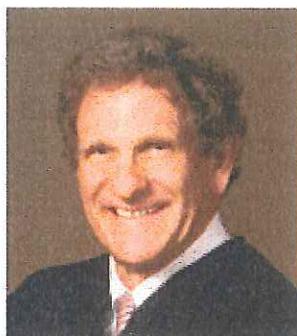


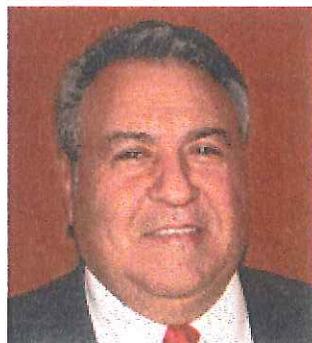
Colorado Courts and Probation

SMART Joint Judiciary Presentation

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Chief Justice
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We are pleased to provide this summary of the FY 2015 budget request and legislative agenda for the Colorado Court and Probation system. Trust in the rule of law distinguishes our society from many others around the world. The legitimacy of government depends on the fair, impartial, and reliable administration of the laws. When citizens who go to court feel they are treated with dignity and respect, research shows that they trust the court system and are more likely to understand, appreciate and follow court orders. The term "procedural fairness" has been coined by researchers to refer to the perception of fairness by those accessing the courts.

Courts serve the people of the state by resolving disputes, protecting individual rights, and delivering justice in criminal and civil cases. To ensure a just society, courts must tailor the fair, effective, and efficient delivery of justice to fit each individual case. This mission requires us not only to reach a fair and just outcome but also to do so in a way that is perceived as being fair to all sides. The perception of fairness is as important as the fairness of the outcome.

For citizens to trust the judicial system they must believe that justice is truly for all. The courts are a fundamental government service and should be easily accessible by the public. Today, as historic events unfold in many parts of the world, we see that where a fair and open judicial system does not exist, citizens are alienated from their governments and instability occurs.

Michael L. Bender
Chief Justice

Gerald A. Marroney
State Court Administrator



Colorado Courts and Probation

Key Budget Factors

The FY 2015 budget request has been developed in an effort to identify and meet the challenges faced by the Colorado Courts and Probation in an ever changing environment. Many factors impact the operations of Colorado's courts and probation, including:

- Focus on procedural fairness
- Increased number of self-represented parties
- Changes in demographics
- Increased reliance on technology

FACTOR 1: Focus on Procedural Fairness



Citizens who use the court system should feel that they are treated fairly throughout their court experience, which is often referred to as procedural fairness. Procedural fairness is a critical part of understanding how the public interprets their experience with the court system and translates that experience into a subjective valuation of the court system as a whole. There are four basic expectations that encompass procedural fairness:

1. **Voice:** the ability to participate in the case by expressing one's viewpoint;
2. **Neutrality:** consistently applied legal principles, unbiased decision makers, and a "transparency" about how decisions are made;
3. **Respectful treatment:** individuals are treated with dignity and their rights are protected; and
4. **Trustworthy authorities:** authorities are benevolent, caring, and sincerely trying to help the litigants—this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants' needs.

Research suggests that the public perception of procedural fairness is associated with higher levels of compliance with court orders and lower levels of recidivism. In fact, studies have shown that most people are in fact more willing to accept a negative outcome in their case if they feel that the decision was arrived at through a fair method. This does not mean that people are happy if they lose their case and fail to obtain the outcomes they desire. It does mean, however, that they are more willing to accept and abide by decisions when those decisions seem to have been made fairly. In addition, procedural fairness increases the public's perception of the legitimacy of the process.

In order to gauge the level of procedural fairness within the courts, the Branch conducted a survey in every judicial district in the state from 2008 through 2013. The survey is a set of ten trial court performance measures developed by the National Center for State Courts that attempt to give court managers a balanced perspective on court operations. The purpose of the survey is to (1) rate the court user's perceptions of the courts accessibility and its treatment of court users in terms of fairness, equality, and respect; (2) provide a general snapshot on how the public perceives access and fairness in the courts; and (3) establish a baseline of information so that the courts can evaluate current practices and create plans for more improved and efficient court practices. The following tables illustrate the survey results from 2011 and 2012.

Table 1
Statewide Fairness Survey
Percent of Respondents that "Agree or "Strongly Agree"

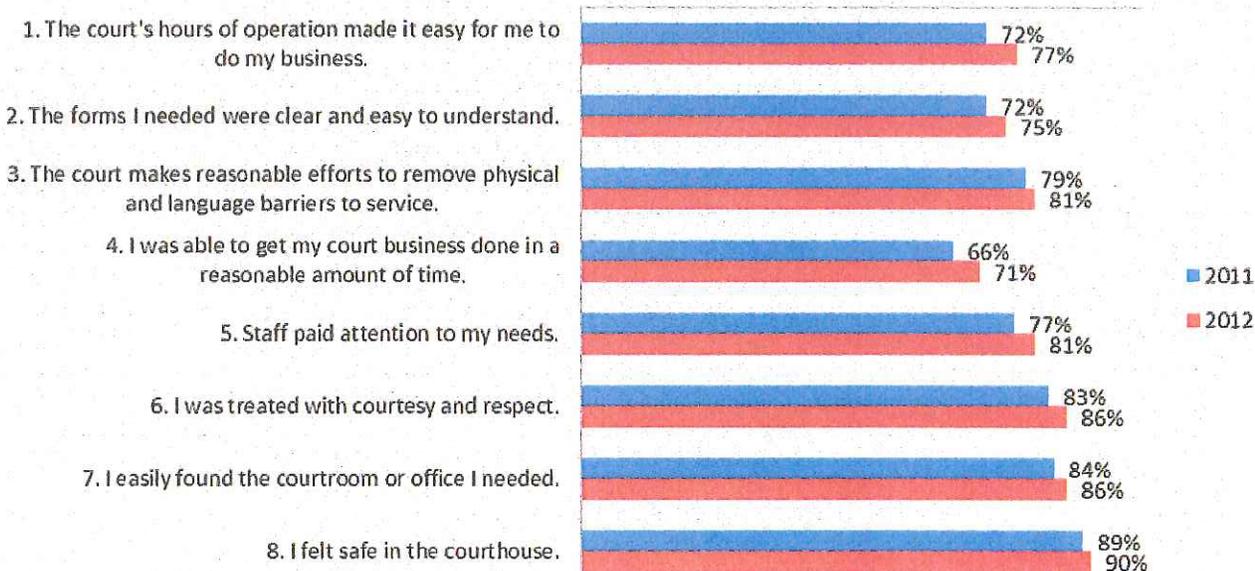
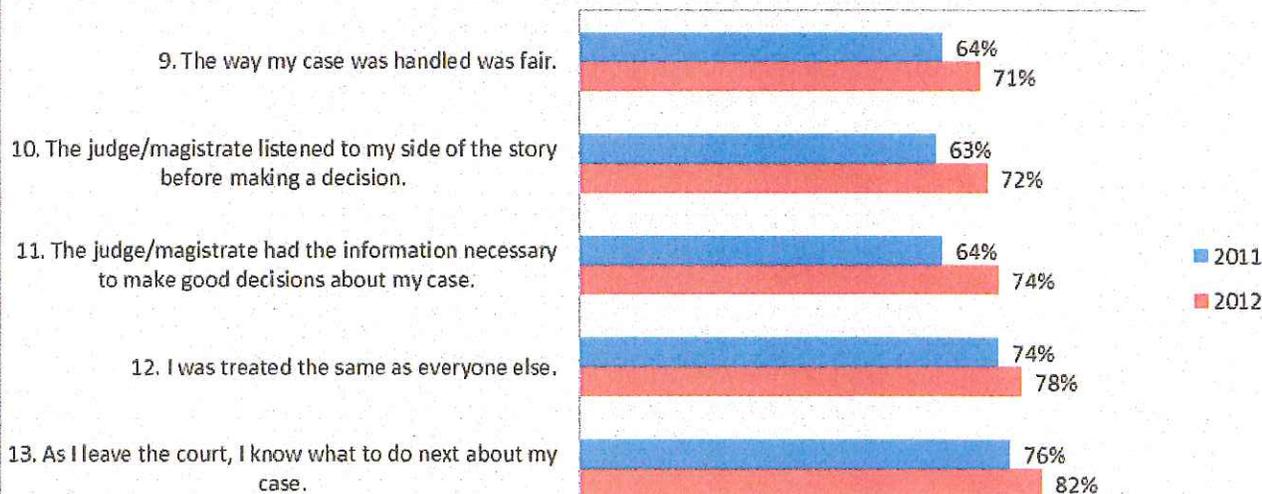


Table 2
Statewide Fairness Survey
Percent of Respondents that "Agree or "Strongly Agree"



FACTOR 2: Increased Number of Self-represented Parties



One complicating factor in providing access to the court system is that a fairly dramatic shift has occurred over the past ten to fifteen years: citizens now generally expect to be able to fully participate in a court case without the services of an attorney. The court system, unfortunately, has not been able to keep up with the demand for providing services to self-represented parties, often referred to as pro se parties, particularly requests for one-on-one procedural assistance. The need for greater services to self-represented litigants has been expanded by the intersection of two forces: (1) a larger cultural shift in terms of a do-it-yourself society that proceeds through the court system without an attorney for either philosophical or economic reasons, and, (2) the fact that people who interact with the court system must be savvy in an increasingly internet-based justice system, which unfortunately has left many people far behind.

Data collected and analyzed by the State Court Administrator's Office shows large increases in pro se parties, particularly in domestic relations cases, which include child custody, child support and divorce proceedings. Over the last decade, a greater number of litigants are not represented by a lawyer. The number of domestic relations cases proceeding without an attorney has grown by 57 percent from 2001 through 2013. Between FY 2001 and FY 2013, total domestic relations cases have grown by 11 percent. In addition to domestic relations cases, probate cases have also seen growth in the number of self-represented litigants (an increase of 35 percent since FY 2009). This caseload growth, along with a marked increase in self-represented litigants, has put significant pressure on the trial courts.

When an attorney is not involved in a case, more resources are required to process a case by court staff. Self-represented parties strain the court system in several respects. They: (1) increase the amount of time necessary for clerks to handle the day-to-day business of the courts and put stress on the workforce; (2) often file the wrong documents or incomplete documents; (3) fail to properly prepare for the hearing or trial and bring the necessary evidence and/or witnesses; (4) do not understand why the clerk's office cannot provide free legal advice; (5) often are not computer literate, so simply giving them a website address of where the information is located is not always sufficient; (6) frequently don't have the capacity to print documents necessary for their cases; and, (7) lack access to the necessary state statutes, court rules, and policies and procedures necessary to properly handle their cases.

In order to address this issue, the trial courts across the state have recognized that ultimately it is the court that must take leadership in addressing the procedural needs of self-represented litigants. By streamlining processes and providing informational resources, courts have become better situated to face the challenges related to self-represented litigants. In FY 2013 and FY 2014, the General Assembly funded a total of twenty-two new FTE that focus solely on providing procedural support to self-represented litigants. These allocations have ensured that every judicial district has at least a part-time employee to help address the needs of self-represented litigants at the local level. The FY 2015 budget request includes a request for additional resources to assist self-represented litigants as this population of court users continues to grow.

FACTOR 3: Changes in Demographics

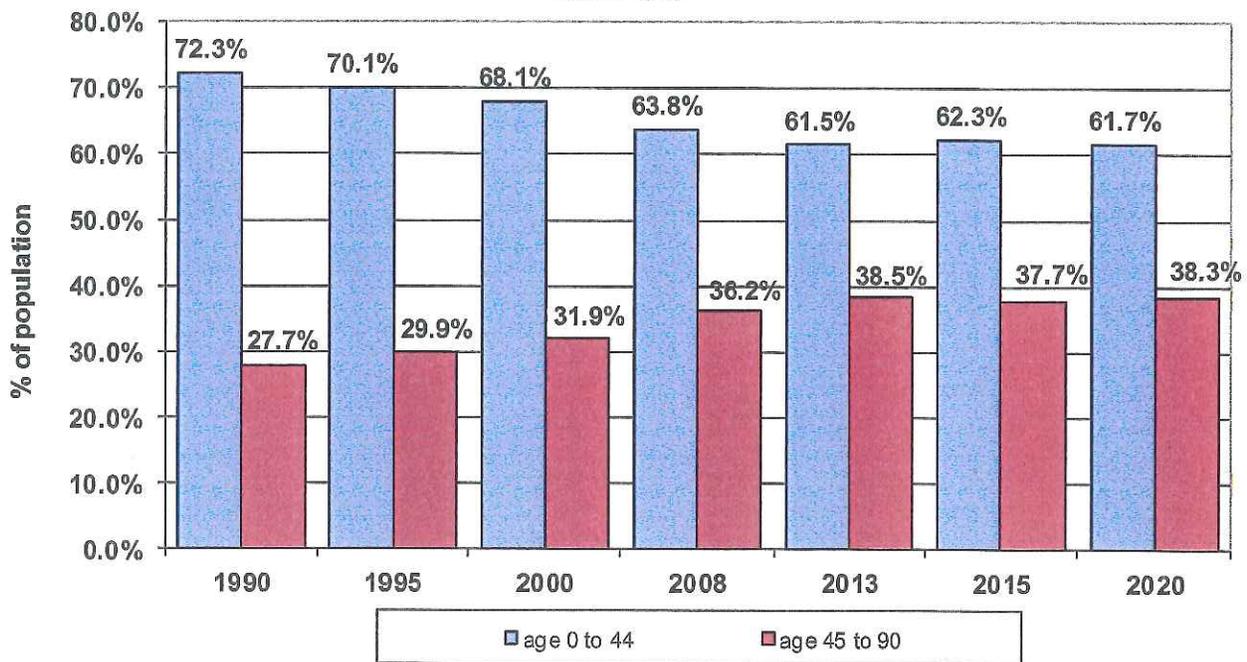


The overall growth in state population has been accompanied by noticeable changes in the state's demographics. These include: a continued aging of the state's population, a sharp rise in the number of foreign-born citizens residing in the state, and an increase in not only the number of citizens speaking foreign languages but in the diversity of languages spoken as well. These demographic changes have a variety of impacts on the operations of Colorado's courts and probation.

Aging population

Colorado has seen significant changes in the age of its population over the last decade. The number of Coloradans over 45 years of age has increased faster than the population as a whole, growing by 121 percent from 1990 to 2013. Those over 45 years of age accounted for 28 percent of the state population in 1990, and are projected to rise to 40 percent in 2020 (see Figure 2 below).

Figure 2. Colorado Age Distribution
Percentage of Total Population
1990 - 2020



Source: Colorado Demography Section

Nationally, approximately 13 percent of the U.S. population was over age 65 in 2010. With increased life expectancy and the aging of the baby boom generation in America, this segment is projected to account for 20 percent of the total population by the year 2030. As the population ages, the courts expect to see increases in case types such as probate and protective proceedings (i.e. guardianships and conservatorships). Unlike some types of court cases which can be resolved in a year or less, many protective proceedings cases require long term oversight by the courts.

Based on historical information, of the 2,500 protective proceedings cases filed annually, we would anticipate that:

- Half of the cases will require court monitoring for more than 5 years;
- A third of the cases will require court monitoring longer than 10 years;
- 15 percent will require court monitoring longer than 20 years; and
- 5 percent will still require court monitoring after 30 years.

After a period when new probate case filings were relatively stable, probate filings have sharply increased in the last few years. New probate case filings, protective proceedings and decedent's estates combined, are up 22 percent just since FY 2009.

Foreign languages

Colorado's foreign-born population more than doubled since 1990. By 2011, approximately 500,000 or 10 percent of the state's population was foreign-born. Compare this percentage to 1990 when only 4.3 percent of Colorado's population was foreign-born. Much of this increase is due to Hispanic and Asian immigration.

According to the census data, the number of people in Colorado with limited English proficiency (LEP) has grown dramatically over the last twenty years—up 26 percent since 2000 and up 88 percent since 1990. The percentage of Colorado's population speaking Spanish as the primary language at home increased from 6.7 percent in 1990 to 10.5 percent in 2000 to 12.1 percent in 2008. These figures are consistent with the increase in the state's Hispanic population, as reported in the decennial census, which indicates that the percentage of residents identifying themselves as Hispanic grew from 12.9 percent in 1990 to 20.7 percent in 2010.

Language and cultural barriers can create other obstacles such as misconceptions about the role of the court system and law enforcement. These challenges can create significant barriers for LEP litigants that can keep them from participating fully in their own court proceedings. In addition, they can result in the misinterpretation of witness statements to judges or juries during court proceedings and can deter minority litigants from using the civil justice system as a forum to address grievances. These concerns coupled with the growth in the LEP population amplify the significance of court interpretation as a management issue for the trial courts, which are increasingly compelled to use language interpreters in court proceedings. This growth in need is illustrated by the FY 2015 budget request for additional resources related to language interpreters.

The need for interpretive services adds another set of variables in the case management efforts of the state's trial courts. Additional time is required to determine the need for interpreter services, to schedule the appearance of interpreters, to conduct proceedings using interpreter services, and to process payments for interpretive services. Further, if an interpreter is not available or does not show up to a hearing, proceedings must be delayed. These factors can add significantly to the time required to resolve cases.

FACTOR 4: Increased Reliance on Technology



As caseloads increase, the Branch has become increasingly reliant on technology to process the large volume of paper associated with trial court and probation cases. The Colorado Judicial Branch has become dependent on its court/probation/financial case management system (i.e. ICON/Eclipse/JPOD) which integrates with applications from other agencies and departments. The system has been a critical mechanism in maintaining service levels to the public without the need for additional Branch resources.

The Branch developed an in-house Public Access system (PAS) that went live on July 1, 2010. Revenue raised from fees charged for public access to court data is now exclusively funding the PAS. In addition, the fees charged for public access helped fund the development of the new in-house e-filing system (Integrated Colorado Courts E-Filing System, ICCES). Development of ICCES began in FY 2011, and the implementation of the e-filing service in all judicial districts (phase I of the project) was completed on June 3, 2013. The ability for citizens to e-file court documents improves their access to the court system and helps make the courts more efficient. To this end, the Branch has requested additional funding to improve network bandwidth in rural areas and provide information technology support to areas that lack those resources.

Budget Request Priorities

To facilitate the goals of access and procedural fairness, the Courts and Probation have identified the following budget request priorities for FY 2014-15:

- **District Judges:** This request seeks two new judgeships in the 18th Judicial District. These new judgeships are requested because of an inadequate number of judges in the 18th Judicial District. By adding new judgeships, the General Assembly will help to ensure that adequate resources are available to handle the growing caseload in this district. When adequate resources are available, judges are able to spend more time and energy with each court user, and they are able to decide cases in a timelier manner. This improves access by ensuring that the courts have the resources to accommodate the demand by court users in each district, and it safeguards procedural fairness by ensuring that judges have the necessary time to spend with each court user and that court users receive a resolution to their issues in a timely manner. This request requires separate legislation.
- **Underfunded Rural Court Facilities:** This request would provide design and potentially limited construction funding for courthouse improvements in rural judicial districts with the most limited financial resources. Priority would be given to judicial districts with: (1) total population below the state median; (2) per capita income below the state median; (3) property tax revenues below the state median; and (4) population living below the federal poverty level above the state median. These resources would assist with access by allowing courthouses to make accommodations for people with disabilities. In addition, reducing these physical barriers to accessing the court system will improve procedural fairness by making all court users feel they are being treated equally. This request requires separate legislation.

- **Information Technology:** The budget request includes the following three decision items related to information technology: (1) regional computer technicians; (2) staff to develop new programs and decrease the backlog of internal IT projects; and (3) improved network bandwidth in rural areas. The court system is increasingly becoming a computerized system, from the electronic filing of documents to the use of technology in the courtrooms. Technology plays a crucial role in the basic operations of the courts in Colorado. Key aspects of court case management, record keeping, jury management, and offender management all rely on the efficient operation of technical systems. Downtime to maintain and service these technical systems is not merely an inconvenience—it can effectively limit access to the courts. The requested technicians will assist with the multitude of IT issues that the court system faces in its efforts to make the system accessible and fair to everyone. Because the court system is increasingly becoming a computerized system, it is imperative that resources be available to improve network bandwidth and access in rural areas. Lack of bandwidth in rural areas inhibits our ability to share crucial data with other agencies and also hurts our ability to serve self-represented litigants in the most effective ways possible (e.g., interactive online tutorials, Skype-based interaction, etc.).
 - **Access to Justice:** The budget request includes the following three decision items related to improving court access: (1) language interpreters; (2) self-represented litigant coordinators; and (3) family court facilitators. Language interpreters allow equal access to the court system by providing language interpretation for those court users that have limited English proficiency. By providing this service, these interpreters ensure that the court system is accessible to all, and they improve procedural fairness by making the process understandable for all court users. Self-represented litigant coordinators provide procedural assistance to self-represented parties in the court system at the local level and are crucial to allowing for greater access to the court system and procedural fairness. Because of the increasing number of court users who choose not to have an attorney, it is important that resources are available to help them achieve the justice that all court users deserve. By providing these resources, the General Assembly will help guarantee that the court system is accessible to all and that it is fair to those with or without an attorney. The family court facilitators assist with managing domestic relations cases in a timely and effective manner while helping parties navigate these cases as they proceed through the court system. Family court facilitators are essential to improving access and procedural fairness in the court system because they make sure the cases are ready for action by the judge/magistrate. Without the help of these facilitators, cases would not be resolved as expeditiously and court users would not be as satisfied with the system.
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Legislative Agenda

The FY 2014-15 legislative agenda for the Courts and Probation includes the following four bills, two of which have been discussed above in relation to the budget request:

- **District Judges:** This bill would add two judgeships in the 18th Judicial District. The 18th Judicial District has the lowest district court judge staffing level in the state. In addition, the 18th Judicial District has seen steady case filing growth over the last thirty years. However, the Branch's ability to add judgeships during that time period has not kept pace with the caseload growth.
- **Underfunded Rural Court Facilities:** This bill would provide funding to rural judicial districts to begin design and potentially limited construction work on renovation/construction of courthouse facilities that are underfunded by local counties.
- **Fingerprint-based Criminal History Background Checks:** This bill would require fingerprint-based criminal history background checks for law license applicants and child and family investigators. Currently, prospective attorneys are fingerprinted when applying to practice law in Colorado; however, the Judicial Branch does not have the statutory authority required by the FBI to run national background checks with those fingerprints. The Judicial Branch feels it is important to have these national background checks in order to ensure the proper regulation of attorneys. A child and family investigator ("CFI") may be appointed in a domestic relations case pursuant to section 14-10-116.5, C.R.S., upon the request of either party or upon the court's own motion. The role of the CFI is to investigate, report and make recommendations to the court on issues outlined in the order of appointment that affect the best interests of children involved in the domestic relations case. Because of the sensitive nature of the work they do, the Judicial Branch believes it is appropriate to conduct fingerprint-based criminal history background checks on CFIs.
- **Rule of Seven:** This bill would conform sections of statute to the Rule of Seven. The Rule of Seven is a Supreme Court rule change that modifies to multiples of seven days the computation of time intervals between events in the legal process to avoid having filing deadlines fall on weekends. The bill would conform Section 13-20-901 (14 days rather than 10 days for class action appellate review), Section 8-43-301 (21 days rather than 20 days for workers compensation cases), Section 13-90-901 (21 days rather than 20 days for appeal of grant/denial of class certification), Section 38-7-102 (21 days rather than 20 days for urban renewal vesting), and Section 14-13-305 (14 days rather than 10 days for the Uniform Child Custody Jurisdiction and Enforcement Act) to the Rule of Seven.

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