



## Vermont Judicial Branch

### FY22 Budget Summary

#### Key Budget and Programmatic Issues

The Judiciary's FY22 budget presentation materials include the following:

- This summary of key FY22 budget and programmatic issues within the Judiciary
- *Judicial Branch Overview, Key Judiciary Initiatives, and RBA Report, 2021*
- *Judiciary Annual Statistical Report, FY20*
  - *Appendix I (Statewide Data) - Judiciary Statistics, FY20*
  - *Appendix II (County Data) - Judiciary Statistics, FY20*
- Budget detail documents – including budget “ups and downs” and all Vantage reports

Topics covered in this summary include:

- Courts, Judiciary Programs, and Performance Measures
  - Annual Statistical Report
  - Judicial Branch Overview, Key Judiciary Initiatives, and RBA Report, 2021
- Pressures on Court Resources
  - Pandemic Response
  - Upward Trend in Number of Criminal Expungements
- Structural Challenges in Court System Funding
- Context for Developing the Judiciary's FY22 Budget Request
  - Summary of Budget Pressures
  - FY22 Pay Act
  - Budget Pressure Detail

#### Courts, Judiciary Programs, and Performance Measures

##### Annual Statistical Report

The Judiciary reports on trial court performance in its Annual Statistical Report. The report is accompanied by appendices containing detailed statistical information about the trial courts on both a statewide (Appendix 1) and county-by-county (Appendix II) basis.

The Judiciary's FY20 Annual Statistical Report is different from prior years' reports. This is principally due to the fact the case-level data on which the analysis depends was not available in all cases. This is due to the phased transition of the trial courts from the Judiciary's legacy case

management system (VTADS) to its Next Generation Case Management System (Odyssey), which occurred between June 2019 and February 2021.

While the Judiciary fully expects to be able to return to reporting on the trial courts' performance using the traditional CourTools measures described in past reports, it is not possible to do so for FY20 for the criminal, family, civil and probate divisions of the Superior Court. This is due to a lack of comparability between key data elements in VTADS and Odyssey. These challenges are being, and will continue to be, addressed through the development and testing of standardized data reports, staff training, and quality assurance protocols.

### **Judicial Branch Overview, Key Judiciary Initiatives, and RBA Report, 2021**

The Vermont Judiciary uses the Results Based Accountability (RBA) model to measure and report on the performance of court programs and activities. These programs and activities include the Court Interpreter program; classes for self-represented litigants; classes for parties in relief from abuse cases; classes for parties in divorce and parentage cases; the Family Mediation and Parent Coordination programs; the Guardian ad Litem program; treatment dockets; judicial officer and staff education programs; and others.

The document “Judicial Branch Overview, Key Judiciary Initiatives, and RBA Report, 2021” sets forth in greater detail the Mission, Vision, and Principles for Administration of the Vermont Judiciary adopted by the Supreme Court, as well as performance measures established by the Judiciary, where applicable, and measurements of performance outcomes, to the extent they are available.

### **Pressures on Court Resources**

#### **Pandemic Response**

The COVID-19 pandemic has had, and will continue to have, a profound impact on Judiciary operations. The March 16, 2020, Supreme Court Order declaring a judicial emergency has been amended 19 times to-date to reflect the changing nature of the pandemic and to ensure that Judiciary operations 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 under the circumstances. This, in turn, will require Judiciary leadership and staff to continue to be agile and resourceful.

The Judiciary is responding to the need to administer justice and provide access to the courts during the pandemic in creative and responsible ways, through the use of remote hearings and livestreaming, ongoing outreach to and engagement with justice partners, communicating with the public through press releases and on social media, the development of pandemic-related FAQs relating to Judiciary operations, and in related ways. We expect efforts on these and other fronts to be ongoing to ensure that access to the courts and the delivery of Judiciary services continues.

Notwithstanding these efforts, the pandemic has interrupted traditional Judiciary systems for adjudicating cases, which previously relied principally on in-person proceedings and the regular scheduling of all cases and case events. While 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.

Of particular concern is the subset of pending cases involving parties who are awaiting jury trial. While criminal and civil 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 informed by input from an infectious disease expert who has been consulting with the Judiciary since the fall of 2020.

The legal needs of Vermonters are not being reduced because of the pandemic. In fact, it may be that the pandemic's impact will increase demand for the Judiciary's services in ways that cannot currently be predicted. 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 is monitoring the situation accordingly.

### **Upward Trend in Number of Criminal Expungements**

The 2017-2018 legislative session ushered in the passage of several bills that expanded criminal expungement eligibility and required the judiciary to initiate petition-less expungement under certain circumstances.<sup>1</sup>

In the 2019-2020 legislative session, a number of bills were introduced by both the House and the Senate.<sup>2</sup> In response, the Judiciary submitted a fiscal impact statement on February 26, 2020, requesting an additional appropriation above existing Judiciary budget requests in the amount of \$1,075,000. This funding would support 13 additional permanent positions and additional costs associated with office space, equipment, VSARA fees, and postage costs to support the proposed expungement workload. In the current legislative session, a bill relating to expanding access to expungement and sealing of criminal history records has been introduced by the Senate Judiciary Committee (S.7).

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<sup>1</sup> See Act 178 (2018), Act 201 (2018), Act 8 (2018 Special Session), and more recently Act 32 (2019).

<sup>2</sup> See H.251, S.114, H.653 and S.294.

*Fiscal Impact*

In FY19, the judiciary requested and received a \$200,000 budget adjustment to fund the hiring of five temporary employees to manage the anticipated increase in expungements. At the time the request was granted, the Judiciary estimated it would see 1,400 expungements in FY19—far less than the 4,204 orders actually issued that year. The number of orders issued has continued to increase dramatically; between FY 18 and FY19 the number of orders issued increased by 124%. There is no data to suggest there will be a plateau or drop in expungements needing processing in the coming years, especially if legislation being considered is passed.

Information about expungement-related activity is included in tables 1 through 4, below.

Table 1: Expungement Orders Issued, FY16-FY20

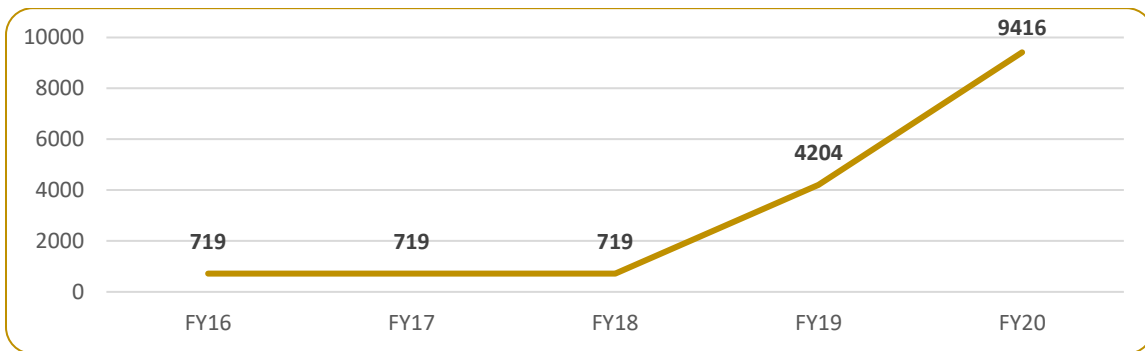
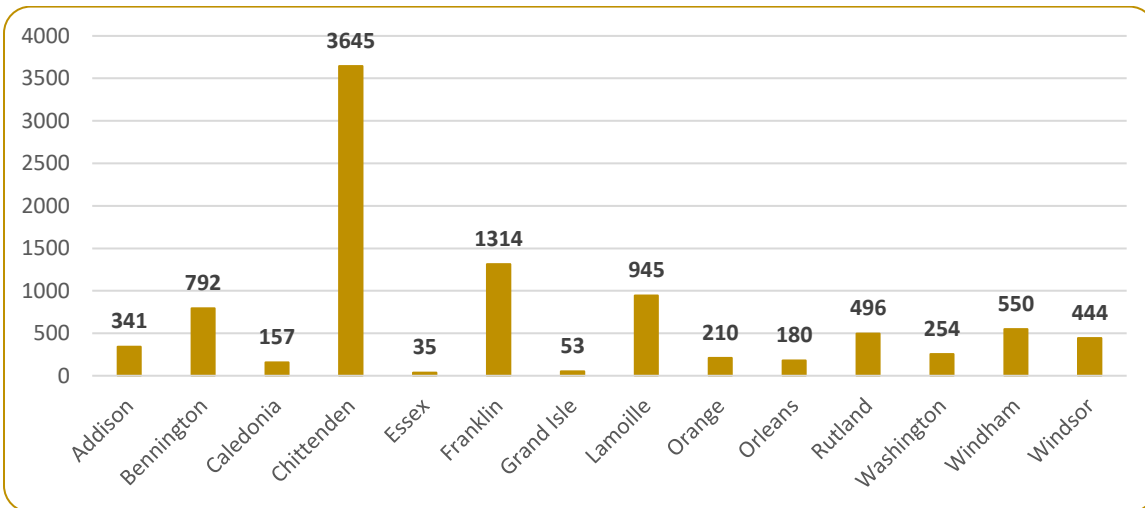
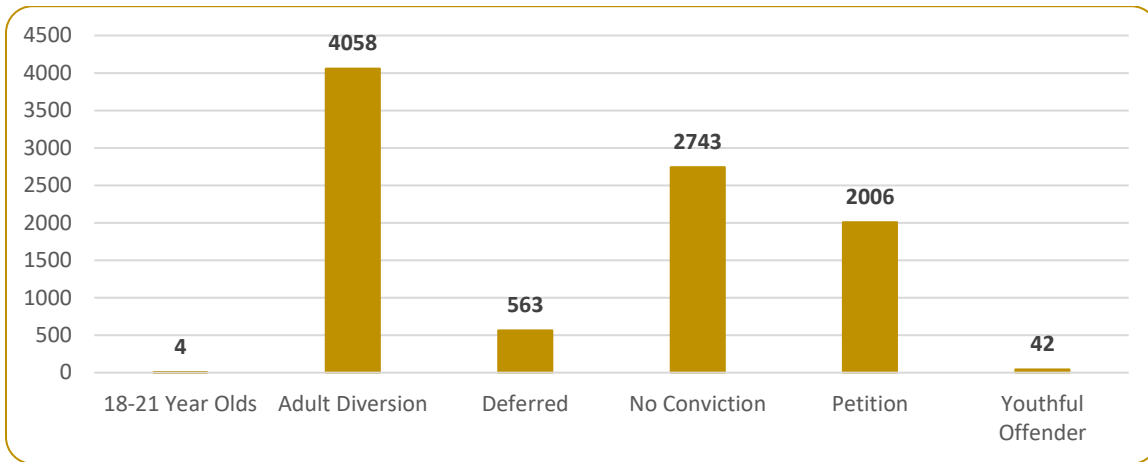


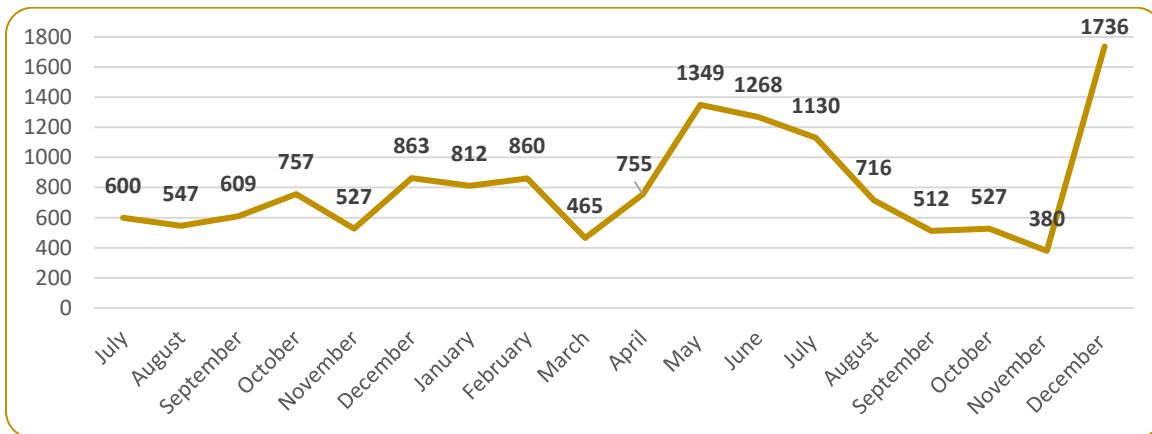
Table 2: Expungement Orders Issued by County, FY20



**Table 3: Expungement Orders Issued by Type, FY20**



**Table 4: Expungement Orders Issued by Month, July 2019 – December 2020**



**Structural Challenges in Court System Funding**

The Judiciary’s funding structure provides relatively little room to absorb growth in operating costs due to its reliance on General Funds, and there is relatively little leeway to reallocate resources within the branch due to a high proportion of personnel and physical footprint costs as a share of the total budget.

Over 88% of the Judiciary’s budget is funded with General Funds, while only 6% is derived from various fees and surcharges, as illustrated in the chart below.

<b>Fund</b>	<b>FY22 Governor's Recommendation</b>	<b>Fund Sources as Percent of Total</b>
<b>General Fund</b>	47,027,262	88%
<b>Fee-based revenue sources:</b>		
Attorney Admission Licensing Fund	802,513	2%
Special Funds*	2,398,146	4%
<b>Other fund sources:</b>		
Inter-Unit Transfer Fund	2,095,399	4%
Federal Revenue Funds	900,469	2%
<b>Total</b>	<b>\$53,223,789</b>	<b>100%</b>

\*Includes Waste Management, Environmental Permit, and Court Technology funds.

In addition to being heavily reliant on General Funds, the Judiciary's budget is concentrated in several cost areas. The three largest items – salary and fringe benefits, fee for space, and court security contracts – account for 86% of the branch's expenses. After accounting for mandatory internal service charges and accounting transactions, only 8% of the Judiciary's budget is associated with operating expenses, as indicated in the chart below.

<b>Major Category of Expense (all funds)</b>	<b>FY22 Governor's Recommendation</b>	<b>Major Category as Percent of Total</b>
Salary and Fringe (less vacancy savings)	38,302,857	72%
Fee for Space	4,950,065	9%
Court security contracts	2,909,103	5%
Other internal service charges (ADS; VISION; Insurance)	2,414,844	5%
Cash payment to DCF (Title IV-D accounting transaction)	400,000	1%
All other expenses	4,246,920	8%
<b>Total (all funds)</b>	<b>\$53,223,789</b>	<b>100%</b>

### **Context for Developing the Judiciary's FY22 Budget Request**

This has been a transformative year for the Judiciary. With the multi-year Next Generation Case Management (NG-CMS) project entering its final calendar year of implementation, going live in the final counties in FY21, combined with the need to transition to remote hearings due to the pandemic, the Judiciary faces many challenges – some expected, most not expected.

The Judiciary obtained \$7.5M in CARES Act funding to support the move to remote hearings and to assist in meeting other pandemic-related needs, including the acquisition and installation of

cameras and screens, new software, and training of judges and staff on the skills needed to use them. These unexpected challenges were exacerbated by the number of people working remotely and the need to socially distance when in the courthouse. However challenging the task, the CARES Act funding provided needed resources and flexibility to allow the Judiciary to make essential changes to operations and strategy. Vermont aggressively implemented the Cisco TV equipment project and is pursuing a corresponding Cisco/Cloverhound software project that will enhance the remote hearing capability and experience, including the integration of scheduling with the Odyssey case management system. While CARES Act funds will soon be spent, however, our need to sustain these changes will remain.

The Judiciary has also used revenues in the Court Technology Fund (“Tech Fund”) to support these changes. This fund is fed by revenues derived from administrative fees and surcharges on civil violations heard in the Judicial Bureau. The Tech Fund has been used to support components of the NG-CMS project and will be relied on to support that system and other software and hardware needs into the future. It is the Tech Fund that will support ongoing licensing and maintenance costs of the NG-CMS and the Cisco/Cloverhound software. However, the revenues going into the Tech Fund are gradually declining. These declines are primarily the result of the impact of the passage of ACT 147 of 2016, which allows Vermonters to have their suspended license reinstated without having to pay the underlying civil violations that lead to the suspension. The Judiciary will need to continue to modify budgeting and spending to adjust for this decline.

The depletion of the CARES Act and the decline of the Tech Fund revenue will inevitably put pressure on the Judiciary’s General Fund budget.

### **Summary of Budget Pressures**

This year, the Judiciary is seeing upward pressures of \$2.36M, as follows:

- Annualization of FY21 Pay Act: \$560,564
- Reinstatement of FY21 base budget reduction: \$500,000
- Decrease in Tech Fund Revenue due to legislative changes: \$300,000
- Convert temporary positions to limited service per VLRB: \$250,000
- Two additional court security officer positions: \$150,000
- Increase to sheriff and private security rates: \$250,000
- Anticipated Title IV-D decrease: \$350,000

Total Pressures: \$2,360,564, or 5.0 GF increase versus FY21.

The pressures reflected in the Judiciary’s FY22 budget recommendation are driven by the increase of personnel costs, which include salaries, third party services, and benefits. They also include residual impacts of the pandemic that are not funded by CARES Act funds. All these pressures increase the cost of funding the Judiciary’s current level of services. Funding these pressures is critical to maintaining, and not falling further behind, the already austere operational capacity that must be devoted to caseload pressures and the constitutional obligations of the branch.

It should be noted that the Judiciary's proposed budget increase does not address the resources that may be required to address the backlog of cases that is being created by the COVID-19 pandemic.

The Governor's Recommended Budget proposes to provide funding for the increase in internal service funds – passthroughs that go to other Executive Branch agencies – of \$100,017. Thus, the Governor proposes to increase the Judiciary's General Fund budget by only 0.2% over the FY21 General Fund Budget even though the Judiciary provided evidence to the Governor's office of substantially higher budget increases required to maintain current operations. It is unfortunate that the Governor's Recommended Budget offers no new funding for the Judiciary's base budget needs, nor does it propose to return to the Judiciary the temporary decrease in the base budget that the Judiciary offered in FY21 in order to meet much more dire financial forecasts that did not come to pass.

### **FY22 Pay Act**

It is important to note that the formal FY22 budget submission does not include the cost of the second year of the Collective Bargaining Agreement between the Judiciary and the Vermont State Employees' Association (VSEA). The Legislature funded only the first year of the agreement. The cost to the Judiciary that was not funded is \$1,120,500. Based on the Governor's announcement that the Pay Act will be funded, the Judiciary assumes that it will be if the Legislature agrees. If it is not funded, the contract requires that the parties return to the bargaining table to renegotiate the Collective Bargaining Agreement.

### **Budget Pressure Detail**

#### **Annualization of FY20 Pay Act: \$560,564**

The Judiciary negotiated a new Collective Bargaining Agreement with the Vermont State Employees' Association (VSEA) that included a one-time lump sum payment of \$1,400 and step increases. The lump sum payment does not need to be annualized. The cost to the Judiciary of step increases is 1.9%, or \$560,564.

By failing to fund these increases to the Judiciary's base budget, the Governor's Office continues to reduce base budget funding of the Judiciary. Not long ago, continual failures to fully fund the rollup of the Pay Act created a financial crisis in the Judiciary. The failure to fully fund this increase will cause an even greater upward pressure in FY23 when the Judiciary will need to annualize two years' worth of pay increases.

#### **Restatement of FY20 Base Budget Reduction: \$500,000**

The Department of Finance and Management (DFM) had asked each department and branch to cut 3% of their base funding in an effort to balance the state's budget given a reduced revenue forecast. The Judiciary negotiated with DFM and returned some one-time carryforward funds from FY20



and agreed to a base budget reduction of \$500,000 that would come from vacancy savings. This increased our budgeted vacancy savings from \$912,549 to \$1,412,549.

In the first quarter of this year, the Judiciary has aggressively managed vacancies for most positions (excluding the Judicial Master position and federal grant-funded positions). Now that the electronic case management system has been fully rolled out in all counties of the state, the Judiciary will be able to use current vacancies in ways that will meet the new needs of the statewide technology-based business processes. Given the CARES Act funding and the aggressive management of vacancies while we awaited the statewide rollout of the Odyssey system, the Judiciary will have a larger than normal carryforward from FY21 that can assist with some one-time funding needs. As the Governor has noted in his public remarks, however, one-time funding cannot address ongoing base budget needs. It would be difficult, if not impossible, to achieve full employment with the existing vacancy savings target of \$1.4M, and yet we must now put in place the workforce required to support the improvements technology has provided to business operations in the Judiciary.

Without the reinstatement of the \$500,000 base budget reduction and without the funding of the rollout of the FY21 Pay Act, the Judiciary's ability to evolve its workforce to match the technology advancements will be difficult.

#### **Decrease in Tech Fund Revenue Due to Legislative Changes: \$300,000**

The revenue sources for the Court's Technology Fund (Tech Fund) come from the \$12.50 administrative fee on each paid state civil violation, and from failure-to-pay and failure-to-reply fees associated with those civil violations. Over the past five years, the Judiciary has experienced a continual decrease of revenue into the Tech Fund. The pandemic has exacerbated that decline. While the pandemic impacts to civil violations may be temporary, the policy changes are not. The Tech Fund revenue will not return to the \$1.6M budgeted again.

Act 147 of 2016 enabled Vermonters to have their suspended licenses reinstated without needing to pay the underlying civil violations that lead to the suspension. This has arguably reduced the motivation for some people to pay their fines. More recently, the Legislature has discussed taking actions like ticket holidays, ending license suspensions, surcharge waivers, and expungement of some civil violations that would further reduce the ticket collections and the Tech Fund revenue. These revenue decreases impact more than just the Tech Fund, as the revenue is split and distributed to many funds according to statute, including local police, the Transportation Fund, the Victims Compensation Fund, the Domestic and Sexual Violence Special Fund, and the General Fund. It is noteworthy that the Governor's Recommended Budget provides \$1M for the Victims Compensation Fund due to the decline in their share of civil violations revenue, but not for the other recipients of these funds.

For many years, the Judiciary has requested that approximately \$300,000 in salaries be moved out of the Tech Fund as that fund is not the appropriate place for personnel costs. The placement of these positions in the Tech Fund was intended to be temporary due to underfunding of the General Fund Pay Act in a particular year, after which the positions 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. The issue was created in 2012 as a temporary budget balancing approach that should have been rectified at a later date. The Judiciary has continually asked to move these salaries over to the General Fund. We now simply ask for general funds to replace the lost revenue in the Tech Fund.

### **Convert Temporary positions to Limited Service per VLRB: \$250,000**

In October 2020, the Vermont Labor Relations Board (VLRB) issued its decision regarding a unit clarification for the Judiciary bargaining unit. The decision requires that the Judiciary convert eight temporary positions to limited-service positions. These positions are mostly part-time but are not deemed as seasonal or associated with temporary caseload increases. The cost of converting all eight of these positions, along with benefits for the people in positions working over 30 hours per week who would qualify, is \$250,000.

This action is not a decision of the Judiciary and there is no other alternative but to request the positions numbers and be appropriated the necessary funding.

The implementation of this decision still requires negotiation with the VSEA and the impacted employees. The start and end dates of the limited-service positions have not yet been agreed upon, and the number of employees who might choose to take these positions is not yet known. Some of the impacted temporary employees are retired state employees and taking a limited-service position would impact their retirement. Three of these positions are security positions, for which the Judiciary has continually sought permanent positions and related funding for the past five budget cycles.

### **Two Additional Court Security Officers: \$150,000**

At the request of the Legislature, the Judiciary has conducted two studies over the past five years of 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 FY18 budget request the Judiciary requested five additional officers to address five locations where the staffing levels are currently dire and in need of immediate rectification. In FY19, FY20, and FY21 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 FY22, the Judiciary has again reduced its request to \$150,000 to fund these two most critically needed court officers to bring the staffing levels closer to (albeit still lower than) the recommended levels in the two security studies. The Judiciary will continue to express its concerns about the risks from inadequate court security staffing levels.

**Increase for Sheriffs and Other Security Contractors: \$250,000**

In most Vermont counties, the County Sheriff provides security services in the courthouses. These services are provided pursuant to a contract between the Judiciary and local sheriffs; there is no constitutional or statutory requirement that the sheriffs provide these services.

For many years, the sheriffs have expressed concern that the rates offered by the Judiciary have not kept up with growth in the costs of those services. The money the Judiciary can offer the sheriffs has 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.

The Legislature has appropriated partial funding for increasing Sheriffs' rates in recent years. The Judiciary appreciates this recognition of the role of the sheriffs in protecting the public and state employees in courthouses. However, the Judiciary feels that only partially addressing this issue 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. These public safety concerns will continue to exist if these finds are not provided.

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

The Judiciary has attempted to collaborate with the Office of Child Support 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. In response, the Judiciary has engaged an expert to help develop a better methodology. While this work is underway, Vermont reduced its federal draw-down by about \$300,000 in FY20, and by \$165,000 in both FY18 and FY19. While the Judiciary continues to attempt to work on a permanent solution, it is forecasted that this reduction will be permanent. The loss of these funds, which pay for costs that are otherwise costs that must be supported by the general fund, require that the general fund appropriation to the Judiciary be increased by the reduced reimbursements from the federal government.