

**SUPREME COURT OF VERMONT
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TO: Patricia Gabel
State Court Administrator

FROM: Gregg Mousley
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DATE: August 21, 2020

RE: FY21 Budget Restatement

The Judiciary has submitted an FY21 Budget Restatement to Finance and Management and it has been incorporated into the Governor's Recommended Budget submitted to the Legislature. The resubmitted budget includes a reduction of \$783,015 from the January Governor's Recommended Budget. I have attached the Vantage Budget Reports to provide all the detail.

We have accomplished this reduction by increasing the expected vacancy savings from \$912,549 to \$1,412,549, an increase of \$500,000. This increase in vacancy savings will need to be accomplished at an unprecedented time for the Judiciary as we are in the middle of making the transition from a paper-based court system to an electronics-based court system, with one workforce supporting two different systems at the same time during the pandemic and Judicial Emergency. The remaining \$283,015 decrease comes from the internal service funds such as fee for space, ADS, and DHR allocations, VISION, workers comp, general liability, property insurance, and other internal service funds..

At this time, the Judiciary cannot sustain a reduction to its base funding.

The transformation of Judiciary operations is ongoing and is proceeding at an impressive rate. The Next Generation Case Management System is rolling out to 4 more counties and the Environmental Division this week - making a total of seven counties, Judicial Bureau, and Environment Division. Seven counties and the Supreme Court remain and are on schedule to convert later this fiscal year. Moving to an electronic system will significantly change how the courts function, as the paper record will no longer be central to every activity. With the support of a few backfill positions, judges and Judiciary staff are performing their normal jobs while at

the same time serving on the expanded project team and participating as trainers and support people for the transition.

In addition to that huge transformation, the Judiciary is now required to drastically alter court operations to comply with the health requirements of this pandemic. Court hearings as they had been structured cannot be held in the same way. Remote video hearings will be the norm for many more hearings over time. For the hearings that must be done in person, an altered courtroom is needed that allows for social distancing, physical barriers, increased ventilation, and reduced capacity. The Judiciary is still doing the analysis required to determine how to hold jury trials safely in our existing courthouse facilities.

These two significant transformations, occurring simultaneously, present substantial change management challenges. The hope is that our investments of time and resources into these changes now position the Judiciary well to provide court services, including the protection of constitutional rights and liberties, in a manner that will ensure equal access to justice to Vermonters in a way that is efficient and effective. Unfortunately, the benefits and savings from these changes will only be realized in the future. The Judiciary cannot reduce its operating budget in FY21 without drastically reducing its capacity, thereby impacting our justice partners, and inhibiting access to justice for Vermonters.

In addition, there are some funding pressures that are not resolved by the Governor's Recommended Budget. These funding issues remain from the January budget submission and are restated below:

Anticipated Title IV-D Decrease: \$350,000

The Judiciary is working in collaboration with the Office of Child Support (OCS) to review and improve the federally funded Title IV-D Program. The accuracy of Vermont's process of reimbursement for child support hearings has been called into question through both internal reviews and federal audits. Judiciary has brought in an expert to help develop a better methodology. While this work is underway, Vermont has reduced its federal draw down by about \$165,000 per year for both FY18 and FY19. It is our intention that by the beginning of FY21 a new methodology would be in place and Vermont may be able to make retroactive adjustments for past years, if appropriate. In addition, there is concern that the outcome of the federal OIG audit might involve past year paybacks.

Expansion of Court Space at Costello Courthouse (Chittenden): \$85,000

The Access and Resource Center and an office of the Judicial Bureau will be co-located at the Costello Courthouse in Chittenden County for purposes of efficiencies and in anticipation of the implementation of the Next Generation Case Management System.

The Access and Resource Center has begun to provide statewide telephone and online assistance to Vermonters. This resource has become more important than ever as a support for the NG-CMS rollout and to provide information and support during the pandemic. Once the fit-up of the space is finished (and when it is safe for the general public to return to the courthouse) the Access and Resource Center will provide walk-in services to unrepresented litigants who are identified as Limited English Proficient individuals entitled to court interpretation services under federal

law. An expansion of the space in the courthouse is necessary to provide an appropriate multi-use walk in service for Vermonters who needs assistance and an adequate workspace for the Center, which is expanding to provide remote support to courts and court users throughout the State.

The requested \$85,000 would cover the increase in the fee-for-space for the expansion. All the set-up costs for computer equipment, software and licensing, and workstations are not part of this request.

***Impact if not funded:** Without an expansion of the court footprint in the courthouse, it would be impossible to have the necessary space needed for the Access and Resource Center, which will be located for the convenience of Vermonters on the ground floor of the courthouse.*

Five Additional Court Security Officers: \$375,000

At the request of the Legislature, the Judiciary has conducted two studies over the past four years to review the security operations and infrastructure of State courthouses. Both studies identified the need for additional court security officers because existing staffing levels did not meet best practices. In the FY17 budget request, the Judiciary requested 18 additional officers as an initial step toward a minimally-acceptable staffing level; in the FY 2018, the Judiciary requested five additional officers to address five locations where the staffing levels are currently dire and in need of immediate rectification. In FY 18, FY19 and FY20, the Judiciary repeated its request to adequately fund courthouse security. These requests were funded at levels far below what had been requested, and no new security positions were approved.

For FY 2021, the Judiciary reiterates its request for \$375,000 to fund these five most critically needed court officers to bring the staffing levels closer to (albeit still lower than) the recommended levels in the two security studies. Of these five positions, three will be used to make permanent certain temporary positions on which the Judiciary has been relying for court officers, and two will be used to contract for additional deputy sheriffs or for private security, as may be available. The Judiciary will continue to express its concerns about the risks from inadequate court security staffing levels.

***Impact if not funded:** The risk will remain high that due to a lack of security our courthouse users and staff are vulnerable and that scheduled hearings and trials will be cancelled at the last minute due to failure by sheriffs and other providers to provide security officers, as has been occurring over the last several weeks. The hours open to the public in the Bennington county courthouse have already been reduced to take account of the fact that security costs in Bennington have exceeded the budget. Security needs from executive branch offices located in some courthouses further stretch insufficient security resources. In some cases, the executive branch offices are utilizing court attorney rooms in the courthouse and staying past the scheduled closing time in order to take advantage of security the Judiciary provides, adding to overtime security costs for the Judiciary and disruption of normal closing hours. Multiple county sheriffs have stated that they will not continue providing courthouse security unless they can cover their costs.*

Increase for Sheriffs and Other Security Contractors: \$125,000

In most Vermont counties, the County Sheriff provides security services in the courthouses. These services are via contract with the Judiciary; there is no constitutional or statutory requirement that the sheriffs provide these services. For many years, the sheriffs have expressed concerns that the rates offered by the Judiciary have not kept up with growth in the costs of those services. The rates for the sheriffs have been an annual concern for the Judiciary and will continue until the rates are raised to a level that supports the services delivered.

The Judiciary is requesting funding with the intent to bring the Judiciary’s rates closer to (albeit still lower than) other government entities that utilize the sheriffs’ services, and hopefully forestall further voluntary terminations of services by the sheriffs.

***Impact if not funded:** Without an increase in hourly rates to the Sheriff’s and private security firms we risk losing more Sheriff contracts and risk not being able to meet the fees of private firms. The average hourly rate paid to the Sheriff’s by the Judiciary is about \$29.00. BGS is currently paying \$50.00 per hour which the legislature funded, 85% more per hour.*

The Governor’s Recommended FY21 Budget includes partial funding of \$125,000 for increasing Sheriffs’ rates. The Judiciary appreciates this recognition of the role of the sheriffs in protecting the public and state employees in courthouses. However, it does not align with the recent trend of partially addressing an issue that cannot be allowed to continue. For the past four years, the Legislature has funded about half of what has been asked by the Judiciary to resolve this issue. The result has led to further deterioration of courthouse security.

Move three RIS Staff Salaries from Court Technology Fund to General Fund: \$258,632

The Judiciary once again requests to move 3 staff positions out of the Court Technology Fund and into the General Fund. A number of years ago, under a previous administration, Finance and Management indicated this change would be made. We have requested it every year, but it has never been included in the Governor’s budget proposal. The placement of these positions in the Tech Fund was meant to be a temporary placement due to underfunding of the General Fund Pay Act in a particular year, after which they were expected to be moved back into the General Fund. The Tech Fund is designed to fund court technology, not ongoing salaries for long-standing permanent positions in the Judiciary. As the legislature implements policy changes that have the impact of reducing revenues in the Tech Fund, there is a risk that there will not be sufficient funding to support annual court technology expenses.