

## **Judiciary Pandemic Response and Recovery Plan**

### **March 15, 2021**

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#### **Overview**

The COVID-19 pandemic has had, and will continue to have, a profound impact on Judiciary operations and on the Vermont justice system. The March 16, 2020, Supreme Court Order declaring a judicial emergency has been amended twenty times to-date to reflect the changing nature of the pandemic and to ensure that Judiciary operations continue to balance public health concerns with access to justice rights and obligations. The Judiciary anticipates that amendments to the order will continue to be made to ensure that the state's courts are as accessible and productive as possible, while continuing to comply with public health guidelines to ensure that the health and safety of the public and those who work in the justice system are addressed.

Reaching and sustaining requisite levels of accessibility, productivity, and service under pandemic conditions has required a continuous rethinking of Judiciary operations, and it will continue to require financial and human resources that could not have been contemplated a year ago. In response, the Judiciary is proposing a Pandemic Response and Recovery Plan that identifies funding needs that, if met, will enable the Judiciary to respond to the public health emergency and the impacts related to it. These funding needs are summarized in Appendix A – Summary of Costs.

We propose that the 38 limited-service positions already authorized for pandemic response be extended to December 31, 2024. We propose that an additional 18 limited-service positions be authorized to fulfill the Judiciary's plan as outlined here.

Our plan includes not only an outline of resources that we will need to fulfill our constitutional responsibilities to Vermonters and other users of the court system between now and December of 2024, but it also recognizes that the funds we are seeking are time-limited. The plan includes a timeline for spending that allows for a gradual transition to reduce spending beginning in January 2024 to avoid a resource cliff in December of 2024. As part of this plan, we will conduct a weighted caseload study in 2022 to evaluate workforce needs in the context of new modes of operating based on the new technologies and staffing models that are enabling the Judiciary to operate during the pandemic and that we hope will expedite case processing during the recovery from the pandemic.

#### **Background**

The pandemic has profoundly disrupted traditional Judiciary systems for adjudicating cases, which relied principally on in-person proceedings and the regular scheduling of all cases and case events. Notwithstanding the fact that remote hearings have been consistently used in the state's trial courts since the spring of 2020, Judiciary leaders anticipate that there will be ongoing challenges associated with working through pending cases and managing the influx of new cases expected.

Of particular concern is the subset of pending cases for which a jury trial is the next step in the adjudicatory process. While jury trials were initially suspended through the end of 2020 by the Supreme Court's declaration of a judicial emergency, the Judiciary is prepared to hold jury trials as soon as it is safe to do so. The Judiciary has developed a protocol for assessing the readiness of courthouses around the state to hold a jury trial and is moving ahead with plans to do so in several locations. The Judiciary's decision to execute these plans, however, is contingent on guidance from the U.S. Centers for Disease Control, the Vermont Department of Public Health, and the incidence and trends of COVID-19 infection at both the state and county level. Judiciary leaders are also being informed by input from an infectious disease expert who has been consulting with the Judiciary since the fall of 2020.

Vermonters' legal needs are not being reduced because of this pandemic disruption. To the contrary, it may be that the pandemic's impact will dramatically increase demand for the Judiciary's services in ways that we cannot currently predict. For example, due to pandemic-related moratoria applicable to eviction and foreclosure proceedings, these cases have been on hold for almost a year. We anticipate that the expiration of these moratoria may result in a substantial spike in eviction and foreclosure cases over and above our historic caseload in these areas. The Judiciary sees planning for and responding to this demand in both traditional and new ways as a core feature of its ongoing pandemic response and recovery and as a way of ensuring access to justice.

In a separate plan (or in separate plans) for capital improvements, the Judiciary will propose pandemic response and recovery measures related to courthouses and infrastructure, some of which will be county expenses and some of which will be state expenses. There will be additional project management positions required to successfully manage those infrastructure projects. Those positions will be outlined in the separate plan.

## **Strategies for Addressing the Backlog Created by the Pandemic**

The Judiciary is considering all viable options for addressing the case backlog and conducting jury trials and will continue to vet them with Judiciary stakeholders.

Strategies under consideration for addressing pandemic-related backlogs include the following:

### **1. Retired Judges**

The Judiciary plans to use retired judges and dedicated docket clerks to help clear case backlogs and ensure sufficient docket time and resources are available to increase the pace of case processing, in both remote settings and in-person settings as may be authorized or required. Judges are needed to preside over cases needing attention, to include pretrial and trial matters in both remote and in-person settings during regular hours and possibly in after-hours sessions.

The Judiciary will consult with internal and external stakeholders to evaluate the possible expansion of court hours to include court time in evenings and/or on weekends. Such an initiative would only go forward if and to the extent that there was stakeholder agreement

regarding the merits of such an experiment. One of the barriers to expediting in-person jury trials is the limitation of courtroom time. Extending the time during which routine case events can be docketed and status conferences, non-evidentiary hearings, and possible other court proceedings can be held would, through the use of remote technology, free up time and space to handle in-person jury trials during the day and may allow a greater number of cases to be heard.

To address the backlog, we need:

- Funding to pay retired judges to return to hear cases that compose the case backlog due to the pandemic disruption
- Training of retired judges on new Odyssey case management system and technology that supports virtual hearings
- Limited service staff positions to staff hearings heard by retired judges. Costs to include workspaces, technology, equipment, furniture, orientation and training
- Differential pay for evening and weekend work

FTE		FY22	FY23	FY 24	FY25	Total 3.5 Yr. Cost
<b>1. Retired Judges</b>						
	Retired Judges (2 FTE)	\$300,000	\$300,000	\$300,000	\$150,000	\$1,050,000
4	Docket Clerks	\$220,000	\$208,000	\$208,000	\$104,000	\$740,000
2	Court Officers	\$110,000	\$104,000	\$104,000	\$52,000	\$370,000
	Differential Pay	\$20,000	\$20,000	\$20,000	\$10,000	\$70,000
6	Subtotal	\$650,000	\$632,000	\$632,000	\$316,000	\$2,230,000

## 2. Maximize Remote Technology

The pandemic disruption of the justice system has taught us that we can deliver justice using remote technologies without compromising the quality of justice or public health.

Technology tools have allowed judges to preside over cases with a minimum of in-person contact among parties, including staff, and has enabled the public to access non-confidential proceedings. The Judiciary needs to make additional investments in remote hearing-related software, hardware, and staff to scale up this work – an essential element of the Judiciary’s pandemic response. Doing so will enable litigants, jurors, and the public to engage court services and participate in court proceedings. To meet this challenge, we need:

- A Senior IT Manager who will focus on two key objectives: managing relationships/contracts with outsource vendors and managing the governance model for receiving, prioritizing, and provisioning service requests
- Training for judicial officers, staff, and court users on remote hearing technologies.
- Continued support of WebEx/ Cloverhound licensing for 100+ hosts

- Replacement of current FTR recording system with one that does not require an individual to be in the courthouse to ensure that the record is being kept consistent with Judiciary standards
- Creation of new positions to support judges in the conduct of simultaneous WebEx-based hearings. The people in these positions will provide technical support for judges and participants in cases to replace in-person hearings. The costs associated with these staff members will include workspaces, technology, technology support personnel, equipment, furniture, orientation and training
- An IT Infrastructure Services Manager to manage the technical help desk staff required to meet the increased pandemic recovery service demands, as well as infrastructure (servers, databases) and related staff
- An IT Data Services Manager to recognize the pandemic-related acceleration of the shift from an application development team to a team that provides data services (exchanges of data between the Judiciary and justice partners; managing business intelligence tools and procedures)
- Cell phones and tablets or chromebooks to enable remote access to court proceedings and access to court services.

FTE		FY22	FY23	FY 24	FY25	Total 3.5 Yr. Cost
<b>2. Maximize Remote Technology</b>						
1	Senior IT Manager	\$138,000	\$135,000	\$135,000	\$69,000	\$477,000
	WebEx/Cloverhound Licensing	\$150,000	\$150,000	\$150,000	\$75,000	\$525,000
	Replacement of FTR System	\$70,000	\$70,000	\$70,000	\$35,000	\$245,000
4	Helpdesk Specialists	\$252,000	\$240,000	\$240,000	\$120,000	\$852,000
1	Infrastructure Services Manager	\$123,000	\$120,000	\$120,000	\$61,500	\$424,500
1	Data Services Manager	\$123,000	\$120,000	\$120,000	\$61,500	\$424,500
	Cell Phones/ Chromebooks/Tablets	\$100,000	\$75,000	\$50,000	\$50,000	\$275,000
7	Subtotal	\$956,000	\$910,000	\$885,000	\$472,000	\$3,223,000

### **3. Re-Imagine Workflows – Expungements and Beyond**

The Judiciary intends to capitalize on all the capabilities that Odyssey, the Judiciary’s new Next Generation Case Management (NG-CMS) System, has to offer in order to meet the demands of the Pandemic Response and Recovery Plan. In addition, the transformation to remote hearings is likely permanently changing how justice is accessed and administered. These new tools offer significant opportunities for efficiencies, though staff additions and reassignments will be necessary to fully realize them. Certain court functions can now be performed remotely, greatly increasing the Judiciary’s flexibility in getting work done

regardless of local court hearing schedules or staffing levels. Expungements and review of court filings are among the first functions that could be done centrally. The Judiciary intends to apply Lean Management techniques to re-think its work processes given these new capabilities. These could lead to significant efficiencies and be part of the Judiciary's overall transformation efforts required to meet the Pandemic Response and Recovery Plan.

Last year's Act 95, Section 5(2) suspended all statutory time frames for issuing orders to seal or expunge criminal history records or processing petitions to seal or expunge criminal history records pursuant to 13 V.S.A. chapter 230 for the duration of the Judicial Emergency declared pursuant to Supreme Court Administrative Order No. 49 plus 120 days. During the first three months of the pandemic, there were only half of each staff in the buildings due to the need for social distancing. Work stations needed to be disassembled and separated throughout the courthouses. During the resurgence of Covid-19 in November of 2020, the courts that were already on the new case management system and could work remotely moved to a "pod" system, and those systems continue until this day.

As a result of the pandemic, of the 15,146 expungements that the courts began to process in October 2019 pursuant to Act 8, 5,695 cases remain to be expunged. There are an additional 5,332 marijuana conviction charges yet to be expunged pursuant to Act 167 passed last year. We estimate that approximately 1,200 additional petitions have been filed in the criminal division since April 2020. Many of these filings were the result of the ongoing expungement clinics that Vermont Legal Aid and the Vermont Attorney General's Office have run during the pandemic. There are now petitions pending in the new case management system, as well. There are also ongoing expungements for deferred sentences when sentences are completed.

Expungement of paper or microfiche records is a time-consuming, laborious process. Until we have been on the Odyssey system for five years, we will continue to need to expunge paper records. Although expungements of records in Odyssey can be made more streamlined, expungements will still require direct clerk involvement. It will not be automatic.

To meet these many challenges, we need:

- A Financial Specialist to manage centralized fee processing and financial reporting. These are tasks previously done by docket clerks, who will be freed up to work on case management
- Court Operations Assistants to provide technical support and training to judges and court staff with remote hearings and livestreaming
- Programs Managers to supervise additional personnel
- Court Operations Specialists and Docket Clerks to support centralized functions
- Docket Clerks to handle expungements
- A Remote Access Advisor to support external partners' needs related to operational strategies and technology solutions associated with remote proceedings and livestreaming
- Business Reengineering /Lean Management consultant

FTE		FY22	FY23	FY 24	FY25	Total 3.5 Yr. Cost
<b>3. Re-Imagine Workflows</b>						
1	Financial Specialist	\$68,000	\$65,000	\$65,000	\$32,500	\$230,500
8	Court Operations Assistants	\$568,000	\$544,000	\$544,000	\$272,000	\$1,928,000
3	Programs Managers	\$294,000	\$285,000	\$285,000	\$142,500	\$1,006,500
5	Court Operations Specialists	\$330,000	\$315,000	\$315,000	\$157,500	\$1,117,500
17	Docket Clerks	\$935,000	\$884,000	\$884,000	\$442,000	\$3,145,000
1	Remote Access Advisor	\$73,000	\$70,000	\$70,000	\$35,000	\$248,000
	Lean Mngmnt Consultant	\$75,000	\$75,000	\$75,000	\$37,500	\$262,500
35	Subtotal	\$2,343,000	\$2,238,000	\$2,238,000	\$1,119,000	\$7,938,000

#### 4. Online Dispute Resolution

The Judiciary intends to pilot an online dispute resolution program as a means for parties to resolve cases remotely and in some cases without the involvement of a judicial officer, thus avoiding the need for courtroom time altogether. To meet this challenge, we need:

- Online dispute resolution (ODR) capability. ODR is an emerging but proven method of resolving cases. ODR provides an option that does not require a person’s physical presence in a courthouse and adds an avenue for case resolution that can result in more timely justice. ODR has obvious benefits to the Judiciary and the public during periods when access to conventional proceedings due to the pandemic disruption is not an option.
- An ODR Programs Coordinator position to oversee the ODR pilot

FTE		FY22	FY23	FY 24	FY25	Total 3.5 Yr. Cost
<b>4. Online Dispute Resolution (ODR)</b>						
	ODR Software	\$200,000	\$200,000	\$200,000	\$100,000	\$700,000
1	ODR Coordinator	\$78,000	\$75,000	\$75,000	\$37,500	\$265,500
1	Subtotal	\$278,000	\$275,000	\$275,000	\$137,500	\$965,500

#### 5. Improve Access to Justice Services

The Judiciary is establishing an Access and Resource Center (ARC) through which certain services will be centralized and access to justice services will be provided. Located in the Costello Courthouse in Burlington, the ARC will be a physical and virtual resource for those representing themselves; for those with limited English proficiency; for those in need of information about their case, about the judicial process, or about Judiciary forms and

services; and for those who are in need of referral to services, including legal services, language access services, and possibly to other advocacy or social services. To meet this challenge, we need:

- A Programs Manager to manage the services and staff that will be part of the ARC
- Court Services Specialists to work in the ARC in Burlington, remotely, or in regional locations to provide remote and in-person assistance to provide information about the Judiciary, provide assistance to people with filling out Judiciary forms, and make referrals to governmental and non-profit service providers

<b>FTE</b>		<b>FY22</b>	<b>FY23</b>	<b>FY 24</b>	<b>FY25</b>	<b>Total 3.5 Yr. Cost</b>
<b>5. Improve Access to Justice Services</b>						
1	Programs Manager	\$98,000	\$95,000	\$95,000	\$47,500	\$335,500
5	Court Services Specialists	\$330,000	\$315,000	\$315,000	\$157,500	\$1,117,500
6	Subtotal	\$428,000	\$410,000	\$410,000	\$205,000	\$1,453,000

**6. Response and Recovery Plan Project Management, Stakeholder Engagement, and 2022 Weighted Caseload Study**

The needs and initiatives outlined above represent a significant advancement in and modernization of Judiciary operations to meet the demands of the pandemic and pandemic recovery. This work will require dedicated and sustained management, which includes a planning, financial tracking, performance monitoring, and communications component.

In addition, the Judiciary intends to update its weighted caseload study, which will inform decisions about staffing the trial courts in a new environment where technology tools are being used to support operations in new and different ways to continue operations during the pandemic and to enable expedited processing of cases during the recovery from the pandemic. The Judiciary’s last weighted caseload study was completed in 2016 and needs to be updated to reflect pandemic-impacted trends in case filings and innovations in case management, including those related to the use of remote hearings and the implementation of Odyssey, the Judiciary’s Next-Generation Case Management System and video remote hearings.

To meet these challenges, we need:

- A Project Manager to manage the Pandemic Response and Recovery Plan, including the spending plan issues, and to manage stakeholder communication
- A weighted caseload study to begin twelve months after the completion of the NG-CMS trial court rollout to help us assess the trial court staffing model needed to support the court system during the pandemic recovery period

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<b>6. Response and Recovery Plan Project Management, Stakeholder Engagement, Weighted Caseload</b>						
1	Project Manager	\$98,000	\$95,000	\$95,000	\$47,500	\$335,500
	Weighted Caseload Study		\$90,000	\$90,000		\$180,000
1	Subtotal	\$98,000	\$185,000	\$185,000	\$47,500	\$515,500

**JUDICIARY PANDEMIC RESPONSE AND RECOVERY PLAN**

**APPENDIX A – SUMMARY OF COSTS**

<b>FTE</b>		<b>FY22</b>	<b>FY23</b>	<b>FY 24</b>	<b>FY25</b>	<b>Total 3.5 Yr. Cost</b>
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<b>6. Response and Recovery Plan Project Management, Stakeholder Engagement, Weighted Caseload</b>						
1	Project Manager	\$98,000	\$95,000	\$95,000	\$47,500	\$335,500
	Weighted Caseload Study		\$90,000	\$90,000		\$180,000
1	Subtotal	\$98,000	\$185,000	\$185,000	\$47,500	\$515,500
	Vacancy Savings (5%)	(\$191,900)	(\$183,500)	(\$183,500)	(\$91,975)	(\$650,875)
	Position Step-Down			(\$560,000)	(\$1,520,000)	(\$2,080,000)
<b>56</b>	<b>Judicial Response and Recovery Plan Totals</b>	<b>\$4,561,100</b>	<b>\$4,466,500</b>	<b>\$3,881,500</b>	<b>\$685,025</b>	<b>\$13,594,125</b>