

**District of Columbia Courts  
FY 2005 Budget Justification  
Defender Services**

As required by the Constitution and statute, the District of Columbia Courts appoint and compensate attorneys to represent persons who are financially unable to obtain such representation under three Defender Services funds. The Criminal Justice Act (CJA) provides court-appointed attorneys to indigent persons who are charged with criminal offenses<sup>1</sup>. The Counsel for Child Abuse and Neglect (CCAN) provides the assistance of a court-appointed attorney in family proceedings in which child abuse or neglect is alleged, or where the termination of the parent-child relationship is under consideration and the parent, guardian, or custodian of the child is indigent<sup>2</sup>. The Guardianship fund provides for compensation to service providers in guardianship and protective proceedings for incapacitated adults<sup>3</sup>. In addition to legal representation, these programs offer indigent persons access to experts to provide services such as transcripts of court proceedings; expert witness testimony; foreign and sign language interpretation; investigations; and genetic testing.

Attorneys and experts who provide defender services submit vouchers to the D.C. Courts' Budget and Finance Division detailing the time and expenses involved in working on a case. Following administrative review and approval by the judge or magistrate judge who presided over the case, the voucher is processed for payment by the General Services Administration (GSA), which issues checks from the Defender Services appropriation.

**Workload data**

Table 1 provides actual and estimated data on the value of Defender Services vouchers received and paid in fiscal years 2001 through 2005.

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<sup>1</sup> See D.C. Code §11-2601 *et seq.*

<sup>2</sup> See D.C. Code §16-2304.

<sup>3</sup> See D.C. Code §21-2060.

Table 1  
Defender Services Obligations and Outlays  
(in millions of dollars)

	Actual 2001	Actual 2002	Estimated 2003	Estimated 2004*	Request 2005
<b>CJA</b>					
Obligations	22.0	23.0	24.4	28.2	28.6
Outlays	20.8	18.3	23.4	26.3	26.7
<b>CCAN</b>					
Obligations	6.9	7.8	10.4	11.2	11.6
Outlays	5.9	6.0	7.2	9.1	9.5
<b>Guardianship</b>					
Obligations	0.9	1.0	1.2	1.3	1.3
Outlays	0.8	0.9	1.0	1.0	1.0
<b>Totals</b>					
Obligations	29.8	31.8	36.0	40.7	41.5
Outlays	27.5	25.2	31.6	36.4	37.2

\*FY 2004 Outlays are projected to exceed the FY 2004 Enacted level of \$32,000,000 (\$22.0 million for CJA; \$9.0 million for CCAN; and \$1.0 million for the Guardianship program).

**FY 2005 Request**

The Courts request \$41,500,000 for the Defender Services base programs in fiscal year 2005. The request consists of \$28,600,000 for CJA; \$11,600,000 for CCAN; and \$1,300,000 for Guardianship. The Courts' total request is \$9,500,000 above the FY 2004 Enacted level and \$8,000,000 above the FY 2003 funding level of \$33,500,000, which included an earmark of \$16,400,000 from the account reserve<sup>4</sup>. The request reflects the complete phase-in of the March 2002 hourly rate increase for attorneys and investigators, the cost of which is detailed in Table 2, below. Attorneys and investigators who provide services under the District of Columbia's CJA and CCAN are now compensated at an hourly rate of \$65 and \$25 respectively.

Table 2  
Requested Increase: Completes the phase-in of FY 2002 Hourly  
Rate Increase Attorney rate \$50 to \$65 (effective 3/1/02)

Criminal Justice Act (CJA)	\$ 6,600,000
Counsel for Child Abuse and Neglect (CCAN)	2,600,000
Guardianship	300,000 <sup>5</sup>
<b>Total</b>	<b>\$ 9,500,000</b>

**Account Reserve Dwindling**

<sup>4</sup> This includes \$1,500,000 earmarked to provide a contractual program of guardians ad litem to abused and neglected children in the District of Columbia Family Court.

<sup>5</sup> This increase actually results from the recognition of projected obligations.

The Courts expect to deplete the unexpended reserve in the account in FY 2004, and will require an additional \$900,000 merely to meet basic outlays (please see Table 3). Obligations are expected to exceed basic outlays. Specifically, projected obligations of \$40.7 million will exceed total resources of \$35.5 million (\$32 million appropriation plus \$3.5 million reserve) by \$5.2 million.

Without additional resources, the Courts will not be able to continue to support basic costs for representation of the indigent, the incapacitated, and children in the District. Both the FY 2002 hourly rate increase for attorneys and investigators and nearly half of the FY 2003 funding were financed through the account reserve. Moreover, the enactment of the *Innocence Protection Act of 2001* (likely to produce an increase in expert services costs related to DNA testing of biological material pertaining to a defendant's case) and rising crime rates in the District of Columbia place further pressure on the account and render even more critical the retention of some reserves in the Defender Services account. Table 3 demonstrates the depletion of the account reserve, providing actual, estimated, and projected balances in the Defender Services account as of the end of fiscal years 2000 through 2004.

Table 3  
Defender Services Account  
Cumulative End of Year Reserve<sup>6</sup>  
(dollars in millions)

	Actual 2000	Actual 2001	Actual 2002	Estimated 2003	Projected 2004
<b>CJA</b>	7.2	12.9	14.8	2.3	-2.0
<b>CCAN</b>	1.0	2.0	4.6	1.2	1.1
<b>Guardianship</b>	0.1	0.1	0.1	-	-
<b>TOTAL</b>	<b>8.3</b>	<b>15.0</b>	<b>19.5</b>	<b>3.5</b>	<b>-0.9</b>

#### Projecting Resource Requirements

Predicting program obligations has been difficult because attorneys submit claims for reimbursement only after the conclusion of a case, which may be years after their appointment to a case. To quantify the time lag between attorney appointment and payment, the Courts, with the assistance of KPMG, analyzed CJA expenditure data for the five-year period from 1995 through 1999. This analysis revealed that in any given year, the Courts make payments to attorneys who were appointed to CJA cases up to six years earlier.

Since its inception, the difficulty in projecting resource requirements for the CJA program has led to budgetary shortfalls, supplemental appropriations, legislative authority to pay prior year claims from current year appropriations, and the need to augment the CJA appropriation with funds from the Courts' already strained operating budget. Disbursements have often exceeded appropriations, as the Courts have supplemented defender services from operating funds.

<sup>6</sup> Reflects the unexpended balance in the Defender Services Account, reduced by the \$1.5 million obligated in FY 2003 for the contractual guardian ad litem program.

Beginning in FY 2000, Defender Services funds are available until expended, permitting any excess funds from one year to be available to cover increased program costs in later years.

The Courts seek to address the problem of CJA funding shortfalls by improving the method by which resource requirements are estimated. In the past, the Courts' ability to determine budgetary requirements for CJA has been hampered by the lack of historical data on obligations (as defined under federal appropriations principles), and by the inability of the Public Defender Service to provide timely, comprehensive data on CJA vouchers issued to attorneys. Therefore, beginning in FY 2002, the Courts assumed responsibility for the issuance of vouchers. By managing and recording the issuance of these vouchers, the Courts' ability to estimate obligations will be greatly enhanced.

#### The KPMG Methodology

KPMG analyzed a representative sample of 180 CJA vouchers identified previously by the General Accounting Office (GAO) to compare the Courts' outlays in any given year for CJA vouchers with the year of attorney appointment. This sample included information on the type of case, dates of attorney appointment and payment, and the amounts claimed and paid. KPMG found that only 40% of all outlays were for vouchers submitted by attorneys who were appointed in the same year, and 31% of all outlays were for vouchers submitted by attorneys appointed in the previous year. Using KPMG's methodology for the FY 2000 CJA expenditures of \$25.4 million, \$10.2 million (40%) were to pay attorneys who were appointed in FY 2000; another \$7.9 million (31% of the total) were to pay attorneys who were appointed in FY 1999. The seven-year payment pattern is presented in Table 4.

Table 4  
CJA Outlays by Year of Attorney Appointment

<u>Year of Appointment</u>	<u>% of CJA Outlays</u>
0	40%
-1	31%
-2	17%
-3	5%
-4	5%
-5	1%
-6	1%

Source: KPMG analysis of GAO sample of CJA vouchers.

**Estimating FY 2005 Resource Requirements**

The Courts applied the outlay percentages determined by KPMG to the expected FY 2004 payments to produce a FY 2005 budget request estimate. Using actual CJA expenditure data for the Fiscal Years 1996 through 2002, and projections of expenditures for Fiscal Years 2003 through 2004, FY 2005 expenditures are projected to be roughly \$26.7 million that can be attributed to current-year and prior-year appointments (see Table 5). This estimate, when considered with actual expenditure data, represents total CJA obligational authority needed to liquidate all vouchers that we project, using the KPMG methodology, could be submitted in FY 2005 by attorneys who were appointed to cases in Fiscal Years 1999 through 2005. Given the data limitations on the outstanding liability associated with case assignments and vouchers not yet submitted for payment, this methodology uses annual expenditures as a proxy for annual obligations.

Table 5  
CJA Estimated Resource Requirements in FY 2005  
 (in millions of dollars)

Year Attorney Appointed	Total Expenditures	FY 2005 Expenditures Attributed to Appointment in Fiscal Year							Total
		2005	2004	2003	2002	2001	2000	1999	
FY 2005	26.7	10.7 (40%)							
FY 2004	26.3		8.28 (31%)						
FY 2003	22.4			4.54 (17%)					
FY 2002	18.3				1.33 (5%)				
FY 2001	20.8					1.33 (5%)			
FY 2000	25.4						0.27 (1%)		
FY 1999	28.0							0.27 (1%)	
Total									26.7 (100%)

**Accrued, Unpaid CJA Liabilities**

In addition to estimating the FY 2005 budget authority needed to pay CJA vouchers submitted by attorneys appointed in Fiscal Years 1999 through 2005, the KPMG methodology may be used to estimate yet-to-be submitted vouchers, or outstanding liabilities of the CJA program. KPMG concluded that, if 40% of all CJA payments in year one were for vouchers submitted by attorneys who also were appointed in year one, then 60% of all obligations for attorney vouchers

in that year must be outstanding. Similarly, if 31% of all outlays are to pay vouchers from attorneys who were appointed in the prior year, then 29% of voucher obligations from year 2 remain unpaid (100% - (40% + 31%)). The seven-year unliquidated liabilities stream estimated by KPMG appears in Table 6 below.

Table 6  
Estimated Outstanding CJA Liability in FY 2005

<u>Year of Attorney Appointment</u>	<u>Total Outlays (\$ Millions)</u>	<u>% Not Paid</u>	<u>Outstanding Liability (\$ Millions)</u>
0 (FY 2005)	26.7	60%	16.0
-1 (FY 2004)	26.3	29%	7.6
-2 (FY 2003)	22.4	12%	2.7
-3 (FY 2002)	18.3	7%	1.3
-4 (FY 2001)	20.8	2%	0.4
-5 (FY 2000)	25.4	1%	0.3
-6 (FY 1999)	28.0	1%	0.3
TOTAL			28.6

The Courts' assumption of the voucher issuance process, including the use of electronic systems, together with the implementation of tighter controls, rules and policies governing voucher issuance, retrieval and submission, has further enhanced the Courts' ability to account for and project its Defender Services liabilities. As a result of the foregoing, the Courts anticipate that the previously established seven-year unliquidated liabilities stream will be compressed in future fiscal years.