



Joint Budget Committee

Interim Supplemental Budget Requests FY 2025-26

**Judicial Department
Alternate Defense Counsel**

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Interim Supplemental Requests

→ OADC Conflicts-of-Interest Contracts Emergency Supplemental

Item	Total Funds	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Request	\$800,613	\$800,613	\$0	\$0	\$0	0.0
Recommendation	800,613	800,613	0	0	0	0.0
Staff Recommendation Higher/-Lower than Request	\$0	\$0	\$0	\$0	\$0	0.0

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.?

YES

The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**

An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.

Explanation: The Office and JBC Staff agree that the request meets supplemental criteria due to data that was not available when the original appropriation was made, specifically that actual June contractor costs would exceed the Office's appropriations. When the Office approached June, its forecast based on an average of three prior year workload averages estimated appropriations would be sufficient but actual experience resulted in a deficit of about \$1.8 million General Fund.

Request

The Office of Alternate Defense Counsel (OADC) requests an increase of \$800,613 General Fund in FY 2025-26 to allow the Office to make final payments to its attorney contractors for providing legal defense of indigent clients with a conflict-of-interest with representation provided by the Public Defender's Office. While the deficit between appropriations and actual expenditures actually exceeded \$1.8 million General Fund, the OADC is only requesting \$800,613 because it was able to work with other independent agencies and the Chief Justice to

transfer \$1.0 million General Fund that would have otherwise reverted at year-end to cover over half of the deficit.

Recommendation

Staff recommends that the Committee approve the Office's request. The amount requested represents the exact amount needed to cover actual work that has already been completed by its independent contractors and thus contains next to no possibility of error. These are constitutionally mandated costs for providing indigent criminal defendants access to legal representation. The total it needed at year-end, \$1.8 million, represents an approximate 2.5 percent change in appropriations over what the final budget totaled for FY 2025-26. Many of the factors that impact OADC's contractor expenses are outside of its control and primarily dependent on the volume of appointments. Changes in the complexity of cases and the volume of discovery that must be reviewed have made forecasting using past actual data less reliable as an indicator of future need and JBC Staff believes the difficulty in forecasting OADC's needs will persist. OADC and JBC staff continue to work collaboratively to fine-tune forecasting future OADC needs.

Analysis

Background

This supplemental budget request is submitted to address outstanding year-end payments to OADC's independent contractor attorneys for work that was already completed in FY 2025-26. The request is only for the exact amount for the billings captured through FY 2025-26 and does not include any additional amount if contractors have not yet submitted invoices for FY 2025-26 work.

As a reminder, OADC fulfills its statutory and constitutional duties to provide legal representation to indigent criminal defendants by contracting with private local attorneys. OADC contractors are only appointed to be counsel when the Public Defender's Office has a conflict-of-interest that precludes it from providing representation. Contractor expenditures are driven by the number, type, complexity, and timing of cases assigned to OADC and by the legal and professional services required in those cases. Finally, the OADC does not have many mechanisms that it can utilize to restrict contractor expenses. It does review the details submitted by its contractors and reviews outliers to ensure fair and accurate billing submissions.

The General Assembly has attempted to provide these contractors with more options to utilize lower-cost employees of the attorney contractors for tasks that do not require a law license to fulfill. However, OADC and the General Assembly tread into potential constitutional issues if it directs attorneys to provide anything less than representation that meets the minimums required by Colorado's Rules of Professional Conduct for attorneys.

The OADC staff alerted JBC staff to a potential problem where actual costs were exceeding the assumptions relied upon to set appropriations for FY 2025-26 in early June, but the entire scope of the problem would not be known until after June had passed. JBC staff advised OADC staff that it would be best to wait for year-end to pass before requesting an emergency supplemental to avoid the need to request and be approved to allow more General Fund than needed to be overexpended to account for the unknowns at the time and instead request only the bare minimum General Fund required to fulfill its obligations.

Between initially identifying the potential problem and OADC actually submitting this emergency supplemental, OADC worked with the State Court Administrator's Office (SCAO), the State Controller's Office, and two of its sister organizations (Office of the Child's Representative [OCR] and Office of Respondent Parents' Counsel [ORPC]) to utilize transfer authority contained in Sections 24-75-108 through 110. C.R.S., to provide OADC with \$500,000 transferred from those programs for a total of \$1.0 million. Had this funding not have been approved for transfer, it would have reverted back to the General Fund.

JBC staff notes for the Committee that both OCR and ORPC were cooperative in approving the transfer but both had some reservations that highlighting this transfer could appear as a flag to the JBC that the funding could be clawed back from their base appropriations in FY 2026-27. As OADC put it, "[t]he transfer does not and should not constitute a permanent base transfer and does not reduce either OCR's or ORPC's FY 2026-27 base appropriations."

JBC staff believes that reducing these agencies budgets based on their ability to assist with transfers this year should not be considered by the Joint Budget Committee when supplementals are submitted in January. The transfer authority contained in statute seems to be working as intended because this transfer complies with statutory constraints and the SCAO and State Controller's Office agree with that conclusion. Finally, JBC staff understands that both OCR and ORPC agreed to make the transfer this year because they believe that if the roles were reversed in the future that they could also rely on sister organizations in the Judicial Department to provide funding to fulfill their program duties in a time of need.

Due to the approved transfers, the OADC is requesting only the remaining amount required to make final payments to contractors for FY 2025-26 (\$800,613 General Fund), and not the full amount they would have needed without the transfer authority. JBC Staff believes the public policy of allowing this transfer in statute is an efficient mechanism to balance unknowns in the Department and had reality differed from the caseload assumptions by a smaller magnitude, an emergency supplemental might not have even been needed to utilize General Fund that was essentially already going to revert at the end of the year.

Changes from forecast upon which appropriations were based

OADC reviewed its forecast and the final figures from the end-of-year experience to determine the major drivers of the change. While OADC did have approximately 1,019 more cases referred to them in FY 2025-26 compared to the prior year, the larger drivers of increased costs are on a per case basis and due to case complexity and the time needed to review discovery continuing to rise. The amount of funding related to reviewing audio and video recordings collected by law enforcement rose from \$8.3 million in FY 2024-25 to \$9.6 million in FY 2025-26. JBC staff believes that these costs will continue to rise as more audio and video recordings are made and retained; this includes not just law enforcement-worn body cams but also community installed cameras (license plate readers and other "Flock"-type surveillance) and even artificial intelligence summaries of audio and video recordings.

Since the current JBC analyst for OADC has had the assignment, staff from both agencies have been working together to try to find a forecast or budgeting model to use that more closely approximates the cost for OADC to meet its obligations. For FY 2026-27 figure setting, JBC Staff and OADC utilized a forecast based on the case-classes. But for the January OADC supplemental request for FY 2025-26, an older method for estimating costs was used. This method estimated the remaining caseload for the year by reviewing actual spending through

November 2025 and compared the percentage of the OADC budget expended with the percentage of the fiscal year completed and extrapolated an estimated cost from that ratio.

Nonetheless, JBC staff believed it would be helpful to show the final breakdown by case type classification, summarized below:

FY 2025-26 Case Matrix Based on Final Actuals

Classification	FY 2025-26 Cases	FY 2025-26 Total Expenditure	FY 2025-26 Average Cost Per Case
DF1	846	\$3,747,777	\$4,430
DF2	512	1,144,648	2,236
DF3	317	560,711	1,769
DF4	714	971,566	1,361
DM1	1,589	1,244,379	783
DM2	85	39,407	464
F1	560	10,769,927	19,232
F2	1,156	12,163,602	10,522
F3	2,327	11,146,202	4,790
F4	4,167	10,759,571	2,582
F5	2,960	5,492,674	1,856
F6	1,154	1,782,021	1,544
F-Unclassified	66	58,683	889
M1	5,565	5,623,576	1,011
M2	2,328	2,146,255	922
M3	65	43,335	667
M-Unclassified	728	800,739	1,100
PO1	884	522,599	591
PO2	66	42,775	648
Traffic	1,124	741,302	660

JBC staff is also including a year-over-year comparison between FY 2024-25 and FY 2025-26 based on the case-classes breakdowns:

Year-over-Year Change by Case Classification

Classification	Change in Cases	Change in Total cost	Change in Average Cost
DF1	-98	-\$56,755	\$400
DF2	18	565	-80
DF3	29	118,587	234
DF4	-2	165,162	234
DM1	185	362,545	155
DM2	2	6,339	65
F1	-41	-1,180,093	-652
F2	3	1,230,971	1,040
F3	20	1,719,457	704
F4	56	1,296,558	280
F5	-131	-39,444	66
F6	-85	254,031	311
F-Unclassified	-20	-19,197	-16
M1	534	1,209,903	133
M2	108	385,172	129
M3	-15	-43,936	-424
M-Unclassified	163	277,345	174
PO1	131	108,088	41
PO2	17	17,573	134
Traffic	145	202,145	109

Final Thoughts

JBC staff has also heard anecdotally that delaying these payments to contractors for work already performed may be having impacts on the network of attorney contractors overall. Those attorney include not only those that are relied upon by OADC, but also those contracted by OCR and ORPC and to a lesser extent, the Office of Public Guardianship and the Office of Bridges of Colorado. JBC staff does believe there is no upside to further delaying the outstanding \$0.8 million requested for overexpenditure authority.

This community of attorney contractors is also expressing disgruntled feelings, anecdotally again, because the hourly rate provided to them in the FY 2026-27 budget cycle essentially did not increase over the amount provided in FY 2025-26, even though the JBC's action complied with statute targeted to increase the hourly rate the decision was was to increase the appropriations related to the expenditures by a total of \$5 (note: \$5 total across all agencies, not \$5 per hour or even \$5 per contractor).

As a preview for the FY 2027-28 budget cycle, JBC staff is expecting agencies reliant on these contractors to request increasing the hourly rate for these by the full \$2 per hour set as a target and cap for the annual increase to the hourly rate. JBC staff believes a forthcoming recommendation for the hourly contractor rate for the next cycle will end up somewhere between the requested max increase and at least a percent increase to the rate consistent with compensation decisions made for state employees; e.g. if state employees are given a 3 percent increase, JBC staff will recommend a similar percent increase to the contractor hourly rate.