

**District of Columbia Courts
FY 2012 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 representation under three Defender Services programs. The Criminal Justice Act (CJA) program provides court-appointed attorneys to indigent persons who are charged with criminal offenses.¹ The Counsel for Child Abuse and Neglect (CCAN) program provides the assistance of a court-appointed attorney in family proceedings in adoptions, where 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.² The Guardianship program provides for compensation to service providers in guardianship and protective proceedings for incapacitated adults.³ In addition to legal representation, these programs provide indigent persons access to services such as: transcripts of court proceedings; expert witness testimony; foreign and sign language interpretation; investigations; and genetic testing.

Defender Services attorneys and service providers 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 presiding over the case, the voucher is processed for payment by the General Services Administration (GSA), which issues checks from the Defender Services appropriation.

Accounting Methodology

In its required reports and filings with the Office of Management and Budget and Congress, the Courts have historically recognized Defender Services obligations at the time of payment (outlays), maintaining a carryover balance from year to year to cover those vouchers that had been issued in prior years (at the time an attorney was appointed to a case) but not yet submitted and paid. In contrast, however, generally accepted accounting principles required that the Courts disclose the value of these outstanding vouchers, or liability, on their annual financial statements. This outstanding liability was calculated by multiplying the total number of vouchers in each case type by the computed average cost paid by case type.

In connection with the foregoing, the Courts contracted an independent accounting firm during FY 2009 to assist in the 1) analysis of the current liability stream of the Defender Services programs; 2) development of a sound methodology to recognize program obligations (e.g. accounting treatment of vouchers issued under the programs); and 3) projection of future resource requirements. The goal of these activities is to better align the outstanding liability of the Defender Services programs reflected on annual financial statements with Federally required (monthly, quarterly, and annual) reports and filings and with budget submissions.

¹ See D.C. Code §11-2601 *et seq.*

² See D.C. Code §16-2304.

³ See D.C. Code §21-2060.

The accounting firm has given its recommendations, which include—

- 1) the obligation of vouchers upon issuance instead of upon submission for payment; and
- 2) the formal recognition of outstanding vouchers from prior years (i.e., the financial liability) by obligating them (through a one-time journal entry) at the beginning of FY 2010.

The firm's recommendations are based in large part on a decision issued by the Comptroller General – *50 Comp. Gen. 589 (1971)*, which notes that “[i]t is clear that from the time of the attorney’s appointment a contractual obligation exists on the part of the Government to pay the reasonable costs of the representation, and that the subsequent court review of the voucher is only for the purpose of determining that the actual costs claimed to have been incurred were necessarily incurred and are in fact reasonable.”

These findings are compelling. The Courts anticipate that implementation of the proposed recommendations will provide a systematic process for projecting future resource requirements and strengthening budget submissions. The Courts began to adopt these recommendations effective with the beginning of FY 2010.

Accordingly, the Courts created a formal obligation in the financial system to recognize prior years’ outstanding vouchers at the beginning of FY 2010. This action converted the liabilities in the account (currently carried in the financial system as an unobligated balance) into obligations. This action also reduced the large unobligated carryover balance in the account, which increased steeply in FY 2008 and FY 2009 when hourly rate increases were fully funded but not in effect at the start of those fiscal years. In addition, effective in FY 2010, the Courts began obligating vouchers when issued upon the appointment of an attorney to a case.

FY 2012 Request

The Courts request **\$55,000,000** for Defender Services in FY 2012, the same as the FY 2010 Enacted Budget.

In fiscal 2008, Congress financed an hourly rate increase for attorneys to \$80 per hour and in FY 2009, legislation was enacted to increase the hourly rate to \$90. It is anticipated that the full impact of the latest hourly rate increase will be realized during FY 2011 and FY 2012.

Estimating FY 2012 Resource Requirements

Predicting program obligations has historically 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. 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, carryover authority, and the need to augment the CJA appropriation with funds from the Courts’ operating budget.

As previously noted, the Courts budget submissions since FY 2000 have included a projection of the value of issued vouchers as a liability (“obligations”) each fiscal year over and above projected outlays. Although the stated dollar value of the obligations has not been formally posted into the financial system of record in the past, these projected obligations have become the basis of each budgetary request for resources, which has also included a narrative on accrued and unpaid liabilities. As noted above, the Courts began to obligate carryover funds in FY 2010 to recognize accrued liabilities in its financial system of record, using real time data from its web-enabled voucher system.

Previous studies completed in 2000 by independent accountants found that it took 7 years from the time of attorney appointment to a case for all vouchers to be submitted to the Court for payment. Due to enhanced program management, operational changes (such as the establishment of guideline vouchers), administrative efficiencies and business process reengineering in recent years, the time between appointment to a case and payment of the voucher has been drastically reduced, producing an increase in the number of vouchers that are expected to be submitted in Fiscal Years 2011 and 2012, and, therefore, an increase in expected outlays.

It should also be noted that the Courts anticipate the continued escalation of costs to sustain the contract for the Courts’ Guardian Ad Litem (GAL) representation of abused and neglected children. The costs for this important program are anticipated to be approximately \$6,000,000, the expense of which is included under the Counsel for Child Abuse and Neglect program.

In addition, the Court has seen program cost increases due to the *Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005*, and the *Innocence Protection Act of 2001*. Specifically, the Office of the Attorney General for the District of Columbia commenced filing petitions in FY 2006 for the appointment of guardians to make health care decisions for persons who are under the care of the Mental Retardation and Developmental Disabilities Administration. These filings emanated from the Health-Care Decisions Emergency Act which became effective October 28, 2005, and subsequent permanent legislation. Based on an analysis of the Act, it appears that the resulting new cases will continue to increase obligations from the Guardianship Fund. Furthermore, the enactment of the Innocence Protection Act has produced an increase in expert services costs related to DNA testing of biological material pertaining to a defendant’s case. As covered extensively in the local media, such DNA testing demonstrated the innocence of one defendant who was released in December 2009 after serving 28 years in prison for a murder conviction.