expedited consideration that may be directed to this matter given the upcoming legislative session begins in January 2019, and efforts to retain a professional lobbyist on a pro bono basis become less likely as the session commences. Thank you for your time and consideration.

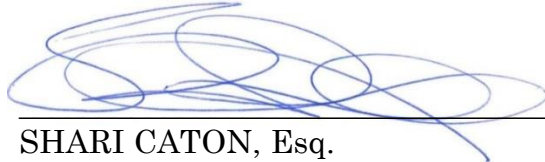
Sincerely,

FOR THE ATTORNEY GENERAL

*s/ Sueanna P. Johnson*

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APPROVED ON BEHALF OF THE OPG COMMISSION:



SHARI CATON, Esq.  
Chair

cc: Shari Caton, Esq., Chair of the OPG Commission  
Dr. Deb Bennett-Woods, Vice-Chair of the OPG Commission  
Marco Chayet, Esq., OPG Commissioner  
Kelsey Lesco, Esq., OPG Commissioner  
Karen Kelley, OPG Commissioner

Enclosures: EXHIBIT 1 – HB 17-1087

EXHIBIT 2 – Fiscal Impact Note for HB 17-1087

EXHIBIT 3 – OPG Commission § 1331 Budget Request with Interim  
Report and Redline of Legislative Amendments

EXHIBIT 4 – OPG Commission Budget Request for FY 19-20

EXHIBIT 5 – OPG Commission By-Laws (Jan. 12, 2018)

Letter from the Office of Public Guardianship Commission  
to the Independent Ethics Commission

## **Exhibit 1**

# An Act

HOUSE BILL 17-1087

BY REPRESENTATIVE(S) Young, Exum, Ginal, Herod, Lee, Lontine, Melton, Pettersen, Salazar, Singer, Coleman, Kennedy, Kraft-Tharp, Duran;  
also SENATOR(S) Lundberg, Aguilar, Court, Gardner, Kefalas, Merrifield, Moreno, Tate, Grantham.

CONCERNING AN OFFICE OF PUBLIC GUARDIANSHIP.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, add article 94 to title 13 as follows:

## **ARTICLE 94** **Office of Public Guardianship**

**13-94-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 94 IS THE "OFFICE OF PUBLIC GUARDIANSHIP ACT".

**13-94-102. Legislative declaration.** (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) DUE TO INCAPACITY, SOME ADULTS IN COLORADO ARE UNABLE TO MEET ESSENTIAL REQUIREMENTS FOR THEIR HEALTH OR PERSONAL CARE;

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(b) PRIVATE GUARDIANSHIP IS NOT AN OPTION FOR SUCH AN ADULT WHEN:

(I) NO RESPONSIBLE FAMILY MEMBERS OR FRIENDS ARE AVAILABLE AND APPROPRIATE TO SERVE AS A GUARDIAN; AND

(II) HE OR SHE LACKS ADEQUATE RESOURCES TO COMPENSATE A PRIVATE GUARDIAN AND PAY THE COSTS ASSOCIATED WITH AN APPOINTMENT PROCEEDING;

(c) VOLUNTEER AND PUBLIC SERVICE PROGRAMS ARE CURRENTLY INADEQUATE TO PROVIDE LEGAL GUARDIANSHIP SERVICES TO INDIGENT AND INCAPACITATED ADULTS IN COLORADO;

(d) COLORADO COURTS STRUGGLE TO ADDRESS THE NEEDS OF INDIGENT AND INCAPACITATED ADULTS WHO LACK THE RESOURCES TO PROVIDE FOR THEIR OWN GUARDIANSHIP NEEDS; AND

(e) WITHOUT A SYSTEM PROVIDING LEGAL GUARDIANSHIP SERVICES TO INDIGENT AND INCAPACITATED ADULTS, THE COURTS ARE LEFT WITH FEW OPTIONS FOR ADDRESSING THESE ADULTS' NEEDS.

(2) IN ESTABLISHING THE OFFICE OF PUBLIC GUARDIANSHIP, THE GENERAL ASSEMBLY INTENDS:

(a) THAT THE OFFICE WILL:

(I) PROVIDE GUARDIANSHIP SERVICES TO INDIGENT AND INCAPACITATED ADULTS WHO:

(A) HAVE NO RESPONSIBLE FAMILY MEMBERS OR FRIENDS WHO ARE AVAILABLE AND APPROPRIATE TO SERVE AS A GUARDIAN;

(B) LACK ADEQUATE RESOURCES TO COMPENSATE A PRIVATE GUARDIAN AND PAY THE COSTS ASSOCIATED WITH AN APPOINTMENT PROCEEDING; AND

(C) ARE NOT SUBJECT TO A PETITION FOR APPOINTMENT OF GUARDIAN FILED BY A COUNTY ADULT PROTECTIVE SERVICES UNIT OR

OTHERWISE AUTHORIZED BY SECTION 26-3.1-104; AND

(II) GATHER DATA TO HELP THE GENERAL ASSEMBLY DETERMINE THE NEED FOR, AND THE FEASIBILITY OF, A STATEWIDE OFFICE OF PUBLIC GUARDIANSHIP; AND

(b) THAT THE OFFICE IS A PILOT PROGRAM, TO BE EVALUATED AND THEN CONTINUED, DISCONTINUED, OR EXPANDED AT THE DISCRETION OF THE GENERAL ASSEMBLY IN 2021.

(3) IN CREATING THE OFFICE OF PUBLIC GUARDIANSHIP, IT IS ALSO THE INTENTION OF THE GENERAL ASSEMBLY TO:

(a) TREAT LIBERTY AND AUTONOMY AS PARAMOUNT VALUES FOR ALL STATE RESIDENTS;

(b) AUTHORIZE PUBLIC GUARDIANSHIP ONLY TO THE EXTENT NECESSARY TO PROVIDE FOR HEALTH OR SAFETY WHEN THE LEGAL CONDITIONS FOR APPOINTMENT OF A GUARDIAN ARE MET;

(c) PERMIT INCAPACITATED ADULTS TO PARTICIPATE AS FULLY AS POSSIBLE IN ALL DECISIONS THAT AFFECT THEM;

(d) ASSIST INCAPACITATED ADULTS TO REGAIN OR DEVELOP THEIR CAPACITIES TO THE MAXIMUM EXTENT POSSIBLE;

(e) PROMOTE THE AVAILABILITY OF GUARDIANSHIP SERVICES FOR ADULTS WHO NEED THEM AND FOR WHOM ADEQUATE SERVICES MAY OTHERWISE BE UNAVAILABLE;

(f) MAINTAIN AND NOT ALTER OR EXPAND JUDICIAL AUTHORITY TO DETERMINE THAT ANY ADULT IS INCAPACITATED; AND

(g) MAINTAIN AND NOT ALTER OR EXPAND ANY AUTHORITY VESTED IN THE STATE DEPARTMENT OF HUMAN SERVICES AND COUNTY DEPARTMENTS OF HUMAN OR SOCIAL SERVICES.

**13-94-103. Definitions.** (1) EXCEPT AS OTHERWISE INDICATED IN THIS SECTION, THE DEFINITIONS SET FORTH IN SECTION 15-14-102 APPLY TO THIS ARTICLE 94.

(2) AS USED IN THIS ARTICLE 94, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COMMISSION" MEANS THE PUBLIC GUARDIANSHIP COMMISSION CREATED PURSUANT TO SECTION 13-94-104.

(b) "DIRECT CARE PROVIDER" MEANS A HEALTH CARE FACILITY, AS DEFINED IN SECTION 15-14-505 (5), OR A HEALTH CARE PROVIDER, AS DEFINED IN SECTION 15-14-505 (6).

(c) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE APPOINTED BY THE COMMISSION PURSUANT TO SECTION 13-94-104.

(d) "GUARDIAN" OR "GUARDIAN-DESIGNEE" MEANS AN INDIVIDUAL EMPLOYED BY THE OFFICE TO PROVIDE GUARDIANSHIP SERVICES ON BEHALF OF THE OFFICE TO ONE OR MORE ADULTS.

(e) "OFFICE" MEANS THE OFFICE OF PUBLIC GUARDIANSHIP CREATED IN SECTION 13-94-104.

(f) "PUBLIC GUARDIANSHIP SERVICES" MEANS THE SERVICES PROVIDED BY A GUARDIAN APPOINTED UNDER THIS ARTICLE 94 WHO IS COMPENSATED BY THE OFFICE.

**13-94-104. Public guardianship commission created - office of public guardianship created - appointment of director - memorandum of understanding.** (1) THE PUBLIC GUARDIANSHIP COMMISSION IS HEREBY CREATED WITHIN THE JUDICIAL DEPARTMENT. THE COMMISSION INCLUDES FIVE MEMBERS, TO BE APPOINTED AS FOLLOWS:

(a) ON OR BEFORE NOVEMBER 1, 2017, THE COLORADO SUPREME COURT SHALL APPOINT THREE MEMBERS, NO MORE THAN ONE OF WHOM IS FROM THE SAME POLITICAL PARTY. TWO OF THE SUPREME COURT'S APPOINTEES MUST BE ATTORNEYS ADMITTED TO PRACTICE LAW IN THIS STATE, AND ONE MUST BE A RESIDENT OF COLORADO NOT ADMITTED TO PRACTICE LAW IN THIS STATE.

(b) ON OR BEFORE NOVEMBER 1, 2017, THE GOVERNOR SHALL APPOINT TWO MEMBERS. ONE OF THE GOVERNOR'S APPOINTEES MUST BE AN ATTORNEY ADMITTED TO PRACTICE LAW IN THIS STATE, AND ONE MUST BE

A RESIDENT OF COLORADO NOT ADMITTED TO PRACTICE LAW IN THIS STATE.

(c) IN MAKING APPOINTMENTS TO THE COMMISSION, THE SUPREME COURT AND THE GOVERNOR SHALL CONSIDER PLACE OF RESIDENCE, SEX, RACE, AND ETHNIC BACKGROUND; AND

(d) NO MEMBER OF THE COMMISSION MAY BE A JUDGE, PROSECUTOR, PUBLIC DEFENDER, OR EMPLOYEE OF A LAW ENFORCEMENT AGENCY DURING HIS OR HER SERVICE ON THE COMMISSION.

(2) EACH MEMBER OF THE COMMISSION SERVES AT THE PLEASURE OF HIS OR HER APPOINTING AUTHORITY, EXCEPT THAT EACH MEMBER'S TERM OF SERVICE CONCLUDES WITH THE REPEAL OF THIS ARTICLE 94 PURSUANT TO SECTION 13-94-111.

(3) NOT MORE THAN ONE MONTH AFTER RECEIVING AT LEAST ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS IN GIFTS, GRANTS, AND DONATIONS TO THE OFFICE OF PUBLIC GUARDIANSHIP CASH FUND CREATED IN SECTION 13-94-108, THE COMMISSION SHALL APPOINT A DIRECTOR TO ESTABLISH, DEVELOP, AND ADMINISTER THE OFFICE OF PUBLIC GUARDIANSHIP, WHICH OFFICE IS HEREBY CREATED WITHIN THE JUDICIAL DEPARTMENT. THE DIRECTOR SERVES AT THE PLEASURE OF THE COMMISSION.

(4) THE OFFICE AND THE JUDICIAL DEPARTMENT SHALL OPERATE PURSUANT TO A MEMORANDUM OF UNDERSTANDING BETWEEN THE TWO ENTITIES. THE MEMORANDUM OF UNDERSTANDING MUST CONTAIN, AT A MINIMUM:

(a) A REQUIREMENT THAT THE OFFICE HAS ITS OWN PERSONNEL RULES;

(b) A REQUIREMENT THAT THE DIRECTOR HAS INDEPENDENT HIRING AND TERMINATION AUTHORITY OVER OFFICE EMPLOYEES;

(c) A REQUIREMENT THAT THE OFFICE MUST FOLLOW JUDICIAL FISCAL RULES; AND

(d) ANY OTHER PROVISIONS REGARDING ADMINISTRATIVE SUPPORT THAT WILL HELP MAINTAIN THE INDEPENDENCE OF THE OFFICE.



**13-94-105. Office of public guardianship - duties - report.**

(1) THE DIRECTOR SHALL ESTABLISH, DEVELOP, AND ADMINISTER THE OFFICE TO SERVE INDIGENT AND INCAPACITATED ADULTS IN NEED OF GUARDIANSHIP IN THE SECOND, SEVENTH, AND SIXTEENTH JUDICIAL DISTRICTS AND SHALL COORDINATE ITS EFFORTS WITH COUNTY DEPARTMENTS OF HUMAN SERVICES AND COUNTY DEPARTMENTS OF SOCIAL SERVICES WITHIN THOSE DISTRICTS. NOT MORE THAN FIVE MONTHS AFTER RECEIVING AT LEAST ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS IN GIFTS, GRANTS, AND DONATIONS TO THE OFFICE OF PUBLIC GUARDIANSHIP CASH FUND CREATED IN SECTION 13-94-108, THE DIRECTOR SHALL ADMINISTER THE OFFICE IN ACCORDANCE WITH THE MEMORANDUM OF UNDERSTANDING DESCRIBED IN SECTION 13-94-104 (4).

(2) IN ADDITION TO CARRYING OUT ANY DUTIES ASSIGNED BY THE COMMISSION, THE DIRECTOR SHALL ENSURE THAT THE OFFICE PROVIDES, AT A MINIMUM, THE FOLLOWING SERVICES TO THE DESIGNATED JUDICIAL DISTRICTS:

(a) A REVIEW OF REFERRALS TO THE OFFICE;

(b) ADOPTION OF ELIGIBILITY CRITERIA AND PRIORITIZATION TO ENABLE THE OFFICE TO SERVE INDIVIDUALS WITH THE GREATEST NEEDS WHEN THE NUMBER OF CASES IN WHICH SERVICES HAVE BEEN REQUESTED EXCEEDS THE NUMBER OF CASES IN WHICH PUBLIC GUARDIANSHIP SERVICES CAN BE PROVIDED;

(c) APPOINTMENT AND POST-APPOINTMENT PUBLIC GUARDIANSHIP SERVICES OF A GUARDIAN-DESIGNEE FOR EACH INDIGENT AND INCAPACITATED ADULT IN NEED OF PUBLIC GUARDIANSHIP;

(d) SUPPORT FOR MODIFICATION OR TERMINATION OF PUBLIC GUARDIANSHIP SERVICES;

(e) RECRUITMENT, TRAINING, AND OVERSIGHT OF GUARDIAN-DESIGNEES;

(f) DEVELOPMENT OF A PROCESS FOR RECEIPT AND CONSIDERATION OF, AND RESPONSE TO, COMPLAINTS AGAINST THE OFFICE, TO INCLUDE INVESTIGATION IN CASES IN WHICH INVESTIGATION APPEARS WARRANTED IN THE JUDGMENT OF THE DIRECTOR;

(g) IMPLEMENTATION AND MAINTENANCE OF A PUBLIC GUARDIANSHIP DATA MANAGEMENT SYSTEM;

(h) OFFICE MANAGEMENT, FINANCIAL PLANNING, AND BUDGETING FOR THE OFFICE TO ENSURE COMPLIANCE WITH THIS ARTICLE 94;

(i) IDENTIFICATION AND ESTABLISHMENT OF RELATIONSHIPS WITH STAKEHOLDER AGENCIES, NONPROFIT ORGANIZATIONS, COMPANIES, INDIVIDUAL CARE MANAGERS, AND DIRECT-CARE PROVIDERS TO PROVIDE SERVICES WITHIN THE FINANCIAL CONSTRAINTS ESTABLISHED FOR THE OFFICE;

(j) IDENTIFICATION AND ESTABLISHMENT OF RELATIONSHIPS WITH LOCAL, STATE, AND FEDERAL GOVERNMENTAL AGENCIES SO THAT GUARDIANS AND GUARDIAN-DESIGNEES MAY APPLY FOR PUBLIC BENEFITS ON BEHALF OF WARDS TO OBTAIN FUNDING AND SERVICE SUPPORT, IF NEEDED; AND

(k) PUBLIC EDUCATION AND OUTREACH REGARDING THE ROLE OF THE OFFICE AND GUARDIAN-DESIGNEES.

(3) THE DIRECTOR SHALL ADOPT PROFESSIONAL STANDARDS OF PRACTICE AND A CODE OF ETHICS FOR GUARDIANS AND GUARDIAN-DESIGNEES, INCLUDING A POLICY CONCERNING CONFLICTS OF INTEREST.

(4) ON OR BEFORE JANUARY 1, 2021, THE DIRECTOR SHALL SUBMIT TO THE JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR TO ANY SUCCESSOR COMMITTEES, A REPORT CONCERNING THE ACTIVITIES OF THE OFFICE. THE REPORT, AT A MINIMUM, MUST:

(a) QUANTIFY, TO THE EXTENT POSSIBLE, COLORADO'S UNMET NEED FOR PUBLIC GUARDIANSHIP SERVICES FOR INDIGENT AND INCAPACITATED ADULTS;

(b) QUANTIFY, TO THE EXTENT POSSIBLE, THE AVERAGE ANNUAL COST OF PROVIDING GUARDIANSHIP SERVICES TO INDIGENT AND INCAPACITATED ADULTS;

(c) QUANTIFY, TO THE EXTENT POSSIBLE, THE NET COST OR BENEFIT, IF ANY, TO THE STATE THAT MAY RESULT FROM THE PROVISION OF GUARDIANSHIP SERVICES TO EACH INDIGENT AND INCAPACITATED ADULT IN EACH JUDICIAL DISTRICT OF THE STATE;

(d) IDENTIFY ANY NOTABLE EFFICIENCIES AND OBSTACLES THAT THE OFFICE INCURRED IN PROVIDING PUBLIC GUARDIANSHIP SERVICES PURSUANT TO THIS ARTICLE 94;

(e) ASSESS WHETHER AN INDEPENDENT STATEWIDE OFFICE OF PUBLIC GUARDIANSHIP OR A NONPROFIT AGENCY IS PREFERABLE AND FEASIBLE;

(f) ANALYZE COSTS AND OFF-SETTING SAVINGS TO THE STATE FROM THE DELIVERY OF PUBLIC GUARDIANSHIP SERVICES;

(g) PROVIDE UNIFORM AND CONSISTENT DATA ELEMENTS REGARDING SERVICE DELIVERY IN AN AGGREGATE FORMAT THAT DOES NOT INCLUDE ANY PERSONAL IDENTIFYING INFORMATION OF ANY ADULT; AND

(h) ASSESS FUNDING MODELS AND VIABLE FUNDING SOURCES FOR AN INDEPENDENT OFFICE OF PUBLIC GUARDIANSHIP OR A NONPROFIT AGENCY, INCLUDING THE POSSIBILITY OF FUNDING WITH A STATEWIDE INCREASE IN PROBATE COURT FILING FEES.

(5) IN ADDITION TO PERFORMING THE DUTIES DESCRIBED IN THIS SECTION, THE DIRECTOR, IN CONSULTATION WITH THE COMMISSION, SHALL DEVELOP A STRATEGY FOR THE DISCONTINUATION OF THE OFFICE IN THE EVENT THAT THE GENERAL ASSEMBLY DECLINES TO CONTINUE OR EXPAND THE OFFICE AFTER 2021. THE STRATEGY MUST INCLUDE CONSIDERATION OF HOW TO MEET THE GUARDIANSHIP NEEDS OF ADULTS WHO WILL NO LONGER BE ABLE TO RECEIVE GUARDIANSHIP SERVICES FROM THE OFFICE.

**13-94-106. Waiver of court costs and filing fees.** THE COURT SHALL WAIVE COURT COSTS AND FILING FEES IN ANY PROCEEDING IN WHICH AN INDIGENT AND INCAPACITATED ADULT IS RECEIVING PUBLIC GUARDIANSHIP SERVICES FROM THE OFFICE.

**13-94-107. Director shall develop rules.** (1) THE DIRECTOR SHALL DEVELOP RULES TO IMPLEMENT THIS ARTICLE 94. THE RULES, AT A

MINIMUM, MUST INCLUDE POLICIES CONCERNING:

(a) CONFLICTS OF INTEREST FOR GUARDIANS AND GUARDIAN-DESIGNEES EMPLOYED PURSUANT TO THIS ARTICLE 94; AND

(b) THE SOLICITATION AND ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS PURSUANT TO SECTION 13-94-108 (3).

**13-94-108. Office of public guardianship cash fund - created.**

(1) THE OFFICE OF PUBLIC GUARDIANSHIP CASH FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF ANY MONEY THAT THE OFFICE RECEIVES FROM GIFTS, GRANTS, OR DONATIONS, AS WELL AS ANY OTHER MONEY APPROPRIATED TO THE FUND BY THE GENERAL ASSEMBLY.

(2) THE MONEY IN THE FUND IS ANNUALLY APPROPRIATED TO THE JUDICIAL DEPARTMENT TO PAY THE EXPENSES OF THE OFFICE. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEY IN THE FUND IS CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEY REMAINING IN THE FUND AT THE END OF A FISCAL YEAR MUST REMAIN IN THE FUND AND NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND; EXCEPT THAT ANY MONEY REMAINING IN THE FUND ON JUNE 30, 2021, SHALL BE TRANSFERRED TO THE GENERAL FUND.

(3) THE OFFICE MAY SEEK AND ACCEPT GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS ARTICLE 94; EXCEPT THAT THE OFFICE MAY NOT ACCEPT A GIFT, GRANT, OR DONATION THAT IS SUBJECT TO CONDITIONS THAT ARE INCONSISTENT WITH THIS ARTICLE 94 OR ANY OTHER LAW OF THE STATE. THE OFFICE SHALL TRANSMIT ALL PRIVATE AND PUBLIC MONEY RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

**13-94-109. No entitlement created.** PUBLIC GUARDIANSHIP SERVICES ARE DEPENDENT UPON THE AVAILABILITY OF FUNDING, AND NOTHING IN THIS ARTICLE 94 CREATES AN ENTITLEMENT.

**13-94-110. Immunity.** AS AN AGENCY OF THE JUDICIAL DEPARTMENT, THE OFFICE IS A PUBLIC ENTITY, AS DEFINED IN SECTION

24-10-103 (5), FOR THE PURPOSES OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24.

**13-94-111. Repeal.** THIS ARTICLE 94 IS REPEALED, EFFECTIVE JUNE 30, 2021. PRIOR TO SUCH REPEAL, THE GENERAL ASSEMBLY, AFTER REVIEWING THE REPORT SUBMITTED BY THE DIRECTOR PURSUANT TO SECTION 13-94-105 (4), SHALL CONSIDER WHETHER TO ENACT LEGISLATION TO CONTINUE, DISCONTINUE, OR EXPAND THE OFFICE.

**SECTION 2. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



Crisanta Duran  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES



Kevin J. Grantham  
PRESIDENT OF  
THE SENATE



Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

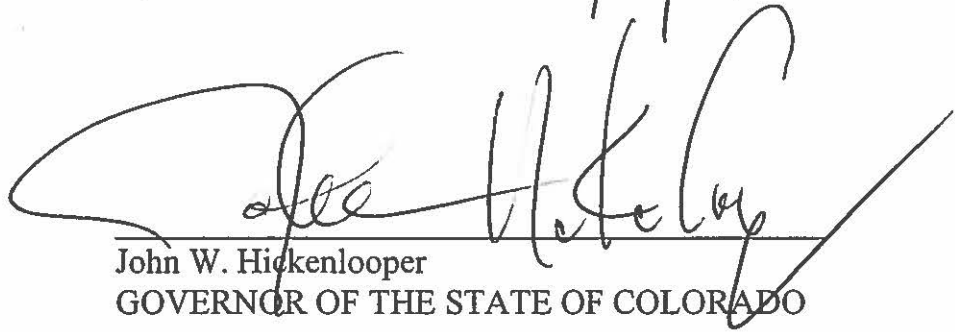


Effie Ameen  
SECRETARY OF  
THE SENATE

APPROVED

2:44 PM

6/5/17



John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO

Letter from the Office of Public Guardianship Commission  
to the Independent Ethics Commission

## **Exhibit 2**



Colorado  
Legislative  
Council  
Staff

HB17-1087

REVISED  
FISCAL NOTE

(replaces fiscal note dated January 31, 2017)

**FISCAL IMPACT:** ☒ State ☒ Local ☐ Statutory Public Entity ☒ Conditional ☐ No Fiscal Impact

**Drafting Number:** LLS 17-0198  
**Prime Sponsor(s):** Rep. Young  
Sen. Lundberg

**Date:** March 1, 2017  
**Bill Status:** House Appropriations  
**Fiscal Analyst:** Amanda Hayden (303-866-4918)

**BILL TOPIC:** OFFICE OF PUBLIC GUARDIANSHIP PILOT PROGRAM

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019	FY 2019-2020
State Revenue	See State Revenue section.		
State Expenditures		<u>\$1,635,730</u>	<u>\$1,644,820</u>
General Fund	Workload increase.	107,176	107,176
Cash Funds		1,528,554	1,537,644
FTE Position Change		10.0 FTE	14.0 FTE
TABOR Impact	See TABOR Impact section.		
Appropriation Required: None.			
Future Year Impacts: Conditional ongoing state expenditures increase through FY 2020-21.			

### Summary of Legislation

This bill, ***as amended by the House Judiciary Committee***, creates a pilot program in the Judicial Department to provide legal guardianship services for incapacitated and indigent adults in the 2nd, 7th, and 16th judicial districts, conditional upon the receipt of sufficient gifts, grants, or donations. To administer the program, the bill creates a five-member Public Guardianship Commission, with three members appointed by the Colorado Supreme Court and two by the Governor before November 1, 2017.

**Office of Public Guardianship.** Not more than one month after receiving at least \$1.7 million in gifts, grants, or donations, the Commission must appoint a director to establish, develop, and administer the Office of Public Guardianship (Office), to provide legal guardianship services to indigent and incapacitated adults with no family or friends available and appropriate to serve as the guardian, and who lack the resources to compensate a private guardian. The director must develop rules to implement the pilot program, including policies regarding conflicts of interests for guardians and the solicitation of funds. The Office must operate as an independent program of the Judicial Department, developing its own personnel rules but following judicial fiscal rules. The Office is required to coordinate its efforts with county departments of human and social services in providing guardianship services. Not more than five months after receiving at least \$1.7 million in gifts, grants, or donations, it must provide the following services:

- a review of referrals;
- eligibility criteria and prioritization to ensure it serves the individuals with the greatest needs;



- appointment and post-appointment public guardianship services of a guardian-designee for each incapacitated and indigent adult in need, including the recruitment, training, and oversight of guardian-designees;
- support for modification or termination of public guardianship services;
- development of a process for receiving, considering, and responding to complaints against the Office, including investigation when necessary;
- implementation of a data management system;
- office management, financial planning, and budgeting;
- identification and establishment of relationships with stakeholder agencies, nonprofit organizations, companies, individual care managers, and direct-care providers to provide services within the financial constraints established for the office;
- identification and establishment of relationships with local, state, and federal agencies so that guardians and guardian-designees may apply for public benefits on behalf of their clients; and
- public education and outreach regarding the role of the Office.

Courts must waive costs and filing fees in any proceeding in which an adult is receiving public guardianship services from the Office.

**Repeal of program.** On or before January 1, 2021, the director of the Office must submit a report to the General Assembly describing the unmet need for services, costs, benefits, efficiencies, obstacles, and other analysis. The director must also develop a strategy for the discontinuation of the Office in the event that the General Assembly chooses not to continue or expand it. Without such a decision by the General Assembly, the pilot program repeals June 30, 2021.

**Office of Public Guardianship Cash Fund.** The bill creates the Office of Public Guardianship Cash Fund. It is authorized to accept gifts, grants, and donations. The money in the fund is annually appropriated to Judicial Department to pay the expenses of the Office.

## **Background**

The Elder Abuse Task Force, created by Senate Bill 12-078, recommended further study of the need for public guardianship services in Colorado. As a result, the Public Guardianship Advisory Committee was formed to study the issue. The Advisory Committee submitted its recommendations for a pilot program in a report to the Chief Justice of the Colorado Supreme Court on July 31, 2014.

Public guardianship proceedings determine when an incapacitated and indigent adult requires assistance managing his or her affairs. Individuals employed or appointed by the court manage different aspects of the proceedings, as described below.

**Court visitors.** Current law requires the appointment of a court visitor in every proceeding for public guardianship. Court visitors provide investigative services for the court. They interview the respondent and other involved parties to make recommendations about the appropriateness of a guardianship.

**Guardians ad litem (GALs).** GALs are court-appointed representatives who defend or protect the interests of a person under legal disability. At any stage of a proceeding, a court may appoint a GAL if the court determines that one is necessary to protect a respondent's interests.

***Legal counsel.*** The court may also appoint legal counsel to represent an indigent respondent's legal interests at the request of the respondent, when recommended by the court visitor, or at the discretion of the court.

***Public guardians.*** Public guardians are appointed to help a person manage his or her affairs outside of court. For example, they may help a person pay bills or properly take medication. Public guardians are charged by law with making decisions about a person's support, care, education, health, and welfare.

## **Assumptions**

The estimated program costs in the fiscal note assume sufficient revenue is received in FY 2018-19. The actual start date may differ if gifts, grants, or donations are received in a later year. In order to have time to implement the pilot program, funding must be received no later than FY 2019-20. Otherwise, it is assumed the pilot program will not be implemented.

## **State Revenue**

The bill may increase revenue from gifts, grants, and donations to the Judicial Department, credited to the Office of Public Guardianship Cash Fund. As of this writing, no source of gifts, grants, or donations has been identified. The bill may also reduce cash fund revenue from filing fees not charged for proceedings handled by the Office. Any decrease in revenue is expected to be minimal.

## **TABOR Impact**

This bill may reduce state cash fund revenue from fees, which may reduce the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill reduces the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will increase by an identical amount. Gifts, grants, or donations received to operate the program do not contribute to the TABOR revenue cap.

## **State Expenditures**

This bill may increase workload and expenditures in the Judicial Department, conditional upon the Office receiving at least \$1.7 million in gifts, grants, or donations.

***Judicial Department.*** In FY 2017-18, the bill may increase workload in the Judicial Department for the appointed members of the Commission to hire an executive director for the Office. The fiscal note assumes the Commission members serve without compensation. Beginning in FY 2018-19, the bill may increase General Fund expenditures by \$107,176 each year and cash fund expenditures by \$1,528,554 and 10.0 FTE in FY 2018-19 and by \$1,537,644 and 14.0 FTE in FY 2019-20 in the Judicial Department to launch the pilot program for public guardianship services. These costs are shown in Table 1.

Table 1. Expenditures Under HB17-1087			
Cost Components	FY 2017-18	FY 2018-19	FY 2019-20
Personal Services		\$916,798	\$1,229,814
FTE		10.0 FTE	14.0 FTE
Operating Expenses and Capital Outlay Costs		376,387	13,300
Guardians ad Litem		30,780	30,780
Court Visitors		43,600	43,600
Court-appointed Counsel		32,796	32,796
Centrally Appropriated Costs*		235,369	294,530
<b>TOTAL</b>		<b>\$1,635,730</b>	<b>\$1,644,820</b>

\* Centrally appropriated costs are not included in the bill's appropriation. Based on the conditions set by the bill, the fiscal note assumes these expenditures would be paid from cash funds.

**Assumptions.** The bill directs the pilot program to provide public guardianship services in the 2nd, 7th, and 16th judicial districts not more than five months after receiving at least \$1.7 million in gifts, grants, or donations. The fiscal note assumes that the Office will serve approximately 200 clients per year and will hire 10 public guardians to manage 20 cases each. Based on data from FY 2015-16, approximately 9 percent of cases will require a guardian ad litem and 18 percent will require state-appointed counsel. By law, all public guardianship proceedings must include a court visitor.

**Personal services.** The fiscal note assumes the executive director of the Office will begin July 1, 2018. The Executive Director will be responsible for hiring staff, implementing a data management system, developing policies and procedures, and coordinating public guardianship services. The fiscal note assumes that the pilot program will require one staff assistant (to start July 1, 2018), one staff attorney, one controller, and ten public guardians, all to begin on October 1, 2018.

**Operating expenses and capital outlay.** Standard operating expenses and capital outlay costs are included for the staff listed above, except that FY 2018-19 costs include \$300,000 for the purchase of a data management system.

**Guardians ad Litem (GALs), court visitors, and court-appointed counsel.** Based on the assumptions noted above, the fiscal note assumes that a GAL will be appointed at an average cost of \$1,710 per appointment in 18 cases, an attorney will be appointed at an average cost of \$911 per appointment in 36 cases, and a court visitor will be appointed at an average cost of \$218 per appointment in all 200 cases per year that the Office will handle during its pilot phase. The estimated \$107,176 for these appointments are General Fund expenditures in the Judicial Department and will be covered by the Office of Public Guardianship Cash Fund.

**Trial courts.** Beginning in FY 2018-19, workload for trial courts may increase to hear new public guardianship cases filed by the Office. The fiscal note assumes that the increase in filings does not require any increase in appropriations for the Judicial Department.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational

purposes and summarized in Table 2. The fiscal note assumes that if the conditions of the bill are met, these costs will be paid from the Office of Public Guardianship Cash Fund. Should the Office require additional funds in the future for leased space, the fiscal note assumes it will request them through the annual budget process.

<b>Table 2. Centrally Appropriated Costs Under HB17-1087</b>			
<b>Cost Components</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)		\$84,181	\$117,762
Supplemental Employee Retirement Payments		82,150	110,198
Indirect Costs		69,038	66,570
<b>TOTAL</b>		<b>\$235,369</b>	<b>\$294,530</b>

### **Local Government Impact**

If the Judicial Department receives \$1.7 million in gifts, grants, or donations, this bill may reduce costs and workload for county departments of human or social services in the judicial districts where the pilot program will operate if the Office takes on public guardianship cases that would have otherwise been handled by these county departments. Costs for individual cases and across counties vary; the fiscal note has not estimated the precise impact to local governments.

### **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

### **State and Local Government Contacts**

Counties  
Judicial

Human Services  
Treasury

Information Technology

Letter from the Office of Public Guardianship Commission  
to the Independent Ethics Commission

## **Exhibit 3**

# COLORADO OFFICE OF PUBLIC GUARDIANSHIP

Shari Caton  
Commission Chair

*FY 2018-19 Funding Request  
December 31st, 2018*

**Department Priority: #1 - Supplemental/Budget Amendment  
Request Title: Funding the Office of Public Guardianship**

Office of Public Guardianship	Fund	Actual FY18	Approp FY19	YTD Exp 11/30/13	FY19 Supplemental Request	FY19 Revised Need	FY20 Nov 1st Request	FY20 Budget Amendment	FY20 Revised Request
<b>Total All Line Items</b>	Total	\$66	\$1,718,786	\$0	\$565,469	\$2,284,255	\$1,748,786	\$0	\$1,748,786
	FTE	-	14.0	-	-	14.0	14.0	-	14.0
	GF	-	-	-	565,469	565,469	-	1,748,786	1,748,786
	CF	66	1,718,786	-	-	1,718,786	1,748,786	(1,748,786)	-
	RF	-	-	-	-	-	-	-	-
	FF	-	-	-	-	-	-	-	-
<b>(11) Office of Public Guardianship</b>	Total	66	1,718,786	-	565,469	2,284,255	1,748,786	-	1,748,786
	FTE	-	14.0	-	-	14.0	14.0	-	14.0
	GF	-	-	-	565,469	565,469	-	1,748,786	1,748,786
	CF	66	1,718,786	-	-	1,718,786	1,748,786	(1,748,786)	-
	RF	-	-	-	-	-	-	-	-
	FF	-	-	-	-	-	-	-	-

## Request Summary:

This request seeks \$565,469 General Fund to provide funding to establish the Office of Public Guardianship (Office) in FY19 and \$1,748,786 General Fund in FY20 to fulfill the requirements of the enabling legislation HB 17-1087. Thus far, Commission has been unable to raise the \$1.7 million from gifts grants or donations as required by the legislation. Only approximately \$2,000 has been raised to date, and the only viable means of funding this Office is through a General Fund appropriation. This request seeks funding to establish the Office with a Director, staff assistant, and other personnel so that public guardians could be in place by July 1, 2019, and begin work in three judicial districts per HB 17-1087.

## Background:

HB 17-1087 creates a pilot program housed within the Judicial Department to provide legal guardianship services for incapacitated and indigent adults in the Second, Seventh, and Sixteenth judicial districts, conditional upon the receipt of sufficient gifts, grants, or donations. To administer the program, the bill creates a five-member Public Guardianship Commission, which was appointed in October 2017.

The legislation states that not more than one month after receiving at least \$1.7 million in gifts, grants, or donations, the Commission must appoint a director to establish, develop, and administer the Office, to provide legal guardianship services to indigent and incapacitated adults with no family or friends available and appropriate to serve as the guardian, and who lack the resources to compensate a private guardian. The Office must

operate as an independent program of the Judicial Department, developing its own personnel rules but following Judicial fiscal rules.

The Office is required to coordinate its efforts with county departments of human and social services in providing guardianship services. Not more than five months after receiving at least \$1.7 million in gifts, grants, or donations, it must provide the following services:

- A review of referrals;
- Eligibility criteria and prioritization to ensure it serves the individuals with the greatest needs;
- Appointment and post-appointment public guardianship services of a guardian-designee for each incapacitated and indigent adult in need, including the recruitment, training, and oversight of guardian-designees;
- Support for modification or termination of public guardianship services;
- Development of a process for receiving, considering, and responding to complaints against the Office, including investigation when necessary;
- Implementation of a data management system;
- Office management, financial planning, and budgeting;
- Identification and establishment of relationships with stakeholder agencies, nonprofit organizations, companies, individual care managers, and direct-care providers to provide services within the financial constraints established for the office;
- Identification and establishment of relationships with local, state, and federal agencies so that guardians and guardian-designees may apply for public benefits on behalf of their clients;
- Public education and outreach regarding the role of the Office

On or before January 1, 2021, the director of the Office must submit a report to the General Assembly describing the unmet need for services, costs, benefits, efficiencies, obstacles, and other analysis. The director must also develop a strategy for the discontinuation of the Office in the event that the General Assembly chooses not to continue or expand it. Without such a decision by the General Assembly, the pilot program repeals June 30, 2021.

Thus far, the Office has only been able to raise \$1,943.00. The Interim Report from the Commission, attached as EXHIBIT A, details the community outreach and fundraising efforts by the members and highlights the challenges and obstacles they face from the private and nonprofit sectors to obtain funds to begin implementation of the pilot program. In short, while potential donors are fully supportive of the Office and its mission, Commission members have encountered a near universal belief among founding sources that the services provided by this Office should be publicly funded. Consequently, while the Commission members continue to seek funding from gifts, grants or donations, there is a real possibility that without general appropriations, the pilot program will not be able to be implemented pursuant to HB 17-1087.

### **Anticipated Outcomes:**

Anticipated donations to fund this office have not materialized, and it is apparent that without state funding, this Office will not be able to fulfill its statutory obligations. This request for \$565,469 General Fund in FY19 and \$1,748,786 General Fund in FY20 will provide funding for the Office. In FY19, the funds will

pay the salary of an Executive Director, Controller and Staff Assistant beginning March 1, 2019 which will enable them to lease space, develop a case management system, and establish office procedures so that public guardians can be hired July 1, 2019.

**Assumptions for Calculations:**

- That the Office of Public Guardianship is unable to raise the necessary gifts, grants and donations to fund this program
- That this request is for funding three positions beginning March 1, 2019 for the balance of the fiscal year: Executive Director; Controller; and Staff Assistant
- That operating, and capital outlay is calculated based on common policy standards per FTE
- That these three positions are necessary to get the Office of Public Guardianship operational. This includes lease space \$77,828; case management system \$300,000 and other requirements necessary to have the Office fully operational by July 1, 2019.
- That an IT consultant will be hired (\$60,000) to assist with implementation of the Case Management system and other IT needs
- That the 10.0 Public Guardians would be hired July 1, 2019
- That this request includes funding for H/L/D; STD; AED; SAED
- That funding for FY20 is based on the fiscal note published by legislative council for HB17-1087



<b>Public Guardian Staff FY2019</b>				
	Exec	Staff	Controller/	<b>Total</b>
	Director	Assistant	Budget	
FTE	1.00	1.00	1.00	3.00
Mo Salary	\$10,645	\$4,447	\$9,396	
No. of Months	4	3	3	
Annual Salary	42,580	13,341	28,188	84,109
PERA (10.15%)	4,322	1,354	2,861	8,537
Medicare (1.45%)	617	193	409	1,220
<b>TOTAL PS</b>	<b>47,519</b>	<b>14,889</b>	<b>31,458</b>	<b>93,866</b>
Operating	950	950	950	2,850
Case Mgt System				300,000
IT Consultant				60,000
Lease Space				77,828
Capital Outlay	4,703	4,703	4,703	14,109
<b>Subtotal</b>				<b>\$548,653</b>
Benefits (Non-Add)				
Health/Life/Dental	2,754	2,754	2,754	8,262
Short-Term Disability	72	23	48	143
AED/SAED	4,258	1,334	2,819	8,411
Total Benefits	7,084	4,111	5,621	<b>\$16,816</b>
<b>Total Cost</b>				<b>\$565,469</b>

### **Consequences if Not Funded:**

The Commission was appointed in October of 2017, and to date, have received less than \$2,000 in donations to the Office of Public Guardianship Cash Fund. HB 17-1087 requires that a minimum of \$1.7 million be donated before a Director can be hired by the Commission. It is apparent that without State funding of this program, it will be unable to fulfill the intent of legislation to serve indigent and incapacitated adults in need of guardianship in the Second, Seventh and Sixteenth Judicial Districts.

### **Impact to Other State Government Agencies:**

N/A

### **Cash Fund Projections:**

\$2,000.00

**Current Statutory Authority or Needed Statutory Change:**

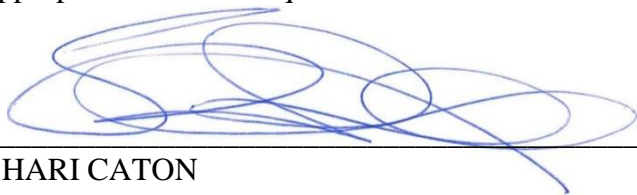
HB 17-1087 – C.R.S. 13-94-101 thru 13-94-111

Although the legislation envisioned the receipt of gifts, grants and donations sufficient to fund the Office, the legislation does not prohibit the receipt of general funding. The Commission anticipates that minor legislative fixes are needed to extend the period of the pilot program in consideration of the delay in the program's implementation. The Commission also anticipates a legislative amendment that provides for a wind-down period of the pilot program, to the extent the program is not extended or made permanent, of at least one year. This wind-down period would allow the Executive Director to find suitable replacement guardians for the incapacitated and indigent adults and file the necessary papers with the court to obtain adequate and appropriate resolution.

The Commission has provided a redline of the minor proposed legislative amendments to this budget submission, as EXHIBIT B, but would anticipate legislative drafting is needed for appropriate language for the wind-down provision, discussed above.

**Supplemental, 1331 Supplemental or Budget Amendment Criteria:**

This request meets supplemental/budget amendment criteria as data that was not available at the time of appropriation. This request fulfills that criteria.



Chair, The Public Guardian Commission

SHARI CATON

11-14-2018

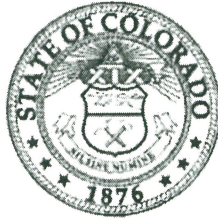
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Date

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## Colorado Office of Public Guardianship

### Commissioners

Shari Caton, Chair  
Deb Bennett Woods, Vice Chair  
Marco Chayet  
Kelsey Lesco  
Karen Kelley



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### INTERIM REPORT OF THE OFFICE OF PUBLIC GUARDIANSHIP COMMISSION

September 7, 2018

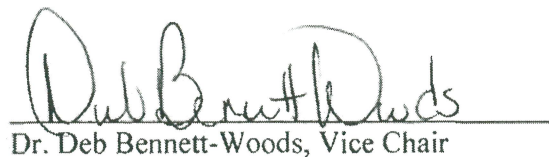
**To: Members of the Joint Judiciary Committee and  
Members of the Joint Budget Committee**

Submitted herewith is an Interim Report of the Office of Public Guardianship Commission that is intended to apprise the Judiciary and Joint Budget Committees of Commission activities and challenges since appointment in October 2017.



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Shari D. Caton, Esq. Chair



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Dr. Deb Bennett-Woods, Vice Chair



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Marco Chayet, Esq., Commissioner



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Karen Kelley, Commissioner



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Kelsey Lesco, Esq., Commissioner

EXHIBIT

A

## EXECUTIVE SUMMARY

This interim report is submitted to the General Assembly for the following purposes: (1) to provide information about the Office of Public Guardianship Commission's activities from October 2017 to present; (2) to highlight the challenges and inability to obtain funding as contemplated by the enabling legislation to implement the pilot program established by HB17-1087; (3) to request general appropriation funding for the current fiscal year to begin implementation of the pilot program; and (4) to recommend that given the funding challenges, that general appropriation funding be provided for the remainder of the pilot program.

In 2017, the General Assembly determined that there was a need for public guardianship services for certain indigent and incapacitated adults. This need was based on intensive review by committees and task forces charged with looking at the issues surrounding guardianship. As a result, the General Assembly passed HB17-1087 that was signed by Governor Hickenlooper in June 2017 to establish the Office of Public Guardianship Pilot Program ("Office"). The enabling legislation for the pilot program contemplates funding for the Office through the receipt of gifts, grants, and donations. The five-member Office of Public Guardianship Commission ("Commission"), established as part of the enabling legislation, is charged with raising at least \$1.7 million from gifts, grants or donations for appointment of the Director to oversee the Office. The Director, in turn, is charged with hiring the necessary public guardians and other staff for the Office to provide guardianship services in three target judicial districts to indigent and incapacitated adults. Additional fundraising would be necessary by the Director and Commission members from the receipt of gifts, grants, and donations to maintain the pilot program through 2021.

As of August 2018, after extensive fundraising efforts and community outreach by the Commission members, the Office has raised only \$1,943.00 of the \$1.7 million initial target amount. The funding sources contacted by the Commission generally support the concept of public guardianship services, but believe such services should be publicly funded. Other fundraising challenges include, but are not limited to, the lack of professional grant or fundraising expertise and the failure to meet criteria for specific grant or nonprofit programs. The pilot program's implementation is already delayed from the timetable contemplated by the enabling legislation and fiscal note due to lack of funding from gifts, grants, and donations. Without the receipt of general appropriations, it is unlikely the Commission will raise the necessary funds to implement the public guardianship pilot program. Thus, a general appropriation request for the current fiscal year and future general appropriations are recommended for the remainder of the pilot program.

## **I. BACKGROUND PRECEEDING HB17-1087**

Colorado courts and legal experts in the areas of probate and guardianship have extensively studied and analyzed the need in our state for public guardianship services. This extensive review resulted in the issuance of three reports, including the Final Report of the Elder Abuse Task Force (2013) and two reports by the Office of Public Guardianship Advisory Committee (2014). The need for public guardianship services nationwide is established and the scope of the need only increases. As of 2018, at least 45 states have statutory provisions for public guardianship services, with the majority of those programs employing the model of a state-funded office serving the entire state. This is a 10-state increase from just 2016, when the American Bar Association reported 35 states having statutory provisions offering public guardianship services.<sup>1</sup>

Based on the experience of other state programs, it is anticipated that Colorado will realize cost/benefit savings in areas including Medicaid, Adult Protective Services, and law enforcement. As a result of these expert reports, legislation was passed by the Colorado General Assembly in 2017 – HB17-1087 – establishing a public guardianship pilot program. While the legislation authorized for a Commission and Office to begin providing public guardianship services in three target judicial districts, funding to implement the pilot program and begin providing services currently depends solely on the receipt of gifts, grants, or donations.

## **II. OVERVIEW OF HB17-1087**

On June 5, 2017, Governor Hickenlooper signed HB17-1087, creating the Office of Public Guardianship Pilot Program. This Office, once funded, will provide guardianship services to indigent and incapacitated adults who meet at least two criteria:

- The adults have no responsible family members or friends who are available and appropriate to serve as a guardian; and
- The adults lack adequate resources to compensate a private guardian and pay the costs and fees associated with an appointment proceeding.

The pilot will provide guardianship services for incapacitated and indigent adults in the Second, Seventh, and Sixteenth Judicial Districts. At the end of the three-year pilot, the Office will also issue a report to the legislature quantifying Colorado's unmet need for public guardianship services and the average annual cost of providing these services to Coloradoans. The Office's report will also include the net cost or benefit to the state that may result from providing these needed services. Ultimately, the Office will assess whether an independent statewide office of public guardianship is needed.

In order to implement the pilot, \$1.7 million in gifts, grants and donations must be raised. The Commission, despite best efforts, has been unable to secure the funds necessary to carry out its

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<sup>1</sup> The ABA Chart listing the states with public guardianship statutes as of 2016 is available at [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/CHARTStatePublicGuardianshipStatutes.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/CHARTStatePublicGuardianshipStatutes.authcheckdam.pdf) (last accessed September 4, 2018)

charge. As a result, the Commission submits this *Interim Report* with a budget request to advise the General Assembly as to the Commission's administrative activities, fundraising activities, and funding challenges. The Commission seeks general appropriations to establish and fully fund the Office of Public Guardianship Pilot Program.

### **III. FUNDRAISING REQUIRED TO APPOINT DIRECTOR**

The Commission was created pursuant to § 13-94-104(1), C.R.S. As required by statute, the Colorado Supreme Court appointed three Commissioners and the Governor appointed two Commissioners. Members of the Commission serve at the pleasure of his or her appointing authority and are not compensated for services.

The Commission is charged with appointing an Office of Public Guardianship ("Office") Director to establish, develop, and administer a pilot program that will provide legal guardianship services for incapacitated and indigent adults in the Second, Seventh and Sixteenth judicial districts.

The pilot program received no general appropriations, and is currently solely dependent upon the receipt of gifts, grants and donations. Appointment of the Director must occur not more than one month after the Office receives at least \$1.7 million in gift, grants, and donations. Not more than five months after receiving at least \$1.7 million, the Director shall administer the pilot program.<sup>2</sup> But until funding is obtained, the Office and services to the targeted judicial districts cannot occur.

### **IV. COMMISSION FUNDING CHALLENGES**

As of the monthly report from the August 29, 2018 Commission meeting, the Office holds a balance of 1,877.00. Gifts and donations have totaled \$1,943.00, and of which these funds were received from a mere five donors. Office funds have been used to cover the basic expenses associated with direct mailings to stakeholders and potential funding sources. Commission members have personally covered expenses associated with reproduction of educational and informational materials and refreshments for fundraising events. With the minimal funds available, the Commission is unable to hire a professional grant writer or fundraiser to seek additional funding. Without the necessary operational funds, the Commission is unable to hire a Director to establish, develop, and administer the OPG pilot program ("OPG").

Numerous fundraising challenges have been encountered. The lack of seed funding for basic supplies or to contract with a professional fundraiser and grant writer is mentioned above. In addition, major grant sources, such as the Colorado Health Foundation, advised the Commission that the project does not align with their current funding priorities and/or technical eligibility criteria. For example, many grants have very specific restrictions regarding use of grant funds for capital expenditures or salaries, disallow funding of state agencies, or require an established track record of services before funding new initiatives. Community stakeholders, while uniformly in support of the project, have consistently expressed the strong opinion that public

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<sup>2</sup> The duties of the Director, once appointed, are discussed in the Appendix.

guardianship services are a public need and should be publicly funded. Finally, requesting non-refundable donations from individual private donors for a program that may fail to meet necessary funding targets, and as a result may never be enacted, presents a particularly difficult sell to potential donors.

To demonstrate Commissioners efforts to educate and solicit funds for the project, the Commission provides the following list of activities that members have engaged in since appointment in October 2017 to present:

- The Commission contacted eighty-seven statewide entities / individuals by direct mailing, provided informational materials regarding the pilot, and asked for financial support. The extensive recipient list compiled for this direct mailing and invitation included stakeholders supportive of the OPG legislation, a large cross-section of the Colorado health care community, professional fiduciaries, non-profits, and bar associations.
- The Commission held an informational and fundraising meeting for stakeholders at the Colorado Bar Association. Attendees included representatives from hospitals, bar associations, and non-profits.
- The Commission prepared and submitted a grant request to the NextFifty Initiative, an independent, Colorado-based, non-profit organization, dedicated to funding mission-driven initiatives that improve community services for the elderly population and caregivers. The grant request was denied for failing to meet technical criteria. The Commission submitted another grant request to this organization on August 31, 2018.
- Commissioner Caton presented an educational seminar for the Colorado Guardianship Association and requested financial support. Attendees of this seminar included guardians, conservators, care-managers, and fiduciaries serving the State. Members of this non-profit organization are acutely aware of issues faced by indigent and incapacitated individuals who have no appropriate family to serve as guardian.
- Commissioner Caton established a meaningful dialogue with representatives of the Colorado Department of Human Services regarding the status of the OPG and its funding challenges.
- Commissioner Caton established a meaningful dialogue with a representative of the Colorado Strategic Action Planning Group on Aging. The Colorado General Assembly and Governor formed this group to develop a long-term strategic plan and one of its recommendations was establishing an OPG.
- Commissioners Caton, Lesco, and Chayet established a meaningful dialogue with the Elder Law Section of the Colorado Bar Association. The Section is supportive of OPG efforts, and made a nominal donation.

- Commissioner Caton spoke with a representative of COPIC, a medical professional liability insurance provider and leader in patient safety and risk management. The representative collaborated regarding solutions and recommended contacts for possible grant-writing support.
- Commissioners Caton and Chayet presented at the 10<sup>th</sup> Annual Rocky Mountain Regional Elder Law Retreat in August 2018. This program was co-sponsored by the Colorado Bar Association and the Colorado Chapter of the National Academy of Elder Law Attorneys.
- Commissioners Caton and Lesco have communicated with the Chief Medical Officer at Montrose Memorial Hospital (“MMH”) and chair of the Ethics Committee, in the 7<sup>th</sup> Judicial District, to share pilot program information. MMH has offered to assist with communication as a regional champion of the pilot.
- Commissioners Caton and Chayet were interviewed for a *Law Week Colorado* article regarding the OPG and its funding challenges.
- Commissioner Kelley presented to the Otero County Commissioners and a feature article was printed in the *La Junta Tribune* about her presentation.
- Commissioner Caton responds to public requests for information made through direct website or telephonic contact with the OPG.
- Commissioner Bennett-Woods accepted an invitation to present the pilot project at the Ethics Committee of Vivage, a large provider of senior care services and living facilities.
- Commissioner Bennett-Woods made a formal presentation and request for support at the annual meeting of the Colorado Healthcare Ethics Forum (CHEF). Attendees of this conference comprised a representation of a wide range of healthcare providers in Colorado, including the major hospital systems, long-term care and hospice facilities, public health, and individual providers. Members are intimately aware of issues related to the lack of guardianship in this vulnerable population as it relates to health care and healthcare decision-making.
- Commissioner Bennett-Woods spoke with a representative of the Colorado Health Foundation. While sympathetic and helpful, the representative did not believe that the OPG was a fit for any of the current funding priorities.
- Commissioner Bennett-Woods spoke with a representative of the Rose Foundation. While sympathetic and helpful, the representative stated that the OPG was not a fit for any of their current funding targets.
- Commissioner Bennett-Woods met with a Vice President and Chief Strategy Officer for the Colorado Hospital Association and discussed financial support from the



hospitals and data gathering. Although supportive, the Colorado Hospital Association is not able to provide financial support and does not see a path to funding from individual health care systems or other health care services providers.

- Commissioner Bennett-Woods conducted a phone conference with three representatives of the local Veteran's Administration hospital, who offered to attempt to locate contacts, both locally and nationally, that might be of assistance in securing funding.
- Commissioner Bennett-Woods has maintained a meaningful dialogue with Representative Dave Young regarding the status and challenges that the OPG experiences.
- Commissioner Bennett-Woods has engaged in outreach with the Center for Improving Value in Health Care to discuss OPG and the net cost-benefit for Colorado.
- Commissioner Kelley spoke with local area aging offices regarding grant-writing assistance.
- Commissioner Kelley, in cooperation with the local Human Services office, coordinated a town meeting to educate stakeholders in the 16<sup>th</sup> Judicial District.
- Commissioner Kelley spoke with several stakeholder groups in the 16<sup>th</sup> Judicial District and delivered written OPG materials to these organizations in an effort to raise awareness and generate funds.
- Commissioner Kelley contacted a member of the judiciary in the 16<sup>th</sup> Judicial District to coordinate a stakeholder meeting.
- Commissioner Kelley is preparing presentations for the Bent and Crowley County Commissioners.
- Commissioner Lesco researched and made inquiries regarding funding through Robert Wood Johnson Foundation, Kaiser Permanente Colorado, The Colorado Health Foundation, and Rose Community Foundation. The OPG does not appear to be a fit at any of these foundations.
- Commissioner Lesco researched funding opportunities through numerous Colorado foundations including Caring for Colorado Foundation, the Anschutz Foundation, and others. For a variety of reasons including the grant makers' priorities and the OPG status, the OPG is either ineligible or a poor fit to receive funding from these foundations.
- Commissioner Lesco researched funding opportunities from the federal government through repeatedly and regularly exploring posted funding opportunities from the

Administration of Community Living and the Centers for Medicare and Medicaid Services, and searched for grant opportunities on grants.gov. An applicable funding opportunity has not been located.

- Commissioner Lesco reached out to the Colorado Trust Foundation for a meeting with the Executive Director.
- Commissioner Lesco approached Zim Consulting, a development, fundraising and grant writing consulting firm for additional ideas on fundraising. An in-person meeting with the founder of Zim Consulting has been scheduled.
- Commissioner Lesco has spoken to the Executive Director of Disability Law Colorado who has thirty-five years of fundraising experience, as well as an experienced grant writer and experienced development director for additional fundraising ideas, foundations, or other avenues to pursue to raise gifts, grants and donations. These professionals do not have any additional thoughts or direction for fundraising.
- Commissioner Lesco attended the Jefferson County Senior Law Day, an elder law public education event attended by nearly 500 members of the public. She distributed approximately 40 OPG fact sheets and spoke to 15 to 20 individuals. Donations forms were also available, but only three were taken and no donations were made. Outreach at the Jefferson County Senior Law Day was primarily aimed at increasing awareness of the Office and fundraising was a secondary consideration. However, it should be noted that while many members of the public expressed support for the Office, none indicated a willingness to financially contribute in support of the office.
- Commissioner Lesco has conducted outreach in the 7<sup>th</sup> Judicial District, made a presentation to the Montrose Memorial Hospital Ethics Committee on the history, goals, future operations and needs of the OPG Pilot program. This presentation was effective at increasing awareness of the OPG in the 7<sup>th</sup> Judicial District.
- Commissioner Lesco presented on the OPG at the Colorado Senior Lobby Board Meeting and the Colorado Senior Lobby Legislative meeting. Colorado Senior Lobby is a nonpartisan senior advocacy organization. In total, the Commissioner estimates presenting to 75 individuals on the OPG. Colorado Senior Lobby is highly supportive of the OPG and will make supporting the OPG one of their top legislative and public policy priorities for the coming year.
- Commissioner Lesco is presenting at an outreach event in the 7<sup>th</sup> Judicial District.
- Commissioner Lesco spoke to a member of the judiciary in the 7<sup>th</sup> Judicial District to pursue additional outreach efforts.

- Commissioner Chayet marshaled and reviewed his personal list of contacts for potential communications and outreach for funding from public and private sources from his personal sphere of influence.
- Commissioner Chayet attended Colorado Bar Association events and discussed the OPG and need for funding.
- Commissioner Chayet attended networking events and discussed OPG and funding needs with various stakeholders in the community.
- Commissioner Chayet met with a member of the 2<sup>nd</sup> Judicial District judiciary to discuss OPG and funding possibilities with stakeholders known to the judiciary member of the 2<sup>nd</sup> Judicial District.
- Commissioner Chayet participated in meetings or conversations with judges, lawyers, Adult Protection Services workers, community advocates outside of the 2<sup>nd</sup> Judicial District to convey the message of OPG and need for funding.
- Commissioner Chayet presents educational seminars on estate planning and guardianship throughout Colorado and has integrated OPG into his presentations.
- Commissioner Chayet drafted educational materials on guardianship to the commission for use in networking and fundraising.
- Commissioner Chayet attends many meetings on behalf of OPG at community wide stakeholder meeting to review the proposed Uniform Guardianship Act.
- Commissioner Chayet met with stakeholders providing guardianship services about potential collaboration and inquiries on funding sources.
- Commissioner Chayet spoke with several private citizens about OPG with zero to little interest in giving “private money” to a perceived public or governmental entity.

## **V. COMMISSION ACTIVITIES SINCE PASSAGE OF HB17-1087**

The Commission has not just been attempting to secure funds, but also has worked to build the legal foundation for the Office. Since appointment in late October 2017, the Commission has held thirteen public meetings and created the following governing instruments:

- Office of Public Guardianship Memorandum of Understanding with the Judicial Department;
- Commission Guardianship Bylaws;
- Commission Document Retention Policy;

- Commission Public Comment Policy; and
- Commission Fundraising Guidelines and Materials.

The Commission has also completed the following administrative tasks:

- Worked with the State Court Administrators Office (“SCAO”) to create letterhead, telephone access with voice messaging, e-mail address, and a website;
- Worked with SCAO to submit a supplemental budget request and obtain spending authority;
- Obtained a tax identification number and tax-exempt status from the Internal Revenue Service;
- Registered with the Colorado Secretary of State as a charitable entity;
- Participated in stakeholder, community, non-profit, and public agency outreach and fundraising;
- Worked with SCAO to develop procedures to create job descriptions / qualifications, compensation ranges, and recruitment of Office Director and staff; and
- Developed a protocol for maintaining a donor list.

In an effort to assist and educate the pilot districts, Commission members agreed to serve as representatives in specific regions. Specifically, Commissioner Chayet assists in the Second, Commissioner Lesco assists in the Seventh, and Commissioner Kelley assists in the Sixteenth. The Chair and Vice Chair provide support for the Commissioners and oversee statewide efforts.

## **VI. COMMISSION REQUEST FOR APPROPRIATIONS**

Because the Commission has been unable to raise the \$1.7 million initial amount from gifts, grants, or donations as required by the legislation, and potential funding sources do not appear to be available, the only viable means of funding the Office pilot is through a General Fund appropriation. Accordingly, the Commission is submitting a *Supplemental Funding Request* seeking \$657,482 general funding for FY 2019, to establish the Office of Public Guardianship and fulfill the requirements of the enabling legislation. To ensure successful completion of the pilot project, the Commission further recommends full funding for the duration of the pilot program, as well as an extension of one year for the pilot program due to the delay experienced from the lack of funding to initiate the pilot in 2018 as assumed in the enabling legislation. The Commission understands that legislation will need to be enacted to extend the length of the pilot program beyond 2021, but HB17-1087 contemplates the potential that the Office’s cash fund may receive general appropriation funding.

## APPENDIX

Once funded and pursuant to HB17-1087, the Director shall ensure that the Office will provide the following services in the designated judicial districts:

- Review of referrals to the OPG;
- Adoption of eligibility criteria and prioritization of individuals with the greatest need;
- Appointment and post-appointment of public guardianship services of a guardian-designee for each indigent and incapacitated adult in need of public guardianship;
- Support for modification or termination of public guardianship services;
- Recruitment, training and oversight of guardian-designees;
- Development of a process for receipt and consideration of, and response to, complaints against the OPG;
- Implementation and maintenance of a public guardianship data;
- Management, financial planning, and budgeting for the OPG;
- Identification and establishment of relationships with stakeholder agencies, nonprofit organizations, companies, individual care managers, and direct care providers necessary to provide services;
- Identification and establishment of relationships with local, state and federal agencies to apply for public benefits on behalf of wards; and
- Public education and outreach regarding the role of the OPG and Guardian-Designees.

On or before January 2021, the Director shall submit to the Judiciary Committees of the Senate and House of Representatives, a report concerning the activities of the Office. The report, at a minimum, must:

- Quantify, to the extent possible, Colorado's unmet need for public guardianship services for indigent and incapacitated adults;
- Quantify, to the extent possible, the average annual cost of providing guardianship services to indigent and incapacitated adults;
- Quantify, to the extent possible, the net cost or benefit, if any, to the state that may result from the provision of guardianship services to each indigent and incapacitated adult in each judicial district of the state

- Identify any notable efficiencies and obstacles that the office incurred in providing public guardianship services;
- Assess whether an independent statewide office of public guardianship or a non-profit agency is preferable and feasible;
- Analyze costs and off-setting savings to the state from the delivery of public guardianship services;
- Provide uniform and consistent data elements regarding service delivery in an aggregate format that does not include any personal identifying information of any person; and
- Assess funding models and viable funding sources for an independent office of public guardianship or a nonprofit agency, including the possibility of funding with a statewide increase in probate court filing fees.

After reviewing the report submitted by the Director, the General Assembly shall consider whether to enact legislation to continue, discontinue, or expand the Office.

The enabling legislation is repealed effective June 20, 2021.

**PROPOSED LEGISLATIVE AMENDMENTS  
BY THE OFFICE OF THE PUBLIC GUARDIANSHIP COMMISSION  
FOR THE 2019 SESSION OF THE GENERAL ASSEMBLY**

**§ 13-94-101, C.R.S.**

The short title of this article 94 is the “Office of Public Guardianship Act”.

**§ 13-94-102, C.R.S.**

(1) The general assembly finds and declares that:

(a) Due to incapacity, some adults in Colorado are unable to meet essential requirements for their health or personal care;

(b) Private guardianship is not an option for such an adult when:

(I) No responsible family members or friends are available and appropriate to serve as a guardian; and

(II) He or she lacks adequate resources to compensate a private guardian and pay the costs associated with an appointment proceeding;

(c) Volunteer and public service programs are currently inadequate to provide legal guardianship services to indigent and incapacitated adults in Colorado;

(d) Colorado courts struggle to address the needs of indigent and incapacitated adults who lack the resources to provide for their own guardianship needs; and

(e) Without a system providing legal guardianship services to indigent and incapacitated adults, the courts are left with few options for addressing these adults’ needs.

(2) In establishing the office of public guardianship, the general assembly intends:

(a) That the office will:

(I) Provide guardianship services to indigent and incapacitated adults who:

(A) Have no responsible family members or friends who are available and appropriate to serve as a guardian;

(B) Lack adequate resources to compensate a private guardian and pay the costs associated with an appointment proceeding; and

(C) Are not subject to a petition for appointment of guardian filed by a county adult protective services unit or otherwise authorized by section 26-3.1-104; and

(II) Gather data to help the general assembly determine the need for, and the feasibility of, a statewide office of public guardianship; and

(b) That the office is a pilot program, to be evaluated and then continued, discontinued, or expanded at the discretion of the general assembly in 2021.

(3) In creating the office of public guardianship, it is also the intention of the general assembly to:

(a) Treat liberty and autonomy as paramount values for all state residents;

(b) Authorize public guardianship only to the extent necessary to provide for health or safety when the legal conditions for appointment of a guardian are met;

(c) Permit incapacitated adults to participate as fully as possible in all decisions that affect them;

(d) Assist incapacitated adults to regain or develop their capacities to the maximum extent possible;

(e) Promote the availability of guardianship services for adults who need them and for whom adequate services may otherwise be unavailable;

(f) Maintain and not alter or expand judicial authority to determine that any adult is incapacitated; and

(g) Maintain and not alter or expand any authority vested in the state department of human services and county departments of human or social services.

### **§ 13-94-103, C.R.S.**

(1) Except as otherwise indicated in this section, the definitions set forth in section 15-14-102 apply to this article 94.

(2) As used in this article 94, unless the context otherwise requires:

(a) “Commission” means the public guardianship commission created pursuant to section 13-94-104.

(b) “Direct care provider” means a health care facility, as defined in section 15-14-



505(5), or a health care provider, as defined in section 15-14-505(6).

(c) “Director” means the director of the office appointed by the commission pursuant to section 13-94-104.

(d) “Guardian” or “guardian-designee” means an individual employed by the office to provide guardianship services on behalf of the office to one or more adults.

(e) “Office” means the office of public guardianship created in section 13-94-104.

(f) “Public guardianship services” means the services provided by a guardian appointed under this article 94 who is compensated by the office.

### **§ 13-94-104, C.R.S.**

(1) The public guardianship commission is hereby created within the judicial department. The commission includes five members, to be appointed as follows:

(a) On or before November 1, 2017, the Colorado supreme court shall appoint three members, no more than one of whom is from the same political party. Two of the supreme court’s appointees must be attorneys admitted to practice law in this state, and one must be a resident of Colorado not admitted to practice law in this state.

(b) On or before November 1, 2017, the governor shall appoint two members. One of the governor’s appointees must be an attorney admitted to practice law in this state, and one must be a resident of Colorado not admitted to practice law in this state.

(c) In making appointments to the commission, the supreme court and the governor shall consider place of residence, sex, race, and ethnic background; and

(d) No member of the commission may be a judge, prosecutor, public defender, or employee of a law enforcement agency during his or her service on the commission.

(2) Each member of the commission serves at the pleasure of his or her appointing authority, except that each member’s term of service concludes with the repeal of this article 94 pursuant to section 13-94-111.

(3) ~~Not more than one month after receiving at least one million seven hundred thousand dollars in gifts, grants, and donations to the office of public guardianship cash fund created in section 13-94-108,~~ The commission shall appoint a director to establish, develop, and administer the office of public guardianship, which office is hereby created within the judicial department. The director serves at the pleasure of the commission.

(4) The office and the judicial department shall operate pursuant to a memorandum of understanding between the two entities. The memorandum of understanding must contain, at a minimum:

- (a) A requirement that the office has its own personnel rules;
- (b) A requirement that the director has independent hiring and termination authority over office employees;
- (c) A requirement that the office must follow judicial fiscal rules; and
- (d) Any other provisions regarding administrative support that will help maintain the independence of the office.

### **§ 13-94-105, C.R.S.**

(1) The director shall establish, develop, and administer the office to serve indigent and incapacitated adults in need of guardianship in the second, seventh, and sixteenth judicial districts and shall coordinate its efforts with county departments of human services and county departments of social services within those districts.

~~Not more than five months after receiving at least one million seven hundred thousand dollars in gifts, grants, and donations to the office of public guardianship cash fund created in section 13-94-108, T~~he director shall administer the office in accordance with the memorandum of understanding described in section 13-94-104(4).

(2) In addition to carrying out any duties assigned by the commission, the director shall ensure that the office provides, at a minimum, the following services to the designated judicial districts:

- (a) A review of referrals to the office;
- (b) Adoption of eligibility criteria and prioritization to enable the office to serve individuals with the greatest needs when the number of cases in which services have been requested exceeds the number of cases in which public guardianship services can be provided;
- (c) Appointment and post-appointment public guardianship services of a guardian-designee for each indigent and incapacitated adult in need of public guardianship;
- (d) Support for modification or termination of public guardianship services;
- (e) Recruitment, training, and oversight of guardian-designees;

(f) Development of a process for receipt and consideration of, and response to, complaints against the office, to include investigation in cases in which investigation appears warranted in the judgment of the director;

(g) Implementation and maintenance of a public guardianship data management system;

(h) Office management, financial planning, and budgeting for the office to ensure compliance with this article 94;

(i) Identification and establishment of relationships with stakeholder agencies, nonprofit organizations, companies, individual care managers, and direct-care providers to provide services within the financial constraints established for the office;

(j) Identification and establishment of relationships with local, state, and federal governmental agencies so that guardians and guardian-designees may apply for public benefits on behalf of wards to obtain funding and service support, if needed; and

(k) Public education and outreach regarding the role of the office and guardian-designees.

(3) The director shall adopt professional standards of practice and a code of ethics for guardians and guardian-designees, including a policy concerning conflicts of interest.

| (4) On or before January 1, 2023~~31~~, the director shall submit to the judiciary committees of the senate and the house of representatives, or to any successor committees, a report concerning the activities of the office. The report, at a minimum, must:

(a) Quantify, to the extent possible, Colorado's unmet need for public guardianship services for indigent and incapacitated adults;

(b) Quantify, to the extent possible, the average annual cost of providing guardianship services to indigent and incapacitated adults;

(c) Quantify, to the extent possible, the net cost or benefit, if any, to the state that may result from the provision of guardianship services to each indigent and incapacitated adult in each judicial district of the state;

(d) Identify any notable efficiencies and obstacles that the office incurred in

providing public guardianship services pursuant to this article 94;

(e) Assess whether an independent statewide office of public guardianship or a nonprofit agency is preferable and feasible;

(f) Analyze costs and off-setting savings to the state from the delivery of public guardianship services;

(g) Provide uniform and consistent data elements regarding service delivery in an aggregate format that does not include any personal identifying information of any adult; and

(h) Assess funding models and viable funding sources for an independent office of public guardianship or a nonprofit agency, including the possibility of funding with a statewide increase in probate court filing fees.

(5) In addition to performing the duties described in this section, the director, in consultation with the commission, shall develop a strategy for the discontinuation of the office in the event that the general assembly declines to continue or expand the office after 2023~~1~~. The strategy must include consideration of how to meet the guardianship needs of adults who will no longer be able to receive guardianship services from the office.

#### **§ 13-94-106, C.R.S.**

The court shall waive court costs and filing fees in any proceeding in which an indigent and incapacitated adult is receiving public guardianship services from the office.

#### **§ 13-94-107, C.R.S.**

(1) The director shall develop rules to implement this article 94. The rules, at a minimum, must include policies concerning:

(a) Conflicts of interest for guardians and guardian-designees employed pursuant to this article 94; and

(b) The solicitation and acceptance of gifts, grants, and donations pursuant to section 13-94-108(3).

#### **§ 13-94-108, C.R.S.**

(1) The office of public guardianship cash fund, referred to in this section as the “fund”, is created in the state treasury. The fund consists of any money that the

office receives from gifts, grants, or donations, as well as any other money appropriated to the fund by the general assembly.

(2) The money in the fund is annually appropriated to the judicial department to pay the expenses of the office. All interest and income derived from the investment and deposit of money in the fund is credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year must remain in the fund and not be credited or transferred to the general fund or any other fund; except that any money remaining in the fund on June 30, 202~~31~~, shall be transferred to the general fund.

(3) The office may seek and accept gifts, grants, or donations from private or public sources for the purposes of this article 94; except that the office may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this article 94 or any other law of the state. The office shall transmit all private and public money received through gifts, grants, or donations to the state treasurer, who shall credit the same to the fund.

#### **§ 13-94-109, C.R.S.**

Public guardianship services are dependent upon the availability of funding, and nothing in this article 94 creates an entitlement.

#### **§ 13-94-110, C.R.S.**

As an agency of the judicial department, the office is a public entity, as defined in section 24-10-103(5), for the purposes of the “Colorado Governmental Immunity Act”, article 10 of title 24.

#### **§ 13-94-111, C.R.S.**

This article 94 is repealed, effective June 30, 202~~31~~. Prior to such repeal, the general assembly, after reviewing the report submitted by the director pursuant to section 13-94-105(4), shall consider whether to enact legislation to continue, discontinue, or expand the office.

Letter from the Office of Public Guardianship Commission  
to the Independent Ethics Commission

## **Exhibit 4**



# JOINT BUDGET COMMITTEE STAFF FY 2019-20 BUDGET BRIEFING SUMMARY

Colorado General Assembly  
Joint Budget Committee

## *Judicial Department*

The Judicial Department interprets and administers the law, resolves disputes, and supervises adult and juvenile offenders on probation. The Judicial Branch also includes seven independent agencies. The four largest agencies provide legal representation for children, juveniles, or indigent adult defendants in certain types of cases. The Independent Ethics Commission provides advice and guidance on ethics-related matters concerning public officers, members of the General Assembly, local government officials, and government employees. The Office of the Child Protection Ombudsman receives, investigates, and seeks resolution of complaints concerning child protection services and makes recommendations to improve such services. The Office Public Guardianship, if it begins operations, will provide guardianship services for incompetent adults who lack resources and family or friends who can serve as guardians. The Department's FY 2018-19 appropriation represents 2.5 percent of statewide operating appropriations and 4.8 percent of statewide General Fund appropriations.

## FY 2018-19 APPROPRIATION AND FY 2019-20 REQUEST

JUDICIAL DEPARTMENT						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2018-19 APPROPRIATION:						
HB 18-1322 (Long Bill)	754,037,172	550,203,048	162,436,088	36,973,036	4,425,000	4,742.7
Other Legislation	6,157,375	2,871,375	3,286,000	0	0	2.6
<b>TOTAL</b>	<b>\$760,194,547</b>	<b>\$553,074,423</b>	<b>\$165,722,088</b>	<b>\$36,973,036</b>	<b>\$4,425,000</b>	<b>4,745.3</b>
FY 2019-20 REQUESTED APPROPRIATION:						
FY 2018-19 Appropriation	\$760,194,547	553,074,423	\$165,722,088	\$36,973,036	\$4,425,000	4,745.3
JUD R1 District court judges and supporting staff	7,681,991	7,681,991	0	0	0	60.0
JUD R2 Probation officers and supporting staff	3,040,883	3,040,883	0	0	0	36.5
JUD R3 Problem solving court coordinators	417,265	417,265	0	0	0	5.0
JUD R4 Audio visual technical staff and administrative support	317,741	317,741	0	0	0	4.0
JUD R5 Distance learning specialists	480,556	480,556	0	0	0	4.0
JUD R6 IT infrastructure	8,393,774	2,744,021	5,649,753	0	0	0.0
JUD R7 Centralized legal research team	33,148	33,148	0	0	0	3.0
JUD R8 Increase spending from Courthouse Security Cash Fund	525,000	0	525,000	0	0	0.0
JUD R9 Justice Center controlled maintenance expenditure adjustment	513,000	0	(2,025,000)	2,538,000	0	0.0
JUD R10 Courthouse capital	2,618,698	2,618,698	0	0	0	0.0
JUD R11 Fleet vehicles for Judicial Dept.	(2,176)	(2,176)	0	0	0	0.0
JUD Salary Survey Request	1,142,148	1,116,382	25,766	0	0	0.0
OSPD R1 Attorney salary survey	5,089,605	5,089,605	0	0	0	0.0
OSPD R2 Refinance Denver criminal court grant	40,131	190,131	(150,000)	0	0	1.2

JUDICIAL DEPARTMENT						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
OSPD R3 Arapahoe courtroom staffing	104,471	104,471	0	0	0	1.6
OSPD R4 IT security	189,442	189,442	0	0	0	1.0
OADC R1 Caseload increase	14,601,111	14,601,111	0	0	0	0.0
OADC R2 Social worker outreach coordinator	116,809	116,809	0	0	0	1.0
OADC R3 Operating expense increase	251,070	251,070	0	0	0	0.0
OADC R4 Compensation plan alignment	114,696	114,696	0	0	0	0.0
OADC R5 Correct FY19 Error in Admin FTE	36,879	36,879	0	0	0	0.0
OCR R1 Caseload and mandated costs adjustment	1,257,168	1,257,168	0	0	0	0.0
OCR R2 Two programs and compliance analyst positions	294,420	294,420	0	0	0	2.0
OCR R3 Compensation plan alignment	61,913	61,913	0	0	0	0.0
OCR R4 Increase operating appropriation	83,000	83,000	0	0	0	0.0
OCR R5 Increase training	20,000	20,000	0	0	0	0.0
OrpcR1 Increase number of appointments and cost per appointment	2,071,337	2,071,337	0	0	0	0.0
ORPC R2 Staff attorney	125,977	125,977	0	0	0	1.0
ORPC R3 Administrative Specialist	70,967	70,967	0	0	0	1.0
ORPC R4 Programs Analyst	95,381	95,381	0	0	0	1.0
ORPC R5 Compensation plan alignment	10,319	10,319	0	0	0	0.0
OPG R1 Funding the Office of Public Guardianship	0	1,718,786	(1,718,786)	0	0	0.0
CDAC R1 District attorney mandated costs	102,373	102,373	0	0	0	0.0
Centrally appropriated line items	16,486,168	15,716,823	769,345	0	0	0.0
PERA Direct Distribution	8,860,946	8,159,213	701,733	0	0	0.0
Justice Center Maintenance Fund	2,575,000	0	2,575,000	0	0	0.0
Non-prioritized decision items	1,887,933	1,887,933	0	0	0	0.0
Carr Center lease revenue adjustments	274,348	(105,768)	274,350	105,766	0	0.0
Annualize Prior Year Budget Actions	(3,387,613)	(2,731,857)	(655,756)	0	0	0.0
Annualize prior year legislation	(1,444,385)	1,607,448	(3,051,833)	0	0	1.2
<b>TOTAL</b>	<b>\$835,346,041</b>	<b>\$622,662,579</b>	<b>\$168,641,660</b>	<b>\$39,616,802</b>	<b>\$4,425,000</b>	<b>4,868.8</b>
<b>INCREASE/(DECREASE)</b>	<b>\$75,151,494</b>	<b>\$69,588,156</b>	<b>\$2,919,572</b>	<b>\$2,643,766</b>	<b>\$0</b>	<b>123.5</b>
Percentage Change	9.9%	12.6%	1.8%	7.2%	0.0%	2.6%

In the preceding table:

- "JUD" indicates a request from the Chief Justice for the courts or for probation programs;
- "OSPD" indicates a request from the Office of the State Public Defender;
- "OADC" indicates a request from the Office of the Alternate Defense Counsel;
- "OCR" indicates a request from the Office of the Child's Representative;
- "ORPC" indicates a request from the Office of the Respondent Parents' Counsel;
- "OCPO" indicates a request from the Office of the Child Protection Ombudsman;
- "IEC" indicates a request from the Independent Ethics Commission;
- "OPG" indicates a request from the Office of Public Guardianship; and
- "CDAC" indicates a request from the Colorado District Attorneys' Council.



Requests from the Judicial Department (Courts and Probation)

**JUD R1 DISTRICT COURT JUDGES AND SUPPORTING STAFF:** The request includes an increase of \$7,681,991 General Fund for 15 new district-court judgeships and 45 support staff in FY 2019-20, for a total of 60.0 new FTE. Each judge gets a court judicial assistant, a law clerk, and a court reporter. The request would place additional judges in the ten judicial districts that are staffed at less than 80 percent of need, according to the Judicial Branch's court workload model. A companion bill will be introduced at the beginning of the 2019 session to authorize the new judgeships. The associated funding will be in the Long Bill. The companion bill could authorize more judgeships than are funded in the Long Bill. The following table shows where the requested judges would be located and the current number of district court judges in each district. The request includes \$1,550,070 of startup costs; in the second year, the cost declines to \$6,532,729 General Fund.

JUDICIAL DISTRICT	COUNTIES	# JUDGES	CURRENT STAFFING %
1 <sup>st</sup>	Gilpin, Jefferson	1	77.6%
2 <sup>nd</sup>	Denver	4	69.8%
4 <sup>th</sup>	El Paso, Teller	2	72.2%
8 <sup>th</sup>	Larimer, Jackson	1	77.3%
10 <sup>th</sup>	Pueblo	1	71.2%
13 <sup>th</sup>	Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Yuma	1	72.9%
17 <sup>th</sup>	Adams, Broomfield	1	76.8%
18 <sup>th</sup>	Arapahoe, Douglas, Elbert, Lincoln	1	78.8%
19 <sup>th</sup>	Weld	2	73.4%
21 <sup>st</sup>	Mesa	1	75.4%
Total:		15	

**JUD R2 PROBATION OFFICERS AND SUPPORTING STAFF:** The Judicial Department requests an increased number of probation officers, supervisors and support staff. The increase would be spread over two years with 36.5 FTE added in FY 2019-20 at a cost of \$3,040,883 General Fund and an additional 12.5 added in FY 2020-21 at an additional cost of \$ 1,263,547 General Fund. These increases will reduce the gap between current staffing levels and the Department's calculation of need, a gap that has resulted in part from the increasing number of offenders who are on state-supervised probation.

**JUD R3 PROBLEM SOLVING COURT COORDINATORS:** The request includes an increase of \$417,265 General Fund to hire five Problem Solving Court Coordinators II. This request is part of a three-year plan to add a total of 18 coordinators. Last year, the Department requested and received 7.0 coordinators. The Department will submit a request next year for six additional coordinators for FY 2020-21. A 2016 workload study concluded that the Branch's problem solving courts need these extra coordinators.

**JUD R4 AUDIO VISUAL TECHNICAL STAFF AND ADMINISTRATIVE SUPPORT:** The request includes an increase of \$317,741 General Fund and 4.0 FTE to create a regional audio visual (AV) technician staff to provide AV support to courts throughout the State.

**JUD R5 DISTANCE LEARNING SPECIALISTS:** The request includes \$480,556 General Fund for 4.0 FTE who are distance learning specialists. These specialists, in collaboration with subject matter experts, will develop online instructional content to meet the training needs of judicial officers, court employees, and probation employees. The emphasis will be on short modules that provide employees “just what they need, when they need it” to perform their jobs. The request includes software for designing and deploying training modules. The Department currently has a pilot program staffed by 1.5 FTE distance learning specialists that has created more than 80 modules. The department

has discovered that these modules, when coupled with periodic classroom instruction, are an effective way to train employees.

**JUD R6 IT INFRASTRUCTURE:** The request includes \$8,393,774 total funds (\$2,744,021 General Fund and \$5,649,753 cash funds) to pay for a number of IT projects.

**JUD R7 CENTRALIZED LEGAL RESEARCH TEAM:** The request includes an increase of \$33,148 General Fund and 3.0 FTE to establish a specialized legal research team housed in the Supreme Court Library in Denver that will be available to trial courts in all judicial districts for death penalty and other research-intensive cases that involve complex legal questions. Currently, the Judicial Branch contracts with legal researchers to perform such research on an as-needed basis. The proposed legal research team will substitute for many of those contracts and is expected to provide better service. The projected reduction in payments to the contractors will pay most of the cost of the new team. The requested General Fund will pay for the associated capital outlay and the AED and SAED.

**JUD R8 INCREASE SPENDING FROM COURTHOUSE SECURITY CASH FUND:** The request includes \$525,000 cash funds for a one-time increase of expenditures from the Court Security Grant program in FY 2019-20 with expenditure subsequently returning to current levels. The additional spending authority would allow the Courthouse Security Commission to fund equipment grants that would replace aging/failing security equipment, while continuing to adequately fund on-going security personnel costs in courthouses across the State.

**JUD R9 JUSTICE CENTER CONTROLLED MAINTENANCE EXPENDITURE ADJUSTMENT:** The request eliminates a \$2,025,000 cash funds appropriation that was in the FY 2018-19 Long Bill and makes a new appropriation of \$2,538,000 reappropriated funds. Since at least the FY 2013-14 Long Bill, a \$2,025,000 appropriation for controlled maintenance work on the Carr Center from the Justice Center Cash Fund has been in the Long Bill. This appropriation went unused because the building did not yet need controlled maintenance. Though unspent, it served as a reminder that a substantial amount of money needed to be set aside each year to fund future controlled maintenance. With the establishment of the Justice Center Maintenance Fund, a dedicated source of controlled maintenance funding is now available and, coincidentally, the first controlled maintenance expenditures on the building are needed. This \$2,538,000 reappropriation from the Justice Center Maintenance Fund will pay for the FY 2019-20 replacement of the building's network switches, which link the building's many automated components with each other and with the building's central control system.

**JUD R10 COURTHOUSE CAPITAL:** The request includes \$2,618,698 General Fund to address required infrastructure and courthouse furnishing needs. Colorado counties provide and maintain courtrooms and other court facilities, while the State provides the furnishings, infrastructure, and court staffing. This request will pay for infrastructure and courthouse furnishings in expanded, remodeled, or new facilities, and for replacement or refurbishment of existing furniture that is no longer useable or will soon become unusable if not repaired. A courthouse capital appropriation appears in the Long Bill every year but the Department does not treat it as a base appropriation off which adjustments are to be made. In FY 2018-19, the General Fund portion of this appropriation equaled \$2,653,360, so this request doesn't change the Courthouse Capital appropriation very much.

**JUD R11 FLEET VEHICLES FOR JUDICIAL DEPARTMENT:** The request includes a net decrease of \$2,176 General Fund for vehicle expenses. The Department requests permission to acquire four leased vehicles through the State Fleet Management program, which will increase the Department's fleet from 35 to 39 vehicles. The new vehicles will be used by employees who currently use personal vehicles for Department business and are compensated for that use at the rate of 49¢ per mile. The additional vehicles will allow the Department to reduce its vehicle-related expenditures by \$2,176 General Fund.

**JUD (UNNUMBERED REQUEST) SALARY SURVEY REQUEST:** The request includes an increase of \$1,142,148 total funds (\$1,116,382 General Fund) for a 2% pay increase for employees in six of the Department's job classifications and minor conforming salary adjustments elsewhere in the Department that are designed to maintain the overall salary structure. The Department's annual salary survey indicates that the salaries for the six designated classifications are 10 to 14% below the salaries of comparable positions identified by the consultant. These salary increases are in addition to the common policy 3 percent merit increases that the Department is requesting for all its employees.

Requests from Office of the State Public Defender (OSPD)

**OSPD R1 ATTORNEY SALARY SURVEY:** The OSPD's request includes \$5,089,605 General Fund for FY 2019-20, to partially fund the recommendations of a compensation study produced by a consulting firm that compared attorney salaries at the OSPD with those of other public-sector attorneys in Colorado. The comparison salaries were from county attorneys, city attorneys, district attorneys, municipal public defenders, and the Colorado Attorney General. The compensation study was conducted in conjunction with the Department of Law, which is using the survey to support its own salary request. The study concluded that OSPD attorneys are paid on average 13.1% below the pay of public attorneys in corresponding positions in the surveyed organizations. At the entry level, OSPD salaries lag the public sector market by an average of 20.9 percent. This increase is in addition to the 3 percent common policy merit increase that the Department is requesting for all its employees, including attorneys.

**OSPD R2 REFINANCE DENVER CRIMINAL COURT GRANT:** The request includes an increase of \$190,131 General Fund and a reduction of \$150,000 cash funds for a \$40,131 net change to the OSPD total appropriation that is related to staffing a Denver criminal courtroom. The request would result in a net 1.2 increase of FTE. The components of the request are:

- Cash funds: The OSPD's FY 2018-19 appropriation includes \$175,000 cash funds and 2.3 FTE from grants. This request would reduce the \$175,000 by \$150,000 to \$25,000 and the 2.3 FTE by 2.0 to 0.3 FTE. *Background:* In January 2018, Denver reconfigured its courtrooms to create a new criminal court. Denver gave the OSPD a short-term grant to hire two attorneys to cover this new court through June 30, 2019, with the understanding the OSPD would request funding to provide representation starting July 1, 2019.
- General Fund: The OSPD requests \$190,131 General Fund and 3.2 FTE to staff the Denver court starting July 1, 2019. The \$190,131 is comprised of \$185,951 General Fund for personal services of 2.0 attorneys and 1.3 support staff plus \$3,800 for operating expenses and \$380 for attorney registration fees.

**OSPD R3 ARAPAHOE COURTROOM STAFFING:** The request includes \$104,471 General Fund and 1.6 FTE to staff a courtroom in Arapahoe County that currently has a 50-50 civil-criminal caseload but is converting to an exclusively criminal caseload. The request will add 1.0 FTE trial attorney, 0.3 FTE investigator, and 0.3 FTE support staff.

**OSPD R4 IT SECURITY:** The request includes an increase of \$189,442 General Fund and 1.0 FTE for IT security, comprised of \$106,318 and 1.0 FTE for an IT Security Administrator and \$83,124 for automated IT security protection services.

Requests from Office of the Alternate Defense Counsel (OADC)

**OADC R1 CASELOAD INCREASE:** The OADC's request includes an increase of \$14,601,111 General Fund for the Office's increased caseload, comprised of \$13,664,883 for Conflict-of-interest Contracts and \$936,228 for Mandated Costs. This is based on a projection that the FY 2019-20 caseload will be 39.8 percent higher than the caseload on which the equivalent FY 2018-19 appropriation is based.

**OADC R2 SOCIAL WORKER OUTREACH COORDINATOR:** The request includes an increase of \$116,809 General Fund and 1.0 FTE to add a Social Worker Outreach Coordinator to the Agency's staff.

**OADC R3 OPERATING EXPENSE INCREASE:** The OADC requests \$251,070 General Fund to increase its Operating appropriation in order to address various needs (many IT related), of which \$11,690 are ongoing and \$239,380 are one time. The request has multiple parts, most of which can be approved or disapproved separately. The \$239,380 of one-time increases are:

- \$132,879 for a contractor-built artificial-intelligence based forecasting model that will combine internal and external data to help predict the Agency's caseload and corresponding expenditure needs for future budget requests.
- \$85,500 for an external audit of the Agency's billing system, which went live in 2015. The audit is designed to ensure the OADC is maximizing its use of the payment system as well as proper payment protocol and system security.
- \$15,000 to build a web-based contractor database that will replace a Microsoft Access database that no longer meets the Agency's needs and is incompatible with the Agency's billing system and website.
- \$6,000 to replace the Agency's 2014-vintage SQL server, which houses the contractor database. The Office's IT contractor has advised that the server should be replaced. This expenditure will cover the cost of the server and installation fees.

The \$11,690 of ongoing increases are:

- \$7,690 for operation and licensing of the new contractor-built forecasting model (first bullet above) in FY 2019-20, rising to \$15,380 annually in FY 2020-21.
- \$3,000 for additional Westlaw licenses for OADC contractors.
- \$1,000 for the 5 percent hourly rate increase that the Office's IT contractor has announced for Fiscal Year 2019-20.

**OADC R4 COMPENSATION PLAN ALIGNMENT:** The request includes an increase of \$114,696 General Fund for salary adjustments that flow from four sources:

- \$3,093 for a 2% increase for employees whose salaries are 10% or more below comparable salaries elsewhere, as determined by the Judicial Branch's annual salary survey (produced by Segal Waters, a compensation consulting company).
- \$22,563 to implement a common compensation plan that the OADC developed jointly with the Office of the Child's Representative and the Office of the Respondent Parents' Counsel. This part of the request increases the salary of staff members whose salary falls below the minimum of the salary range for their new job class to the new minimum.
- \$73,647 to increase the salaries of some employees whose salaries are at or close to the minimum of their new salary range under the new common compensation plan.
- \$15,394 for a salary increase for the Executive Director of the OADC. This part of the request comes from the Alternative Defense Counsel Commission, which oversees the Director. The Commission requests that the Executive Director of the Alternate Defense Counsel be paid a salary equal to that of the State Public Defender, i.e. equal to the salary of an associate judge of the Court of Appeals.

**OADC R5 CORRECT TECHNICAL ERROR IN APPROPRIATION:** The request includes an increase of \$36,879 General Fund to correct a technical error in the agency's personal services appropriation that occurred during 2018 figure setting. Staff anticipates a supplemental in January to correct the FY 2018-19 appropriation to the OADC.

Requests from Office of the Child's Representative (OCR)

**OCR R1 CASELOAD AND MANDATED COSTS ADJUSTMENT:** Increase in Number of Appointments and in Costs per Appointment: The OCR's request includes a \$1,257,168 General Fund increase that is comprised of \$1,227,168 for the Court-Appointed Counsel appropriation and \$30,000 for the Mandated Costs appropriation. The Court-Appointed Counsel increase reflects a projected increase in caseload for FY 2019-20. The Mandated Costs increase is to catch up with increases in expenditures from this line item that have recently occurred.

**OCR R2 TWO PROGRAMS AND COMPLIANCE ANALYST POSITIONS:** The request includes an increase of \$294,420 General Fund and 2.0 FTE to fund two new Programs and Compliance Analyst positions to implement the recommendations of the Office's 2018 Performance Audit and support ongoing comprehensive oversight of attorney services for children. This request includes a one-time cost of \$90,598 to build and furnish work space for the two positions; thus the ongoing costs are \$203,822 = (\$294,420 - \$90,598).

**OCR R3 COMPENSATION PLAN ALIGNMENT:** The request includes \$61,913 General Fund for the OCR to implement the common compensation plan that has been jointly developed by the Office of the Child's Representative (OCR), the Office of Respondent Parents' Counsel (ORPC), and the Office of the Alternate Defense Counsel (OADC). The request adjusts the salary and benefits of staff members whose salary falls below the minimum of the salary range for their new job class under the Common Compensation Plan.

**OCR R4 INCREASE OPERATING APPROPRIATION:** The OCR requests \$83,000 General Fund to increase its operating appropriation (mostly for IT needs), of which \$60,000 is ongoing and \$23,000 is one time. The following table details the request, which adds to more than \$83,000.

ITEM	COST
<b>Ongoing expenses</b>	
Report writing tool (Jaspersoft)	\$20,000
Maintenance and storage costs throughout life of system	18,400
Replacement of PCs, laptops, routers	10,000
Increased expenses to travel to judicial districts	10,000
Increased Westlaw access, OCR's online legal research tool	7,000
<b>One-time expense that will be periodically repeated</b>	
Replace 2 servers	22,857
<b>Total</b>	<b>\$88,257</b>

The Office has been overspending its operating appropriation for several years, using its authority to transfer up to 2.5 percent of its total appropriation between line items to cover the shortfall. With this increase, it believes it can cover its operating expenses.

**OCR R5 INCREASE TRAINING:** The request includes an ongoing increase of \$20,000 General Fund for the training program that the Office runs for its contract attorneys pursuant to its statutory mandate.

Requests from Office of the Respondent Parents' Counsel (ORPC)

**ORPC R1 INCREASE NUMBER OF APPOINTMENTS AND COST PER APPOINTMENT:** The ORPC requests \$2,071,337 General Fund for a projected increase of the cost of court appointed counsel and of mandated costs. Two factors are at work: the number of appointments is increasing and the cost per appointment is rising. The number of new ORPC appointments was 11.4 percent higher in the first 3 months of FY 2018-19 than it was in the corresponding months of FY 2017-18. In addition, the cost per closed appointment in the first 3 months of FY 2018-19 is 9.7 percent higher than the average cost per closed appointment during the entire fiscal year FY 2017-18.

**ORPC R2 STAFF ATTORNEY:** The request includes \$125,977 for a staff attorney who will consult with the Office's contract attorneys on cases, respond to parent complaints, and generally alleviate currently overburdened FTE workloads. The cost annualizes to \$134,832 in FY 2020-21.

**ORPC R3 ADMINISTRATIVE SPECIALIST:** The request includes an increase of \$70,967 General Fund and 1.0 FTE for an Administrative Specialist I. The Office does not have an administrative specialist (the Judicial Branch equivalent of an administrative assistant) or anyone to perform similar functions and this individual would reduce the amount of time other employees spend on administrative tasks. The Office also points to the extensive growth of the ORPC since it was created in July 2016, growth that has increased the need for administrative support. In FY 2020-21, the cost of the request annualizes to \$75,989 General Fund.

**ORPC R4 PROGRAMS ANALYST I:** The request includes an increase of 1.0 FTE and \$95,381 General Fund for a Programs Analyst I. The Office states that this individual will increase the ORPC's capability to perform essential oversight and evaluation functions. The ORPC points to the recently completed audit of the Office of the Child's Representative, noting that ORPC functions are similar to those of the OCR. The Office believes it should strengthen its controls in areas similar to those where the audit found weaknesses at the OCR. The cost of the request annualizes to \$101,458 General Fund in FY 2020-21.

**ORPC R5 COMPENSATION PLAN ALIGNMENT:** The request includes \$10,319 General Fund for the ORPC to implement the common compensation plan that has been jointly developed by the Office of the Child's Representative (OCR), the Office of Respondent Parents' Counsel (ORPC), and the Office of the Alternate Defense Counsel (OADC). The request adjusts the salary and benefits of staff members whose salary falls below the minimum of the salary range for their new job class under the Common Compensation Plan. On October 30, 2018, the ORPC Commission voted to increase the Executive Director's salary from being tied to a Colorado District Court Judge to being tied to a Colorado Court of Appeals Judge. This request includes funding for that increase. See request OADC R4 for more on a similar increase.

#### Requests from Office of Public Guardianship (OPG)

**OPG R1 FUNDING THE OFFICE OF PUBLIC GUARDIANSHIP:** The request, which comes from the Public Guardianship Commission, includes an increase of \$1,718,786 General Fund and a reduction of \$1,718,786 cash funds for the Office of Public Guardianship for FY 2019-20. This request is accompanied by a supplemental request of \$565,469 General Fund for FY 2018-19. Together these requests will be sufficient to start operations of the pilot public guardianship program established by H.B. 17-1087, a bill that also requires the pilot public guardianship program to report its results and findings to the General Assembly by January 1, 2021, at which time the General Assembly will decide whether to extend, expand, or cancel the program. The Public Guardianship Commission requests that the JBC carry a bill that will (1) extend the deadline for the OPG report, and (2) provide a wind-down period during which replacement guardians can be found for OPG wards if the OPG is not extended.

#### Requests from the Colorado District Attorneys' Council

**CDAC R1 DISTRICT ATTORNEY MANDATED COSTS:** The request includes an increase of \$102,373 General Fund for District Attorney mandated costs, which reimburses district attorneys for part of the mandated costs incurred in prosecution. The request equals 4.0 percent of the FY 2018-19 total appropriation for DA mandated costs. *[For more information see Appendix C, Judicial request for information #4.]*

#### Other Changes Requested by Judicial Agencies

**CENTRALLY APPROPRIATED LINE ITEMS:** The request includes the following adjustments to central appropriations:

CENTRAL APPROPRIATIONS ADJUSTMENTS						
	TOTAL	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL	FTE
Merit pay adjustment	10,850,605	10,293,923	556,682	0	0	0
Health, life, and dental adjustment	2,799,629	2,630,651	168,978	0	0	0
Payments to OIT adjustment	960,482	960,482	0	0	0	0
SAED adjustment	874,907	852,070	22,837	0	0	0
AED adjustment	844,717	823,143	21,574	0	0	0
CORE adjustment	322,566	322,566	0	0	0	0
Payment to risk management / property funds adjustment	118,939	118,939	0	0	0	0
Legal services adjustment	108,902	108,902	0	0	0	0
Leased space adjustment	46,709	46,709	0	0	0	0
Vehicle lease payments adjustment	21,262	21,262	0	0	0	0
Workers' compensation adjustment	(365,663)	(365,663)	0	0	0	0
Salary survey adjustment	(74,854)	(74,854)	0	0	0	0
Short-term disability adjustment	(22,033)	(21,307)	(726)	0	0	0
<b>Total</b>	<b>16,486,168</b>	<b>15,716,823</b>	<b>769,345</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Special merit-pay request for judicial officers:** For FY 2019-20 the Department requests that the Governor's 3 percent merit increase be given equally to all judicial officers with no regard to merit. If the Governor's merit increase is adjusted up or down, or another form of increase is approved, the Department requests that all judicial officers be given the same increase that other state workers are on average receiving, except that the percentage increase will be equal for all judicial officers.

**PERA DIRECT DISTRIBUTION:** The requests includes \$8,860,946 total funds (\$8,159,213 General Fund) for the PERA direct distribution.

**JUSTICE CENTER MAINTENANCE FUND:** The appropriation includes \$2,575,000 cash funds, which is appropriated from the Justice Center Cash Fund to the newly created Justice Center Maintenance Fund.

**NON-PRIORITIZED DECISION ITEMS:** The request includes the following non-prioritized decision items:

NON-PRIORITIZED DECISION ITEMS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
JUD NP 3 (OIT R2) Securing IT Operations	\$1,836,297	\$1,836,297	\$0	\$0	\$0	0.0
JUD NP 4 (OIT R4) Self Service Capabilities	51,636	51,636	0	0	0	0.0
<b>TOTAL</b>	<b>\$1,887,933</b>	<b>\$1,887,933</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0.0</b>

**CARR CENTER LEASE REVENUE ADJUSTMENT:** The request includes a \$105,766 increase in the leased space payments paid by tenants within the Ralph L. Carr Colorado Judicial Center (reappropriated funds received from General Funded tenant agencies) with accompanying adjustments.

**ANNUALIZE PRIOR YEAR BUDGET ACTIONS:** The request includes the following adjustments for annualization of prior year budget actions:

ANNUALIZE PRIOR BUDGET ACTIONS						
	TOTAL	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL	FTE
FY19 OSPD R1 Workload and Caseload Increases	393,960	393,960	0	0	0	0.0
FY19 JUD R5 IT Project Mgt. Security	72,768	72,768	0	0	0	0.0
FY19 JUD R3 Problem Solving Court Coordinators	41,919	41,919	0	0	0	0.0
FY19 JUD R4 Access to Justice	11,657	11,657	0	0	0	0.0

ANNUALIZE PRIOR BUDGET ACTIONS						
	TOTAL	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL	FTE
FY19 JUD R6 Interstate Compact FTE Transfer	9,828	9,828	0	0	0	0.0
FY19 JUD R7 Courthouse Furnishings	(3,233,311)	(2,733,311)	(500,000)	0	0	0.0
FY19 OSPD R2 IT Support, Security, and Development	(398,213)	(398,213)	0	0	0	0.0
Prior year salary survey	(274,255)	(118,499)	(155,756)	0	0	0.0
FY19 ORPC BA5 Operating expenses	(6,900)	(6,900)	0	0	0	0.0
FY19 OADC R2 Administrative Support	(3,473)	(3,473)	0	0	0	0.0
FY19 Social services professional coordinator one-time computer expense	(1,593)	(1,593)	0	0	0	0.0
<b>TOTAL</b>	<b>(3,387,613)</b>	<b>(2,731,857)</b>	<b>(655,756)</b>	<b>0</b>	<b>0</b>	<b>0.0</b>

**ANNUALIZE PRIOR YEAR LEGISLATION:** The request includes the following adjustments for annualization of prior year legislation:

ANNUALIZE PRIOR YEAR LEGISLATION						
	TOTAL	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL	FTE
SB 18-200 (PERA)	1,093,410	889,243	204,167	0	0	0.0
SB 18-251 Bridges Program	639,875	639,875	0	0	0	0.1
SB 18-203 Muni Courts	78,330	78,330	0	0	0	1.1
JUD SB08-054 (Judicial Performance Evaluations) Public awareness poll this year per that bill	30,000	0	30,000	0	0	0.0
JUD SB18-267 Justice Center Maintenance Fund	0	0	0	0	0	0.0
JUD SB18-1176 Offender re-entry grant program	(3,286,000)	0	(3,286,000)	0	0	0.0
<b>TOTAL</b>	<b>(1,444,385)</b>	<b>1,607,448</b>	<b>(3,051,833)</b>	<b>0</b>	<b>0</b>	<b>1.2</b>

## SUMMARY OF ISSUES PRESENTED TO THE JOINT BUDGET COMMITTEE

**FUNDING THE OFFICE OF PUBLIC GUARDIANSHIP:** The Office of Public Guardianship was created by H.B. 17-1087, which directed it to run a pilot program in three judicial districts, supported solely by gift, grants, and donations. The Office provides legal guardianship services for incapacitated adults who lack financial resources and lack potential guardians among family and friends. In January 2021, the Office must report to the General Assembly and the General Assembly must decide whether to continue or expand the program or allow it to end. Despite extensive fund raising efforts, the Office has only been able to obtain \$2,000 in donations and it now requests a \$1,718,786 General Fund appropriation for FY 2019-20 and a supplemental appropriation of \$565,469 General Fund for FY 2018-19 so that it can begin operations. The Office also asks the JBC to carry a bill to extend its reporting date and its termination date.

**OFFICE OF THE CHILD'S REPRESENTATIVE AUDIT:** The state auditor has released a performance audit that criticizes the Office of the Child's Representative (OCR) for deficient selection and monitoring of its contract attorneys, insufficient oversight of the CASA (Court Appointed Special Advocate) program, and inadequate internal control over payments to contractors and procurement cards. The OCR has promised to implement the auditor's recommendations and requests a \$294,420 General Fund appropriations to do so. Two other independent agencies, the Office of the Alternate Defense Council and the Office of the Respondent Parents Council, which operate in a similar, are requesting General Fund appropriations to strengthen and examine their processes.



**INCREASE THE NUMBER OF DISTRICT JUDGES:** The Judicial Department has requested \$7,681,991 General Fund for 15 new district-court judgeships and 45 support staff for FY 2019-20, for a total of 60.0 new FTE. This request responds to the substantial increase in workload that the courts have experienced in recent years. Much of the increase is due to an increased number of felony cases.

**COMMON COMPENSATION PLAN FOR THREE INDEPENDENT AGENCIES:** A common compensation plan has been adopted by three independent agencies in the Judicial Branch, the Office of the Alternate Defense Counsel, the Office of the Child's Representative, and the Office of the Respondent Parents' Counsel. This issue explains why a common compensation plan has been adopted and how it has affected this year's budget requests.

## FOR MORE INFORMATION

**JBC STAFF ANALYST:** Steve Allen  
(303) 866-4961  
Steve.Allen@State.co.us

**TO READ THE ENTIRE BRIEFING:** [http://leg.colorado.gov/sites/default/files/fy2019-20\\_judbrf.pdf](http://leg.colorado.gov/sites/default/files/fy2019-20_judbrf.pdf)

Letter from the Office of Public Guardianship Commission  
to the Independent Ethics Commission

## **Exhibit 5**

# THE OFFICE OF THE PUBLIC GUARDIANSHIP COMMISSION

## BY-LAWS

### ARTICLE I: PREAMBLE / ORGANIZATION

HB 17-1087 established the Office of the Public Guardianship (“Office”), an independent public entity within the Colorado Judicial Department. That same organic statute also established the Colorado Office of the Public Guardianship Commission (“Commission”). The Office and Commission comprise a pilot program that the General Assembly in its discretion may continue, expand, or discontinue in 2021.

The legislative purpose of establishing the pilot program is to address the needs of certain indigent and incapacitated adults who have otherwise lacked the financial resources or do not have responsible family or friends available and appropriate to serve as a guardian.<sup>1</sup> The legislative purpose of the Office is to provide public guardians for certain indigent and incapacitated adults, in addition to, collect data to determine the feasibility of a state-wide office of public guardianship, and appoint public guardians only to the extent necessary without altering or expanding judicial authority regarding determinations of mental capacity or altering or expanding the authority vested in the State Department of Human Services or County Departments of Human Services.<sup>2</sup>

### ARTICLE II: THE COMMISSION

#### Section 2.1 Composition and Term of Service.

The Commission is comprised of five members.<sup>3</sup> The appointing officials for the Commission include the Colorado Supreme Court and Governor that include:

- Three members are appointed by the Colorado Supreme Court, no more than one of whom is from the same political party, two must be attorneys licensed to practice law in the state of Colorado, and one a resident of Colorado not licensed to practice law.<sup>4</sup>

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<sup>1</sup> § 13-94-102(1), C.R.S. (2017).

<sup>2</sup> §§ 13-94-102(2)(a)(I), (a)(II), (3), C.R.S. (2017)

<sup>3</sup> § 13-94-104(1), C.R.S. (2017).

<sup>4</sup> § 13-94-104(1)(a), C.R.S. (2017).

- Two members are appointed by the Governor, one who must be an attorney licensed to practice law in the state of Colorado and one who is a resident of Colorado but not licensed to practice law.<sup>5</sup>

Commission members serve until 2021, at which point the pilot program will either be continued, expanded or discontinued.<sup>6</sup>

## **Section 2.2            Compensation.**

Members of the Commission shall serve without compensation but may be reimbursed for actual and reasonable expenses incurred in the performance of their duties, subject to funding.

## **Section 2.3            Commission Vacancy Appointments.**

The Chair, the Vice-Chair, or the Director shall immediately notify the relevant appointing authority of any Commission member vacancy. The relevant appointing official shall fill any vacancy of the Commission for the remainder of any time.

# **ARTICLE III:       COMMISSION CHAIR AND VICE-CHAIR**

The Commission shall elect by a majority vote a Commission Chair and Vice-Chair to oversee Commission business. The current Chair and Vice-Chair, who were elected at the October 2017 meeting, shall serve until June 30, 2019. Thereafter, the Commission Chair and Vice-Chair shall serve one year terms that coincide with the state fiscal year of July 1 to June 30. The Chair shall preside over the meetings of the Commission and work with the Director to set the Commission agenda. The Vice-Chair will act as the Chair-Elect.

The Vice-Chair shall act in the absence of the Chair.

The election for the Vice-Chair, who will serve as the next Chair-Elect, shall take place six months prior to the expiration of the term of service as Commission Chair. In the event the individual serving as Commission Chair no longer serves on the

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<sup>5</sup> § 13-94-104(1)(b), C.R.S. (2017).

<sup>6</sup> § 13-94-104(2), C.R.S. (2017).

Commission prior to the expiration of the term as Chair, the Vice-Chair shall serve as the Commission Chair for the remainder of that term.

The Chair or Director shall immediately notify the relevant appointing authority of any Commission member resignation. The relevant appointing official shall fill any vacancy of the Commission for the remainder of any time.

## **ARTICLE IV: COMMISSION MEETINGS**

### **Section 4.1 Regular Meetings.**

Regular Commission meetings are held monthly commencing in February 2018 on the fourth Wednesday of the month, unless otherwise noticed. Meetings are from 10:00 AM-noon, unless otherwise specified. The meetings will be held in the Ralph L. Carr Judicial Building, located at 1300 Broadway in Denver, Colorado, unless a different location is designated. The specific conference room where the meeting is located in the Ralph L. Carr Building will change subject to availability.

Commission members may participate by telephone to attend meetings, so long as they provide notice to the Chair, Director or other acting liaison in advance so that appropriate conferencing technology is made available.

Emergency or special meetings of the Commission may be called by the Chair or Director or other acting liaison. Notice of an emergency or special Commission meeting shall be delivered by electronic mail or telephone to each Commission member, which will include the date, time, location and purpose of the meeting. Notice of the special or emergency Commission meeting shall be provided to the Commission member no later than 24 hours prior to the time set for the meeting.

### **Section 4.3 Quorum.**

A majority of the members of the Commission, when present at any meeting, shall constitute a quorum.

### **Section 4.4 Notice of Meetings.**

The Commission shall provide public notice of all its meetings on the Office website, or through such other means as the Chair or Director or acting liaison deems

appropriate until an Office website is established. The notice shall include the date, time, location, and agenda for the meeting.

#### **Section 4.5            Conduct of Meetings.**

All regular meetings of the Commission shall be open to the public where public business is discussed. Meetings of the Commission shall be conducted generally in keeping with Roberts Rules of Order, except as otherwise provided in these By-Laws, but shall be as informal as circumstances permit.

Members of the public who attend shall be provided a reasonable opportunity to speak at the beginning of the meeting, subject to the Commission policy on public comment. The Commission may from time to time and by a majority vote adopt or amend its policy for the receipt of public comment.

The Commission may vote to conduct certain business in Executive Session. Such circumstances that may necessitate Executive Session include, but are not limited to, information that must be kept confidential subject to the attorney-client privilege, personnel matters related to the Director, or information that must be kept confidential subject to other state or federal laws. The Chair shall announce to the public the general topic for discussion in Executive Session and call for a motion to enter into Executive Session. The Commission must vote by two-thirds majority of its membership before it may enter into Executive Session. If the Commission votes to enter Executive Session, only those persons invited by the Commission may be present during the Executive Session.

#### **Section 4.6            Voting.**

Each member of the Commission shall be entitled to one vote in the affairs of the Commission. A majority of the quorum passes a measure unless otherwise specified in these By-Laws.

#### **Section 4.7            Minutes.**

Minutes for all Commission meetings shall be taken. The Commission shall have an opportunity to review the minutes of a prior meeting at its next regularly scheduled meeting, and shall approve the minutes by a majority vote, subject to any amendments or corrections. The approved minutes shall constitute the

Commission's official record of proceedings. The approved minutes shall be made available to the public via the Office website, or through other means until an Office website is established.

#### **Section 4.8          Attendance.**

Attendance to all regular Commission meetings is mandatory, unless previously excused by the Chair, Vice-Chair or Director. If a Commission member has more than three consecutive unexcused absences, the Chair, in his or her discretion and as may be delegated to the Director, may report such circumstances to the Commission member's appointing authority.

### **ARTICLE V:          COMMISSION DUTIES**

#### **Section 5.1          Commission Duties Generally.**

The Commission's duties include:

- Appointment and evaluation of the Director;
- Assignment of duties to the Director;
- Consult with the Director with the discontinuation plan for the Office in the event the General Assembly does not continue or expand the program in 2021.

#### **Section 5.2          Fundraising Activities.**

The Commission shall be authorized to engage in fundraising activities, and may draft and approve separate fundraising guidelines and materials in furtherance of those activities.

#### **Section 5.3          Appointment of the Director.**

The Commission shall appoint a Director by a two-thirds majority vote of the Commission membership.

The Commission shall work with Human Resources for the State Court Administrator's Office ("SCAO"), which may provide assistance with the hiring

process for the Director, will be outlined in a Memorandum of Understanding between the Colorado Judicial Department and the Office, or any successor agreement.

The Commission shall review the applications that are received, narrow the pool to a certain number of finalists, conduct interviews of the finalists, conduct reference checks, and vote by a two-thirds majority for appointment of the Director. The Commission shall provide reasonable transparency in the hiring process, while protecting the privacy rights of candidates subject to any applicable laws.

#### **Section 5.4            Evaluation of the Director.**

The Commission shall set the compensation of the Director, subject to the guidelines established or best practices engaged in by other state agencies in the compensation of their executive level staff directors, as well as subject to funding availability.

The Commission shall conduct Annual Evaluations of the Director, which shall include at minimum, a completed self-evaluation by the Director, comments and feedback from the Office staff, and completed evaluation forms of Commission members. The Commission may delegate to the Chair, or other designee, the responsibility of preparing a draft Annual Evaluation that combines the Director's self-evaluation, Office staff comments and feedback, and Commission member evaluations. The Commission shall review the draft Annual Evaluation, and by majority vote, approve a final Annual Evaluation subject to any corrections, amendments, or deletions. The final Annual Evaluation shall be delivered to the Director, who shall at the next regularly scheduled meeting have an opportunity to provide a response, either through written or verbal means, or both.

#### **Section 5.5            Termination of the Director.**

The Commission may terminate the Director's employment by a two-thirds majority vote of the Commission membership.

A decision by the Commission to terminate the Director is final and not subject to appeal, review, or grievance.

#### **Section 5.6            Advisory Role of the Commission to the Director.**



The Commission shall provide any and all assigned tasks to the Director as the Commission deems appropriate, and when appropriate in consultation with the Director.

The Commission shall from time to time offer suggestions, advice, recommendations or other input to the Director, as the Commission deems appropriate.

## **ARTICLE VI: COMMISSION DOCUMENTS**

The Commission shall draft and approve a separate Document Retention Policy that complies with the retention and destruction of Commission Documents in compliance with state and, to the extent applicable, federal law.

## **ARTICLE VII: AMENDMENTS**

### **Section 7.1 Procedures.**

The change in state or federal law, or other circumstances, may warrant the amendment of these By-Laws. These By-Laws may be amended or repealed, in whole or in part, by a majority vote at any publicly noticed meeting of the Commission and are effective upon adoption or amendment.

### **Section 7.2 Distribution.**

The Chair, as may be delegated to the Director, shall provide a copy of the latest version of these By-Laws to any person who requests a copy. The latest version of the By-Laws shall be made available to the public via the Office website, or through other means until an Office website is established.

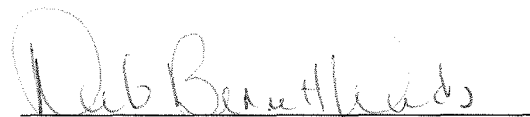
### **Section 7.3 History.**

Adopted and effective by the Commission on January 12, 2018

COLORADO OFFICE OF THE PUBLIC GUARDIANSHIP COMMISSION:



SHARI CATON, ESQ.  
Commission Chair



DEB BENNETT-WOODS  
Commission Vice-Chair