

**C00A00
Judiciary**

Operating Budget Data

(\$ in Thousands)

	<u>FY 17 Actual</u>	<u>FY 18 Working</u>	<u>FY 19 Allowance</u>	<u>FY 18-19 Change</u>	<u>% Change Prior Year</u>
General Fund	\$479,643	\$490,373	\$524,244	\$33,871	6.9%
Adjustments	0	-4,549	0	4,549	
Adjusted General Fund	\$479,643	\$485,824	\$524,244	\$38,420	7.9%
Special Fund	51,660	66,279	62,200	-4,079	-6.2%
Adjustments	0	0	0	0	
Adjusted Special Fund	\$51,660	\$66,279	\$62,200	-\$4,079	-6.2%
Federal Fund	702	1,053	169	-884	-84.0%
Adjustments	0	0	0	0	
Adjusted Federal Fund	\$702	\$1,053	\$169	-\$884	-84.0%
Reimbursable Fund	4,876	5,191	4,795	-396	-7.6%
Adjustments	0	0	0	0	
Adjusted Reimbursable Fund	\$4,876	\$5,191	\$4,795	-\$396	-7.6%
Adjusted Grand Total	\$536,881	\$558,346	\$591,408	\$33,061	5.9%

Note: FY 18 Working includes targeted reversions, deficiencies, and across-the-board reductions. FY 19 Allowance includes contingent reductions and cost-of-living adjustments.

- The Governor’s plan for budgetary balance assumes a reversion from the Judiciary of \$4.6 million in general funds in fiscal 2018. Employee and retiree health insurance costs in fiscal 2018 are reduced through an across-the-board action, but the Governor cannot reduce the budgets of the Judiciary or the General Assembly.
- The Judiciary’s budget request for fiscal 2019 increases by \$33.1 million, or 5.9%, over the fiscal 2018 working appropriation. The general fund request is \$524.2 million, an increase of \$38.4 million, or 7.9%, above fiscal 2018.

Note: Numbers may not sum to total due to rounding.

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Personnel Data

	<u>FY 17</u>	<u>FY 18</u>	<u>FY 19</u>	<u>FY 18-19</u>
	<u>Actual</u>	<u>Working</u>	<u>Allowance</u>	<u>Change</u>
Regular Positions	3,950.50	3,989.00	4,051.75	62.75
Contractual FTEs	<u>334.00</u>	<u>347.00</u>	<u>344.00</u>	<u>-3.00</u>
Total Personnel	4,284.50	4,336.00	4,395.75	59.75

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	116.69	2.88%
Positions and Percentage Vacant as of 12/31/17	96.55	2.42%

- The Judiciary’s fiscal 2019 request includes 62.75 new regular positions for the following purposes:
 - 20.5 positions for clerks and assistants in the Clerks of the Circuit Court program (including 2.0 positions for asbestos case managers in Baltimore City);
 - 17.0 positions for District Court clerks to process expungement requests under the Maryland Second Chance Act and Justice Reinvestment Act;
 - 13.0 positions for Judicial Information Systems (JIS) to support operations and improve cybersecurity;
 - 5.0 positions for problem solving court coordinators and case managers in Baltimore and Montgomery counties;
 - 4.25 positions in the Administrative Office of the Courts (AOC) and special judiciary units; and
 - 3.0 contractual conversions.
- Turnover expectancy is set at 2.88%, which will require 116.7 vacancies. As of December 31, 2017, the Judiciary had a total of 96.6 vacancies for a vacancy rate of 2.42%.

Analysis in Brief

Major Trends

Trial Court Clearance Rates Generally Unchanged: The performance of the District Court and circuit courts is evaluated based on the percentage of cases that are cleared within established time standards. Performance across all case categories was in line with recent history. While timely clearance rates are generally high for both courts, they do fall short of the standard, which is a 98% timely clearance rate for most case types.

Maryland Legal Services Corporation Increases Assistance: Maryland Legal Services Corporation (MLSC) is a State-funded tax-exempt nonprofit corporation that provides grants to legal assistance programs across the State. In fiscal 2017, MLSC spent \$19.9 million, and grantees closed a total of 177,127 cases.

Problem Solving Courts Continue to Expand Services: Since the first drug court in the State was launched in Baltimore City in 1994, the Judiciary has expanded the Office of Problem Solving Courts (OPSC) to include 53 courts in 21 of the State’s 24 jurisdictions. However, despite the ongoing opioid epidemic and a renewed focus on addiction treatment, the number of drug court participants across the State has been declining since fiscal 2012. **The Department of Legislative Services (DLS) recommends that the Judiciary discuss with the budget committees major trends in drug court participation and why it believes participation has declined in the last five years.**

Issues

Judicial Compensation Commission Offers Recommendations: The Judicial Compensation Commission met during the 2017 interim and has recommended a \$35,000 salary increase for each State judge phased in over the next four years. The Judiciary has included \$5.6 million to fund the plan in fiscal 2019, and DLS estimates that the cumulative cost will reach \$22.6 million in fiscal 2022, the first year the plan would be fully implemented. **DLS recommends that, in light of the State’s fiscal condition, the General Assembly deny the requested salary increases as unaffordable and unnecessary to recruit and retain qualified judges in the State.**

New Judicial Workload Assessment: The Judiciary has issued new workload measures for judges in order to improve how it measures the need for judgeships across the State. The new workload measures indicate that there is less need for judges statewide than previously assumed. Some jurisdictions may even have more judges now than these measures indicate are necessary to meet demand. **DLS recommends that the Judiciary comment on how it plans to respond to the new workload study’s findings and, in particular, how it plans to address the reported surplus of judicial resources in some jurisdictions. DLS also recommends that the Judiciary discuss how it plans to increase judicial capacity in Baltimore County when the new Catonsville District Courthouse opens. DLS further recommends that the Judiciary’s fiscal 2020 judgeship need certification include a discussion of options for more efficiently utilizing existing judgeships to ease workloads statewide**

and a new, multi-year judgeship deployment plan. Finally, DLS recommends that funding for magistrates and recalled judges be reduced in those jurisdictions shown to have sufficient regular judicial resources.

Courthouse Information Technology Upgrades More Expensive Than Expected: Estimated expenditures for the Courthouse eReadiness project, which is upgrading courthouses to accommodate the Maryland Electronic Courts Initiative (MDEC), increased by 17.5% to \$14.3 million in the fiscal 2019 Information Technology (IT) Master Plan. These upgrades have proven more costly than expected in older courthouses across the State and may be particularly difficult for facilities in Baltimore City that are near the end of their life cycle. **DLS recommends that the Judiciary comment on the current condition of the IT infrastructure in the Mitchell and Fayette Street courthouses. DLS further recommends that the Judiciary prepare a report outlining a strategy to mitigate the costs of upgrades at the Fayette Street Courthouse.**

Compensation Study Leads to Higher, More Equitable Salaries for Judiciary Employees: The Judiciary conducted a compensation study in 2014 that found a need for reclassifications and other personnel policy changes to ensure compensation equity within the Judiciary. The study also found that Judiciary salaries, like those across State government, are not competitive in the marketplace. From calendar 2015 to 2017, AOC worked to eliminate the inequities identified in the study. Then, in October 2017, the Judiciary instituted a new, increased salary scale for many of its frontline employees. This plan is expected to cost \$4.4 million in general funds in fiscal 2018, which will be funded by the Judiciary by cutting other expenses. The cost increases to \$6.2 million in general funds in fiscal 2019, which is included in the current budget request. **DLS recommends that the Judiciary comment on the importance and necessity of its salary plan and how it relates to the findings of its compensation study. DLS further recommends that the fiscal 2019 allowance be reduced to continue the savings that it plans to achieve in its other operating expenses to fund the plan in fiscal 2018.**

Judiciary Expands Drug Court Grants but Falls Short on the Heroin and Opioid Prevention Effort and Treatment Act Funding: The Heroin and Opioid Prevention Effort and Treatment Act (HOPE Act) (Chapters 571 and 572 of 2017) is the centerpiece of the State’s legislative response to the ongoing opioid crisis. The HOPE Act includes intent language directing the Judiciary to request \$2.0 million in fiscal 2019 to expand drug court services statewide. After evaluating drug court capacity, the Judiciary has presented a plan to increase expenditures by \$750,000 and add new drug courts in Baltimore, Montgomery, and Washington counties. **DLS recommends that the Judiciary comment on how OPSC and the State’s drug courts are responding to the opioid epidemic, why the approach to drug court expansion that it has offered is the most appropriate under the circumstances, and how it would utilize the full \$2.0 million in additional funding in fiscal 2019 if it was provided by the General Assembly.**

Operating Budget Recommended Actions

	<u>Funds</u>	<u>Positions</u>
1. Add budget bill language to eliminate general funds for merit salary increases, judge compensation, and a new salary plan for regular employees.	\$ 13,957,338	
2. Add budget bill language to reduce general funds to limit growth in general fund expenditures for the Judiciary to limit growth in general fund revenue.	2,710,207	
3. Reduce funding for recalled judges in jurisdictions with sufficient regular judicial resources to fulfill current workloads.	1,077,690	
4. Eliminate 5.75 positions for circuit court magistrates that are unnecessary based on current workloads.	954,399	5.8
5. Add budget bill language that restricts the use of \$8.5 million in general funds for the implementation of <i>DeWolfe v. Richmond</i> .		
6. Eliminate 17.0 new positions in the District Court.	834,097	17.0
7. Reduce funding for furniture and equipment purchases to hold the appropriation to the most recent actual expenditures.	494,569	
8. Adopt committee narrative to request a report on the Appointed Attorney Program costs and utilization.		
9. Eliminate 4.0 new positions for the Administrative Office of the Courts.	272,604	4.0
10. Adopt committee narrative to request a report on the Maryland Electronic Courts Initiative upgrades in Baltimore City.		
11. Adopt committee narrative to request a new, multi-year judgeship deployment plan.		
12. Eliminate a 0.25 new position in the Court Related Agencies program.	22,429	0.3
13. Eliminate 13.0 new positions in Judicial Information Systems.	1,039,768	13.0
14. Add budget bill language to make general funds for salary increases for the circuit court clerks contingent upon the enactment of legislation.		

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15. Eliminate 20.5 new positions in the Clerks of the Circuit Court program.	1,056,922	20.5
Total Reductions	\$ 22,420,023	60.5

Updates

Appointed Attorney Program on Track with Lower Expenditure Target: Actual expenditures for the Appointed Attorney Program in fiscal 2017 were \$7.9 million, a decrease of \$170,071 from fiscal 2016. The fiscal 2018 working appropriation and fiscal 2019 request each include \$8.5 million for this purpose.

New Bail Rule Goes into Effect: A new Maryland rule approved by the Court of Appeals that limits the use of cash bail in the State went into effect on July 1, 2017. The Judiciary submitted a statistical report on pretrial dispositions before and after the rule was enacted that shows that utilization of cash bail has declined 50%, while the percent of defendants held without bail has increased from 9% to 21%.

Major IT Projects: The Judiciary’s fiscal 2019 IT Master Plan includes seven funded projects, with a total cost of \$14.6 million in fiscal 2019, all from the Land Records Improvement Fund (LRIF). The Judiciary also reports that the rollout of MDEC is on schedule, but the total cost estimate for the project has increased by \$3.0 million.

LRIF: The LRIF funds the State’s land records offices and major IT projects within the Judiciary. IT expenditures will continue to strain the fund over the next several years, even with new filing fees and an increase to the recordation surcharge enacted during the 2015 session.

Push from Budget Committees Spurs New Budget Practices for Clerks of the Circuit Court Program: In response to a request in the 2017 *Joint Chairman’s Report*, the Judiciary has reviewed its internal budget development process for the Clerks of the Circuit Court program and instituted new procedures that should lead to budget requests that better reflect actual needs.

Path Forward for Electronic Court Reminder Messages: The Judiciary reports that it does not currently collect the necessary information from defendants to provide text message or email reminders about pending court dates. However, the Judiciary also found that, despite a few technical challenges, it would be relatively simple and inexpensive to deploy a notification system.

JIS and the Department of Information Technology Compare Notes on Cybersecurity: JIS and the Department of Information Technology collaborated to produce a report comparing their cybersecurity practices and investigating ways they could work together to improve the State’s cybersecurity in the future. The two agencies report that they have functionally identical cybersecurity policies and intend to continue to communicate regularly and share technical expertise going forward.

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Commissioners Assume Responsibility for Indigency Determinations: Under Chapter 606 of 2017, on July 1, 2017, the Judiciary assumed responsibility for determining whether defendants are financially eligible for representation by the Office of the Public Defender. The Judiciary reports that the average time between booking and release in local jails has increased due to the additional paperwork and review, but the system is now functioning without significant issues.

Preliminary Sunset Evaluation Suggests Need for Increased Fees for the State Board of Law Examiners: DLS conducted a preliminary sunset evaluation for the Board of Law Examiners during the 2017 interim. As part of this review, DLS determined that bar examination fees were insufficient to cover the cost of administering bar examinations in fiscal 2017. The current fee is \$250, but the statutory cap on the fee is \$400.

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Operating Budget Analysis

Program Description

The Judiciary is composed of four courts and five programs that support the administrative, personnel, technological, and regulatory functions of the Judicial Branch of the State government. Courts consist of the Court of Appeals, the Court of Special Appeals, circuit courts, and the District Court. The Chief Judge of the Court of Appeals is the administrative head of the State's judicial system. The Chief Judge appoints the State Court Administrator as head of the Administrative Office of the Courts (AOC) to carry out administrative duties, which include data analysis, personnel management, education, and training for judicial personnel.

Other agencies are included in the administrative and budgetary purview of the Judiciary. Judicial Units include the Commission on Judicial Disabilities and the Maryland State Board of Law Examiners. The State Law Library serves the legal information needs of the State. Judicial Information Systems (JIS) manages information systems maintenance and development for the Judiciary. Major Information Technology (IT) Development Projects are in a separate program, while all production and maintenance of current operating systems are in the JIS program.

Performance Analysis: Managing for Results

1. Trial Court Clearance Rates Generally Unchanged

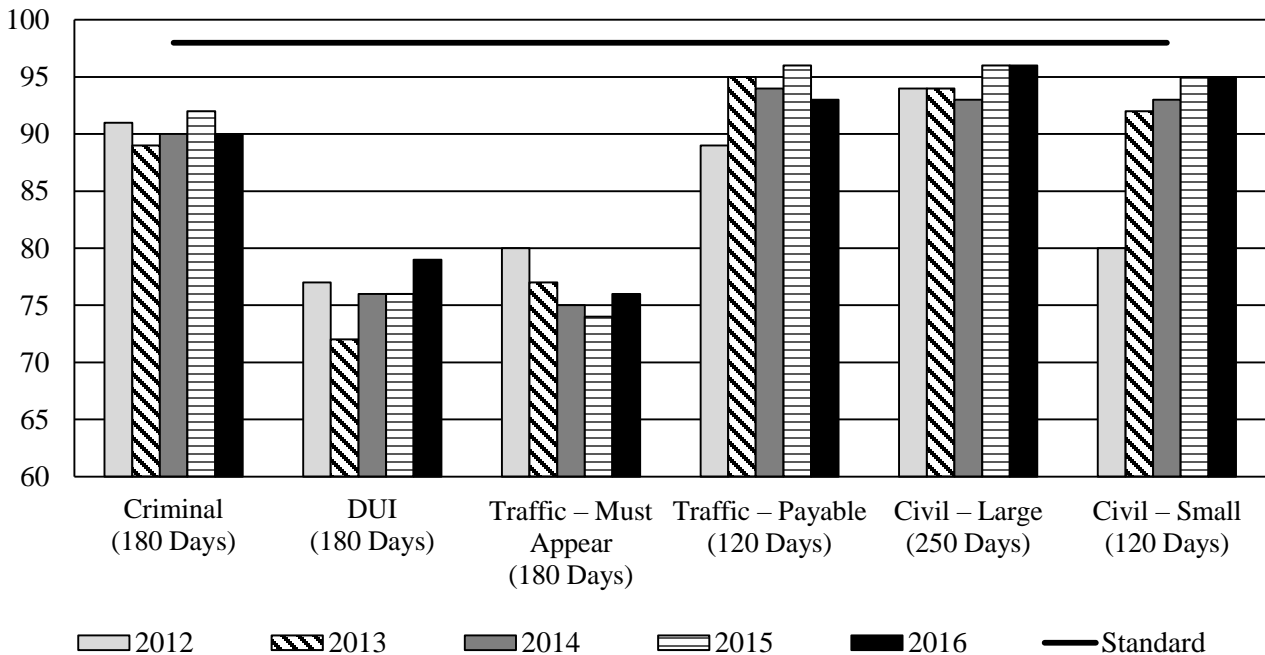
The Judiciary incorporates case flow standards adopted by the Maryland Judicial Council into its annual Managing for Results data in order to evaluate access to justice; expedition and timeliness; equity, fairness, and integrity; independence and accountability; and public trust and confidence.

The Judiciary utilized standards set by the American Bar Association that determine the amount of time it should take to process a particular type of case. Those standards were modified due to existing statutes and rules that impact the way in which Maryland courts are required to process certain cases. The statewide case flow assessment submitted by the Judiciary analyzes cases that come through the District and circuit courts and, in particular, the timeliness with which those cases are terminated or otherwise disposed.

The Judiciary reports case time standards for each court based on a random sample of cases from each district and applies a weighting based on the total number of cases in the district. **Exhibit 1** illustrates the percentage of cases disposed within the time standard each year since fiscal 2012 for the District Court. While the average time to disposition was well within the time standard for each case type, the District Court has failed to meet the performance standard of 98% of

cases within the standard for all case types. However, performance was generally consistent with previous years and was particularly strong for civil cases.

Exhibit 1
Maryland District Court
Percentage of Cases Terminated within Standard
Fiscal 2012-2016

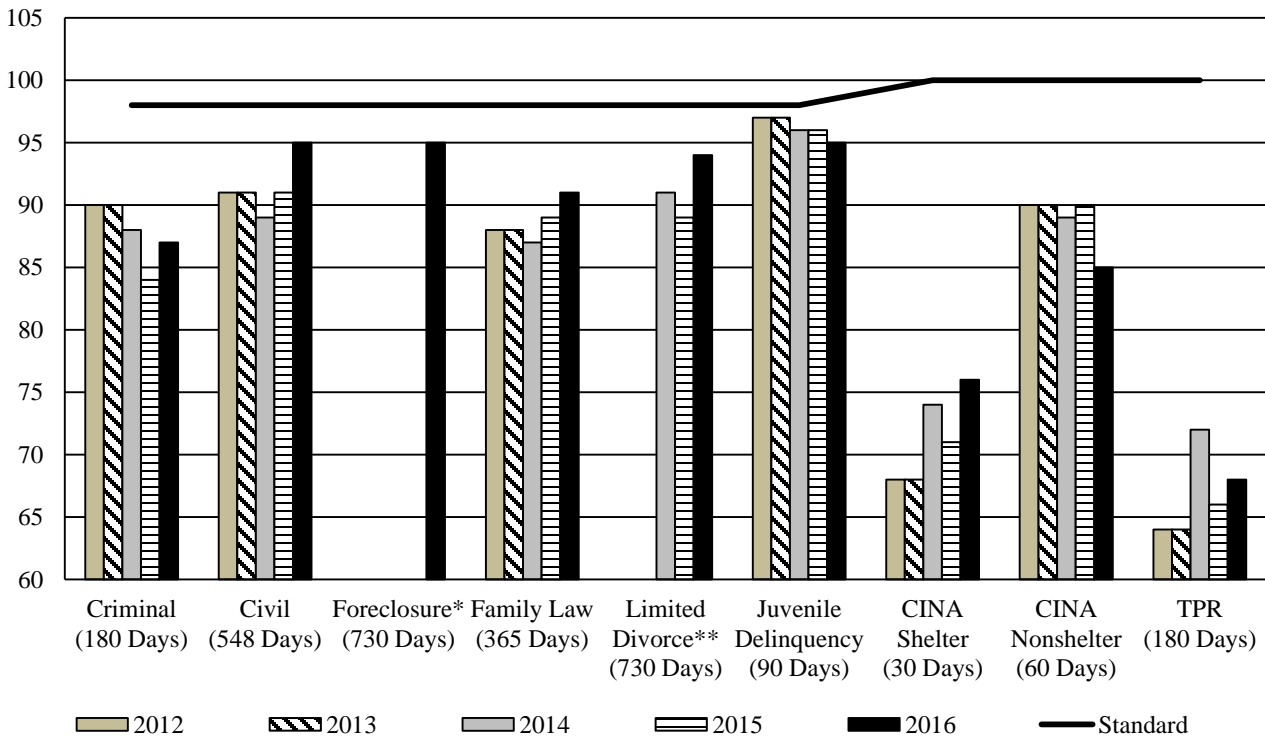


DUI: Driving Under the Influence

Source: Maryland Judiciary; Department of Legislative Services

Exhibit 2 illustrates the number of circuit court cases terminated within the time standard. Similar to the District Court, while average processing time was within the standard for the majority of case types, the circuit courts failed to meet the established target for the percentage of cases resolved within the time standard for all categories (100% of cases within standard for child in need of assistance (CINA) and termination of parental rights (TPR) cases, 98% within standard for all other types). Refinements to the case types in the family law and civil categories have brought higher clearance rates based on more appropriate expectations, but overall results are mixed. CINA and TPR continue to pose a special challenge because of their complexity and the particular need for expedited resolution.

**Exhibit 2
Maryland Circuit Courts
Percentage of Cases Terminated Within Standard
Fiscal 2012-2016**



CINA: Child in Need of Assistance
TPR: Termination of Parental Rights

* The foreclosure category was introduced in fiscal 2016. Foreclosure cases were previously included in the civil category.
** The limited divorce category was introduced in fiscal 2014. Limited divorce cases were previously included in the family law category.

Source: Maryland Judiciary; Department of Legislative Services

2. Maryland Legal Services Corporation Increases Assistance

The Maryland Legal Services Corporation (MLSC) is a tax-exempt, nonprofit corporation chartered by the State to provide grants to organizations that provide legal assistance across Maryland. MLSC is an independent entity controlled by a nine-member Board of Directors appointed by the Governor with the advice and consent of the Senate. The organization’s general operating revenue comes from three State-directed sources: (1) a surcharge on civil cases filed in Maryland courts; (2) interest on lawyer trust accounts; and (3) an annual statutory transfer from the Abandoned Property Fund. In fiscal 2017, MLSC received \$16.5 million from these sources. In addition, MLSC receives grant funding directly from the Judiciary to support the Judicare Program.

During the 2017 session, at MLSC’s request, the General Assembly took two actions to provide additional certainty to MLSC’s funding. Chapters 797 and 798 of 2017 eliminated a provision that would have sunset the MLSC surcharge at the end of fiscal 2018. Additionally, Chapter 839 of 2017 increased the annual transfer from the Abandoned Property Fund to MLSC from \$1.5 million to \$2.0 million.

In fiscal 2017, MLSC provided grants totaling \$15.2 million to 35 organizations that provide legal assistance and an additional \$4.7 million for other legal aid programs, including \$1.9 million for Judicare and \$2.2 million for foreclosure prevention and community development. As shown in **Exhibit 3**, MLSC grantees participated in 177,127 cases that were closed in fiscal 2017 and spread across all regions of the State, an increase of 25,333 cases over fiscal 2016. MLSC has attributed this increase to the expansion of District Court Self-Help Centers, which are staffed by legal aid attorneys. **Exhibit 4** breaks down these cases by type and illustrates that about 60% of the assistance provided by grantees is related to family law matters and housing issues. MLSC also reports that these organizations were able to leverage the *pro bono* work of 3,300 attorneys in private practice who donated services with an estimated value of over \$25.0 million.

Exhibit 3
Maryland Legal Services Corporation
Cases Closed by Region
Fiscal 2014-2017

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Anne Arundel County	19,830	20,278	24,693	26,281
Baltimore City	39,134	34,379	32,289	35,041
Baltimore County	14,599	13,676	13,806	17,884
Central Maryland	8,706	8,446	8,874	11,441
Eastern Shore	8,608	8,206	8,441	12,159
Montgomery County	14,202	13,597	13,734	16,405
Prince George’s County	25,438	25,945	31,640	36,706
Southern Maryland	6,949	7,245	6,211	8,173
Western Maryland	9,692	9,061	9,159	10,236
Other ¹	2,862	2,499	2,947	2,801
Total	150,020	143,332	151,794	177,127

Central Maryland: Carroll, Harford, and Howard counties

Eastern Shore: Caroline, Cecil, Dorchester, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, and Worcester counties

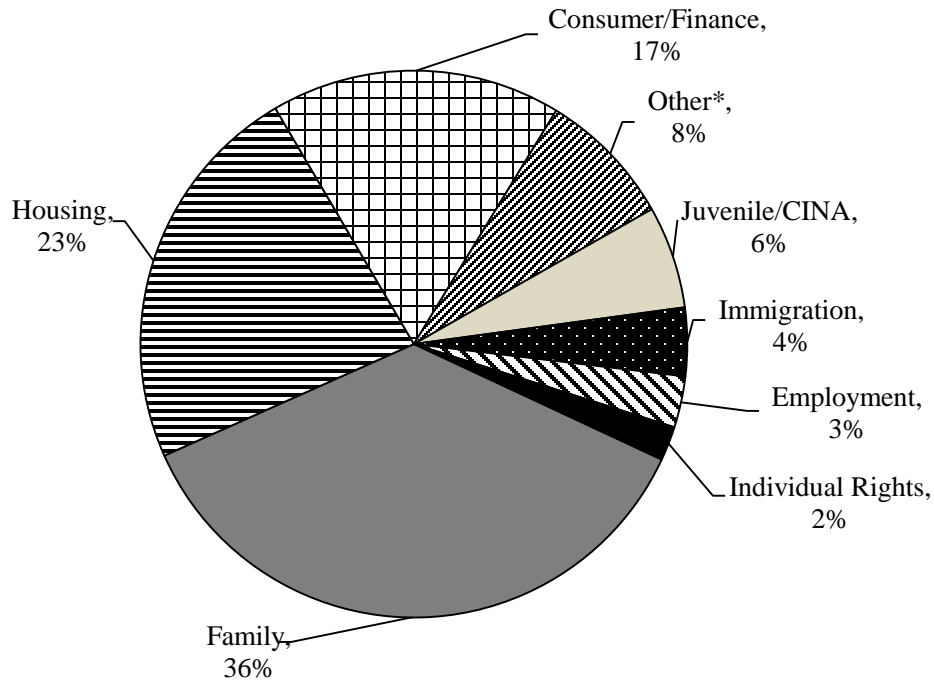
Southern Maryland: Calvert, Charles, and St. Mary’s counties

Western Maryland: Allegany, Frederick, Garrett, and Washington counties

¹ Includes cases that the Maryland Legal Services Corporation could not place in a single regional category or occurred out of state.

Source: Maryland Legal Services Corporation

Exhibit 4
Maryland Legal Services Corporation
Cases Closed by Type
Fiscal 2017



CINA: child in need of assistance

*Includes education, health, income maintenance, and uncategorized cases.

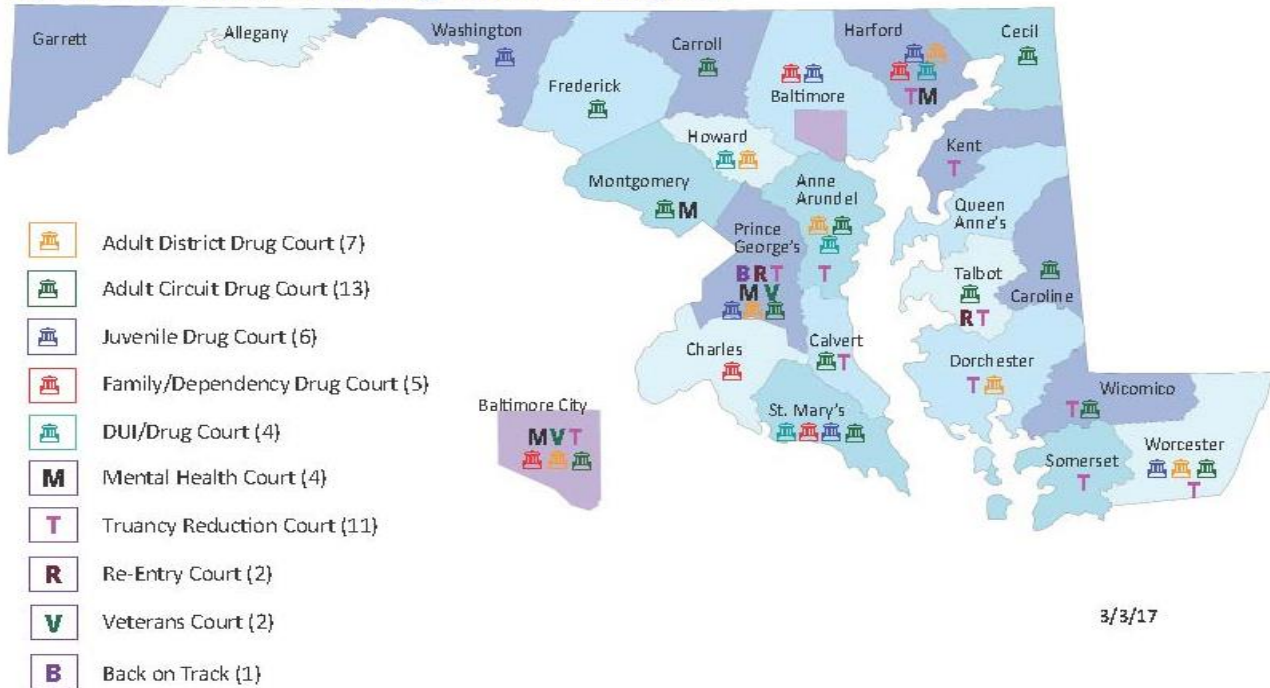
Source: Maryland Legal Services Corporation

3. Problem Solving Courts Continue to Expand Services

The Baltimore City Circuit Court initiated one of the first drug courts in the nation in 1994. Since that time, the Judiciary, in collaboration with its State and local justice partners, has expanded this service to include a total of 53 problem solving courts. The courts are managed by local District and circuit court judges with financial and technical support from the Office of Problem Solving Courts (OPSC). **Exhibit 5** shows the distribution and type of problem solving courts across the State in 2017. Twenty-one out of 24 jurisdictions now have at least 1 problem solving court.

**Exhibit 5
Problem Solving Courts by Jurisdiction
As of March 3, 2017**

Operational Problem-Solving Courts in Maryland



Source: Maryland Judiciary

Problem solving courts are typically low volume but work closely with participants over long periods of time. For instance, in fiscal 2017, the average length of participation for those who completed or were discharged from adult drug courts was 22.5 months. While in a drug court program, individuals make regular court appearances, attend court-mandated meetings and treatment, and must fulfill other conditions such as drug testing.

Despite the expansion of offerings and the addition of dockets in more jurisdictions, the number of participants in drug court programs has actually declined since fiscal 2012, as shown in **Exhibit 6**. While this decline may be a reflection of the overall decline in arrest rates in the State, it is unexpected, given the ongoing surge in opioid addiction across the State. **The Department of Legislative Services (DLS) recommends that the Judiciary discuss with the committees major trends in drug court participation and why it believes participation has declined in the last five years.**

Exhibit 6
Drug Court Participation
Fiscal 2007-2016

<u>Fiscal Year</u>	<u>Participants</u>	<u>Graduates</u>
2007	962	471
2008	2,007	302
2009	3,852	652
2010	3,342	614
2011	3,400	498
2012	3,443	713
2013	3,140	627
2014	2,813	649
2015	2,605	499
2016	2,583	357
Total	28,147	5,382

Source: Maryland Judiciary

Fiscal 2018 Actions

Across-the-board Employee and Retiree Health Insurance Reduction

The budget bill includes an across-the-board reduction for Executive Branch employee and retiree health insurance in fiscal 2018 to reflect a surplus balance in the fund. Since the Governor cannot modify the Judiciary’s budget request, the Administration’s plan for budgetary balance assumes a \$4.6 million general fund reversion from the Judiciary in fiscal 2018. DLS will recommend that this amount be added to the reduction in Section 19.

Proposed Budget

The fiscal 2019 budget totals \$591.4 million, of which 88.6% is general funds. In comparison to the fiscal 2018 working appropriation, the budget grows by \$33.1 million, or 5.9%, as shown in **Exhibit 7**. This increase is largely attributable to increased personnel costs due to salary increases for Judiciary employees and judges.

Exhibit 7
Proposed Budget
Judiciary
(\$ in Thousands)

How Much It Grows:	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2017 Actual	\$479,643	\$51,660	\$702	\$4,876	\$536,881
Fiscal 2018 Working Appropriation	485,824	66,279	1,053	5,191	558,346
Fiscal 2019 Allowance	<u>524,244</u>	<u>62,200</u>	<u>169</u>	<u>4,795</u>	<u>591,408</u>
Fiscal 2018-2019 Amount Change	\$38,420	-\$4,079	-\$884	-\$396	\$33,061
Fiscal 2018-2019 Percent Change	7.9%	-6.2%	-84.0%	-7.6%	5.9%

Where It Goes:**Personnel Expenses**

Increments.....	\$7,461
Judiciary compensation plan.....	6,788
Judicial Compensation Commission.....	5,173
New positions	3,645
Employee and retiree health insurance	3,190
Decrease turnover rate	2,101
Workers' compensation premium assessment	625
Employer pension contributions	305
Annualization of new fiscal 2018 positions.....	240
Other fringe benefit adjustments.....	490

Grants

Maryland Legal Services Corporation.....	2,500
Children and family services grants.....	1,529
Office of Problem Solving Courts	750
Mediation and Conflict Resolution program	322
Juror payments.....	219
Other grants	-1,419

Major Information Technology (IT) Projects

Maryland Electronic Courts Initiative	47
Case Search 2.0.....	-94
Attorney Information Systems.....	-407
Courthouse eReadiness.....	-751

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Where It Goes:

Enterprise virtualization.....	-762
Cybersecurity	-815
IT service management.....	-2,001

Other Changes

Equipment and furniture	2,057
Recalled judges.....	1,657
Bailiff compensation.....	748
District Court facility improvements	617
Travel.....	335
Judicial self-help centers.....	146
Communications	-234
Supplies.....	-419
Payment to State Archives.....	-1,000
Other adjustments	19

Total **\$33,062**

Note: Numbers may not sum to total due to rounding.

Growth in Judiciary’s General Fund Request Substantially Exceeds General Fund Revenue Growth

The Judiciary’s general fund request of \$524.2 million is 7.9% over the fiscal 2018 working appropriation. While the Judiciary has provided reasonable justifications for a large portion of this increase, that growth rate is simply not sustainable in the current fiscal climate and with the other pressures on the General Fund. General fund growth for fiscal 2019 is estimated to be 3.3%. If the same growth rate were applied to the Judiciary’s general fund appropriation, it would increase by \$16.0 million in fiscal 2019 to \$501.9 million. That amount is \$22.4 million less than the Judiciary’s fiscal 2019 request but would still allow the Judiciary to fund many of its identified priorities. **DLS recommends that the General Assembly limit the Judiciary’s general fund appropriation to no more than \$501.9 million due to the State’s fiscal condition and to adhere to the Spending Affordability Committee’s recommendation that the structural deficit be eliminated in fiscal 2019.**

General Salary Increase

The fiscal 2019 allowance includes funds for a 2.0% general salary increase for all State employees in the Executive and Legislative branches, effective January 1, 2019. For other agencies these funds are budgeted in the Department of Budget and Management’s statewide program

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and will be distributed to agencies during the fiscal year. However, the Judiciary's request already includes a total of \$7.5 million for increments, which would be sufficient to provide Judiciary employees a 3.4% salary increase. The Judiciary's share of the proposed general salary increase is \$2.2 million in general funds and \$124,919 in special funds if the General Assembly adopts the proposed Judicial Compensation Commission plan. In addition, employees will receive another 0.5% increase and a \$500 bonus effective April 1, 2019, if actual fiscal 2018 general fund revenues exceed the December 2017 estimate by \$75.0 million. These funds have not been budgeted. The Administration will need to process a deficiency appropriation if revenues are \$75.0 million more than projected. **DLS recommends that the Judiciary's appropriation for increments be adjusted to match the proposed increase for other State employees.**

Personnel

Personnel expenditures increase by \$30.0 million in fiscal 2019. This amount includes an increase of \$4.6 million due to the presumed health insurance reduction for fiscal 2018. It also includes \$7.5 million for increments for Judiciary employees (as discussed previously), \$5.2 million to fund salary increases for judges recommended by the Judicial Compensation Commission (JCC), and \$6.8 million for a new Judiciary salary plan. A request for 62.75 new positions increases expenditures by \$3.6 million and annualization of positions created in fiscal 2018 adds \$240,248.

Other personnel adjustments include \$2.1 million to reduce the turnover rate to 2.88%, which is consistent with Judiciary vacancy rates; \$304,809 for pension contributions; and \$624,837 for workers' compensation. Excluding the impact of fiscal 2018 savings, health insurance expenditures decline by \$1.4 million.

Grants

Significant changes to grants include \$2.5 million in increased spending authority for MLSC, \$1.5 million for children and family services programs, and \$750,000 for problem solving courts. There is a decline of \$1.4 million for federal and special fund grants for a variety of programs including the Foster Care Court Improvement Project. These funds will be added to the appropriation by budget amendment when the Judiciary can determine how much funding is available.

Major IT Projects

Expenditures for major IT projects from the Land Records Improvement Fund (LRIF) decline by \$4.8 million. Maryland Electronic Courts Initiative (MDEC) expenditures increase slightly (\$46,584). Expenditures for all other funded projects decrease including:

- \$2.0 million for IT service management;
- \$815,000 for cybersecurity;
- \$762,050 for enterprise virtualization;

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- \$750,659 for courthouse upgrades for MDEC; and
- \$500,820 for the Attorney Information Systems (AIS) and Case Search 2.0 portals.

Additional detail on these projects and the Judiciary’s overall IT plan can be found in the Updates section of this analysis.

Other Changes

Other significant changes include \$2.1 million for equipment and furniture, \$1.7 million for compensation for recalled judges, \$748,446 to increase pay for contractual bailiffs due to increases for regular employees, and \$617,000 for facilities projects at District Courthouses.

Issues

1. Judicial Compensation Commission Offers Recommendations

JCC was established in 1980 and consists of seven members charged with studying and making recommendations regarding all aspects of judicial compensation in order to ensure that highly qualified individuals will be attracted to the bench and will continue to serve without undue economic hardship. Chapter 484 of 2010 (the Budget Reconciliation and Financing Act) altered the meeting schedule of the commission to allow for a review of salaries in 2011 and 2013, then every four years thereafter.

Recent JCC Actions

In 2011, the commission submitted a recommendation to increase judicial salaries a total of \$29,006 from fiscal 2014 to 2016. In the 2012 session, the General Assembly amended the resolution submitted by the commission so that the annual salaries for all judges increase as follows: (1) \$4,556 beginning July 1, 2013; (2) \$4,692 beginning July 1, 2014; and (3) \$4,833 beginning July 1, 2015.

The commission also made recommendations in its 2011 report on appropriate retirement benefit and member contribution levels. The commission recommended that the contribution rate for the Judge's Retirement System (JRS) for judges appointed after July 1, 2012, increase from 6% to 8% of earnable compensation. Chapter 485 of 2012 made this change and further added a five-year vesting requirement for individuals who become JRS members on or after July 1, 2012. In 2013, the commission met again but elected not to recommend additional changes to compensation.

Action during the 2017 Interim

JCC met twice during the 2017 interim. After reviewing information about compensation in Maryland, across the region, and nationwide, five members voted to recommend that the salaries for all State judges increase by \$10,000 per year for fiscal 2019 and 2020 and \$7,500 per year for fiscal 2021 and 2022. The impact of this proposal on salaries is presented in **Exhibit 8**. In making this recommendation, JCC followed a suggestion offered by the Judiciary to increase all judicial salaries by the same dollar amount rather than a percentage. A percentage salary increase would have provided a larger benefit to those judges who already have larger salaries.

Exhibit 8
Judicial Compensation Commission
Salary Recommendations
Fiscal 2019-2022

	<u>Current Salary</u>	<u>Proposed 2019</u>	<u>Proposed 2020</u>	<u>Proposed 2021</u>	<u>Proposed 2022</u>	<u>Phase-in</u>
Court of Appeals						
Chief Judge	\$195,433	\$205,433	\$215,433	\$222,933	\$230,433	\$35,000
Judge	176,433	186,433	196,433	203,933	211,433	35,000
Court of Special Appeals						
Chief Judge	166,633	176,633	186,633	194,133	201,633	35,000
Judge	163,633	173,633	183,633	191,133	198,633	35,000
Circuit Court						
Judge	154,433	164,433	174,433	181,933	189,433	35,000
District Court						
Chief Judge	163,633	173,633	183,633	191,133	198,633	35,000
Judge	141,333	151,333	161,333	168,833	176,333	35,000

Source: Judicial Compensation Commission

Senate Joint Resolution 5 and House Joint Resolution 3 were introduced on January 24, 2018. Failure by both houses of the General Assembly to adopt or amend a joint resolution within 50 calendar days after its introduction will result in the adoption of the salary recommendations. If the General Assembly rejects the recommendations, judicial salaries will remain at their current level unless modified under other provisions of law.

Fiscal Impact of Salary Recommendations

The estimated impact of JCC's recommendations is presented in **Exhibit 9**. The plan would incrementally increase State expenditures between \$3.9 million and \$9.3 million per year, and cumulatively, expenditures would be \$22.5 million higher in fiscal 2022 due to the plan. These projected costs include:

- \$11.0 million for judicial salary increases;
- \$420,000 for increased salaries for the public defender, State prosecutor, and members of the Workers' Compensation Commission, whose compensation is pegged by statute to judicial salaries;

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- \$6.8 million in additional employer pension contributions based on an actuarial estimate of the impact of the salary plan. The majority of this effect (\$4.8 million) occurs in fiscal 2020, the first year in which JRS contribution rates would be recalibrated to reflect the new compensation plan;
- \$2.7 million to increase salaries for magistrates based on an internal Judiciary policy that magistrate salaries be equal to no less than 90% of a District Court judge’s salary;
- \$1.5 million to increase the compensation rate of recalled judges, whose compensation is also pegged by statute to compensation for active judges; and
- \$164,938 in additional employer payroll tax payments.

Exhibit 9
Impact of Judicial Compensation Commission Recommendations
Fiscal 2019-2022

	Proposed <u>2019</u>	Proposed <u>2020</u>	Proposed <u>2021</u>	Proposed <u>2022</u>	<u>Total</u>
Salaries ¹	\$3,250,000	\$3,250,000	\$2,437,500	\$2,437,500	\$11,375,000
Social Security	47,125	47,125	35,344	35,344	164,938
Pensions ²	763,184	4,763,184	717,388	527,388	6,771,144
Compensation for magistrates ³	744,402	787,643	580,690	580,690	2,693,425
Compensation for senior judges ⁴	438,448	438,448	328,836	328,836	1,534,568
Total	\$5,243,159	\$9,286,400	\$4,099,758	\$3,909,758	\$22,539,075

¹ Includes salary increases for the public defender, State prosecutor, and members of the Workers’ Compensation Commission. Does not include incremental costs for State’s attorneys, whose salaries are also tied to judicial salaries but are funded locally.

² Impact on judicial pensions is based on an actuarial estimate prepared based on the recommended salary increases. The contribution rate for regular employees is assumed to be 19.32%.

³ The Judiciary’s budget request for fiscal 2019 includes these funds based on internal branch policy. Magistrate compensation is not under the purview of the Judicial Compensation Commission, but the request arises directly from the recommendation.

⁴ Compensation for recalled judges is tied to judicial salaries by statute.

Source: Bolton Partners; Maryland Judiciary; Department of Legislative Services

The Judiciary reports that it included \$5.6 million in its fiscal 2019 request, based on its own cost estimate for the proposal.

According to the National Center for State Courts (NCSC), judges in Maryland are generally paid less than judges in other jurisdictions in the region, on a nominal and cost-of-living adjusted basis. Maryland has also lost ground relative to those jurisdictions since JCC last met during the 2013 interim. JCC's proposal, which would increase judicial salaries between 17.9% and 24.8%, would make the State's judges, particularly at the trial court level, among the highest compensated in the country.

DLS has several concerns with the proposal:

- ***General Fund Structural Deficit:*** The General Fund is currently facing pressure from several directions. Since the recession, while revenues have recovered, year-over-year revenue growth has been slower than it was in previous periods of economic expansion and has been matched or exceeded by growth in expenditures. Pressure to increase expenditures for other priorities, including health care and education, is likely to continue, especially given the current uncertainty of federal policy on many key issues.
- ***Judicial Branch Expenditures Relative to Other Parts of State Government:*** The Judiciary's fiscal 2019 budget request includes a General Fund increase of \$38.4 million, or 7.9%, above the fiscal 2018 working appropriation. While this request already includes funding for JCC's recommended salary increases, it still clearly illustrates that, realistically, there is not capacity in the budget to fully fund these increases, increases for regular employees, and all of the Judiciary's other priorities.
- ***General Salary Increases Have Been Limited in Recent Years:*** Cost-of-living adjustments (COLA) and merit-based increments for State employees have been erratic since the 2008 recession. Under the circumstances, such a large increase in judicial salaries is incongruous with the treatment of other State employees, including the nearly 4,000 other employees of the Judiciary. The Judiciary's own budget request reflects this in addition to a COLA for all State employees in the Governor's spending plan; the Judiciary also has its own spending plan for regular employees that will cost \$6.8 million in fiscal 2019.
- ***No Evidence That Recruiting Judges is Difficult:*** While recruiting highly qualified individuals to serve as judges in the State is important, there is no particular reason to believe that the State is struggling to attract strong judicial candidates under the current salary schedule.

Effect of Proposed COLA in Governor's Budget Plan

The Governor's fiscal 2019 budget plan includes a 2% COLA for State employees effective January 1, 2019. Judges are eligible for COLAs provided to other State employees only in those years in which they are not receiving a scheduled salary increase under a compensation plan. Therefore, if the General Assembly approves a COLA for fiscal 2019 but not a compensation plan increase for judges, then judges would still receive a salary increase effective on January 1, 2019. **Exhibit 10** outlines the impact of the proposed COLA versus the JCC recommendation on judicial salaries for fiscal 2019.

DLS recommends that, in light of the State’s fiscal condition, the General Assembly deny the requested salary increases as unaffordable and unnecessary to recruit and retain qualified judges in the State.

Exhibit 10
Judicial Salaries with COLA
Fiscal 2019

	<u>Current Salary</u>	<u>JCC Proposal</u>	<u>2% COLA</u>
Court of Appeals			
Chief Judge	\$195,433	\$205,433	\$199,342
Judge	176,433	186,433	179,962
Court of Special Appeals			
Chief Judge	166,633	176,633	169,966
Judge	163,633	173,633	166,906
Circuit Court			
Judge	154,433	164,433	157,522
District Court			
Chief Judge	163,633	173,633	166,906
Judge	141,333	151,333	144,160

COLA: cost-of-living adjustment

JCC: Judicial Compensation Commission

Note: For fiscal 2019, the proposed COLA will only be in effect for the second half of the fiscal year. This table provides the new annual salaries that would become effective January 1, 2019, rather than the budget impact.

Source: Department of Legislative Services

2. New Judicial Workload Assessment

Each year from 1979 to 2015, the Judiciary submitted a report to the General Assembly certifying the need for additional judgeships across the State, and, as appropriate, a formal request to establish judgeships in specific courts and jurisdictions. Committee narrative in the 2012 *Joint Chairmen’s Report* (JCR) requested that the Judiciary develop a multi-year plan for adding new District and circuit court judgeships so that the General Assembly could address the Judiciary’s needs more gradually and spread the budget impact over several years.

The Judiciary submitted the Judgeship Deployment Plan in November 2012. The Judiciary presented a six-year timeline (fiscal 2013 to 2018) to add 26 judgeships. In November 2015, after two legislative sessions in which the previous plan was not followed, the Judiciary submitted an updated version of the plan seeking 20 new judgeships between fiscal 2017 and 2019. Chapter 91 of 2016 established 13 judgeships.

For the 2017 session, however, the Judiciary reported that it was working with NCSC to develop new workload measures for the State's trial courts. This work took longer than initially expected and, rather than rely on the old metrics, the Judiciary chose not to issue a certification of need until the new workload study was complete. As a result, no new judgeships were requested for fiscal 2018.

New Metrics, Less Need

The Judiciary released NCSC's final report and its fiscal 2019 judgeship certification in December 2017. NCSC evaluated the workload of the Judiciary based on a weighted-caseload methodology, which divides the work of judges into categories based on case type, tracks how much time judges actually spend on those cases, and develops a case weight (measured in minutes) for each category. Once these case weights were calculated, NCSC used data on the number of filings in each case category from fiscal 2013 through 2015 to determine how many judges are needed to handle the expected workload in each jurisdiction in the State. In addition, the new metrics now include an adjustment to account for the additional responsibilities of the administrative judges in each jurisdiction. This adjustment adds 11.5 trial court judges to the total need statewide, relative to the prior methodology.

For fiscal 2019, the Judiciary has certified a need for 7 circuit court and 8 District Court judges in jurisdictions around the State. In October 2015, when the Judiciary last certified a need for new judges, the need was 19 circuit court and 12 District Court judges. In response to this certification, the General Assembly created 11 circuit court and 2 District Court judgeships. Statewide, then, the new metrics have a modest impact on the number of judges needed to fully staff the State bench.

In addition, for the first time since the modern certification process was created, there are several jurisdictions that appear to have more judges than necessary to effectively manage current caseloads. Specifically, the Judiciary has projected a need for only 20 District Court judges in Baltimore City and 3 in Howard County, while those jurisdictions currently have 28 and 5 judges, respectively. As shown in **Exhibit 11**, factoring in those findings, there is actually a need statewide for only 115 District Court judges, compared to the 117 that are currently established.

Statistics for the circuit courts show a similar decline in workloads; however, the impact on the number of judges is more complicated because each jurisdiction also relies on magistrates to handle some of the judicial workload. Therefore, while the Judiciary did not certify a need for fewer judges in any county, it did find that a total of 5.75 magistrate full-time equivalents are unneeded across four jurisdictions. This amount includes 3.0 magistrates in Baltimore City, 1.75 in Carroll County, and 0.5 each in Charles and Worcester counties.

Exhibit 11
Certified Need for Judges
Circuit and District Courts
Fiscal 2019

	Circuit Courts			District Court		
	<u>Current Judges</u>	<u>Projected Need</u>	<u>Additional Need</u>	<u>Current Judges</u>	<u>Projected Need</u>	<u>Additional Need</u>
Allegany	2.0	3.0	1.0	2.0	2.0	-
Anne Arundel	13.0	13.0	-	9.0	10.0	1.0
Baltimore City	35.0	35.0	-	28.0	20.0	-8.0
Baltimore County	20.0	24.0	4.0	13.0	15.0	2.0
Calvert	3.0	3.0	-	2.0	2.0	-
Caroline	1.0	1.0	-	1.0	1.0	-
Carroll	4.0	4.0	-	2.0	2.0	-
Cecil	4.0	4.0	-	2.0	2.0	-
Charles	5.0	5.0	-	3.0	3.0	-
Dorchester	1.5	1.5	-	1.0	1.0	-
Frederick	6.0	6.0	-	3.0	3.0	-
Garrett	1.0	1.0	-	1.0	1.0	-
Harford	6.0	6.0	-	4.0	4.0	-
Howard	5.0	5.0	-	5.0	3.0	-2.0
Kent	1.0	1.0	-	1.0	1.0	-
Montgomery	24.0	24.0	-	13.0	13.0	-
Prince George's	24.0	25.0	1.0	17.0	19.0	2.0
Queen Anne's	1.0	1.0	-	1.0	1.0	-
Somerset	3.0	3.0	-	1.0	1.0	0.0
St. Mary's	1.0	1.0	-	1.0	2.0	1.0
Talbot	1.0	1.0	-	1.0	1.0	-
Washington	5.0	6.0	1.0	2.0	3.0	1.0
Wicomico	3.5	3.5	-	2.0	3.0	1.0
Worcester	3.0	3.0	-	2.0	2.0	-
Total	173.0	180.0	7.0	117.0	115.0	-2.0

Source: Maryland Judiciary

The 2018 legislative session is the first time the Judiciary and General Assembly have quantifiable evidence that any jurisdiction has more judges than necessary for its workload. In response, the Judiciary has elected not to recommend any changes to the State's bench, including new

judgeships where a need has been demonstrated, until there has been additional time for study and the scope of options available to the Judiciary and General Assembly is better understood.

DLS recommends that the Judiciary comment on how it plans to respond to the new workload study’s findings and, in particular, how it plans to address the reported surplus of judges in some jurisdictions. DLS further recommends that the Judiciary’s fiscal 2020 judgeship need certification include a discussion of options for more efficiently utilizing existing judgeships to ease workloads statewide and a new multi-year judgeship deployment plan.

Next Steps

While DLS concurs with the Judiciary’s recommendation that it is premature to consider any changes to the number of judges in the State, in preparation for possible future discussions, DLS has requested an Advice of Counsel letter from the Office of the Attorney General on the statutory and constitutional issues associated with managing judgeships. Receipt of the letter is pending, as of this writing.

DLS has also identified three specific issues arising from the new workload study that warrant immediate consideration:

- ***Staffing for the New Catonsville District Courthouse:*** Construction is currently underway on a new courthouse for the Baltimore County District Court in Catonsville. The courthouse, which is expected to open in the first quarter of calendar 2019, will be able to accommodate 5 more judges than the current courthouse. While the Judiciary has certified a need for 2 additional judges in Baltimore County and will have a new facility that needs to be staffed, it has not requested any judges to do so. **DLS recommends that the Judiciary comment on how it plans to increase judicial capacity in Baltimore County once space is available.**
- ***Recalled Judges:*** The Judiciary utilizes recalled judges for a variety of functions in every court and all jurisdictions across the State. These judges are compensated on a per diem basis to perform a wide range of judicial functions. The cost for recalled judges in the six jurisdictions with excess judicial resources was \$1.1 million in fiscal 2017. **DLS recommends that funding for recalled judges be eliminated in those jurisdictions shown to have sufficient regular judicial resources.**
- ***Magistrates:*** As discussed above, the Judiciary has reported that it employs 5.75 more magistrates in four circuit courts than are necessary for current workloads. **DLS recommends that these magistrate positions and associated funding be eliminated.**

3. Courthouse Information Technology Upgrades More Expensive Than Expected

An essential feature of the deployment of MDEC is upgrades to the physical IT infrastructure in the State's courthouses. MDEC is a statewide system, and all courthouses must be able to handle significant network traffic reliably and have appropriate equipment for employees to access MDEC. In order to accomplish this objective, the Judiciary is in the middle of the Courthouse eReadiness major IT project, which is being implemented parallel to MDEC, to upgrade courthouse IT systems. According to the Judiciary's fiscal 2019 Information Technology Master Plan (ITMP), this project is scheduled for completion in fiscal 2021 and will cost a total of \$14.3 million. The cost estimate for the project has increased by \$2.1 million, or 17.5%, since the fiscal 2018 ITMP.

Courthouse eReadiness has several objectives, including the installation of modern fiber optic cabling and wireless Internet within each courthouse in the State for MDEC, ensuring that infrastructure outside the building is sufficient to support new equipment inside the buildings, and installation of new audio-video equipment to facilitate greater use of technology in court proceedings. These upgrades are essential to the effective implementation of MDEC and to ensure that the Judiciary, in all parts of the State, can keep pace with evolving technology.

MDEC implementation is proceeding on schedule and will move into the State's larger jurisdictions over the next few years. The final jurisdiction will be Baltimore City in January 2021.

Courthouse eReadiness currently has a total cost estimate of \$14.3 million and is a significant project in its own right, constituting about 15.0% of the major IT expenditures required for MDEC. As noted above, the cost estimate for the project increased 17.5% this year. The Judiciary reports that this is because it developed its initial estimate based on the actual costs incurred for the MDEC Anne Arundel County pilot. However, Anne Arundel County's courthouses are relatively new and recently renovated compared to facilities in some parts of the State. As the Judiciary has moved MDEC into other parts of the State, the costs of these upgrades has been as much as twice of what was anticipated.

Of particular concern are two facilities in Baltimore City, the Mitchell Courthouse, which houses the Circuit Court of Baltimore City, and the Civil District Courthouse on Fayette Street. The Mitchell Courthouse is a famously troubled facility, and there have been calls to build a new courthouse for decades. The Judiciary reports that it will cost \$1.1 million to upgrade the facility. Despite the need, it is very unlikely that the Mitchell Courthouse will be retired or rehabilitated in the near future. A more immediate fiscal concern is the \$250,000 estimated cost to upgrade the Civil District Courthouse. There is currently a project in the *Capital Improvement Plan* to vacate the facility in fiscal 2022. While the cost to upgrade the facility is not large relative to the entire MDEC project, these funds, which are intended to create long-term value for the State, will be expended to buy 6 to 18 months use in a building that is in such poor condition that it could not be occupied again without complete rehabilitation. **DLS recommends that the Judiciary comment on the current condition of the IT infrastructure in the Mitchell and Fayette Street courthouses and the upgrades necessary for MDEC. DLS further recommends that the Judiciary prepare a report outlining a strategy to mitigate the costs of upgrading the Fayette Street Courthouse for MDEC.**

4. Compensation Study Leads to Higher, More Equitable Salaries for Judiciary Employees

In 2014, the Judiciary contracted with a consulting firm to develop a classification and compensation study due to complaints from employees about inequitable and insufficient compensation across the branch. Senior management were also aware that because of historic practice, the migration of many formerly local positions into the State system, and the partial implementation of a previous compensation plan beginning in 2000, there were inequities and other deficiencies in the Judiciary's overall compensation structure. The study identified a number of issues, including inconsistent titles and job descriptions across courts, jurisdictions, and programs; improperly graded positions; below-market compensation; and inconsistent pay for the same position.

AOC has been proactive in resolving the inequities that the study brought into focus; over the last two years, pay was increased for the branch employees with the lowest compensation (some of whom did not earn enough to meet the poverty line), a consistent classification system was deployed, and a uniform pay structure was established. Those changes had minimal impacts on the Judiciary's overall budget and were necessary as a matter of fairness for Judiciary employees.

In October 2017, the Judiciary moved to a new phase of its response to the compensation study by rebasing the salaries for many positions. Most of those who received the benefit of these increases were the Judiciary's front line workers: clerks and administrators in the District and circuit courts, who, like many other State employees, are not paid a wage that is competitive even with their local government counterparts. The Judiciary reports that this salary plan increase will cost an additional \$4.4 million in general funds in fiscal 2018 and \$6.2 million in general funds in fiscal 2019, when the new salary scales will be in place for the full fiscal year.

The Chief Judge has authority to establish salaries within the Judiciary, and deficiencies in compensation have been well-documented by DLS and others. Additionally, the plan put forward by the Judiciary appears to prioritize the most significant concerns and is at least cognizant of the current constraints on the State budget. In light of these facts, DLS does not object to the new salary plan or recommend against the funds requested in fiscal 2019 to provide a full year of the increased compensation.

However, it is also the case that the Judiciary was able to increase these salaries in the middle of fiscal 2018, despite the fact that no funds were sought or provided for this purpose in the fiscal 2018 budget. In fact, the General Assembly chose to reduce the Judiciary's fiscal 2018 request by \$13.9 million and considered an even larger reduction, but the Judiciary did not publically offer this new salary plan as a reason it needed additional funding. The Judiciary has reported, instead, that it will fund the fiscal 2018 portion of the increase, including \$4.4 million in general funds, by finding savings elsewhere in its budget. Given that the Judiciary believes it can achieve these savings within its operating budget in fiscal 2018, it is reasonable to expect that it should do so going forward.

DLS recommends that the Judiciary comment on the importance and necessity of its salary plan and how it relates to the findings of its compensation study. DLS further recommends

that the fiscal 2019 allowance be reduced to reflect the savings Judiciary plans to achieve in its other operating expenses to fund the plan in fiscal 2018.

5. Judiciary Expands Drug Court Grants but Falls Short on the Heroin and Opioid Prevention Effort and Treatment Act Funding

Chapters 571 and 572 of 2017, the Heroin and Opioid Prevention Effort and Treatment Act (HOPE Act), represent a comprehensive and coordinated effort between all three branches of State government to address the ongoing opioid epidemic that has impacted all corners of the State. The HOPE Act, broadly, seeks to expand services for individuals with opioid use disorders and provide emergency medical treatment.

The Judiciary has a significant role to play in this effort as one of the principal actors in the criminal justice system. The court's main contribution to substance abuse response and treatment comes in the form of drug courts, which use the existing justice system and the promise of reduced criminal sanctions to facilitate treatment for individuals with substance abuse disorders. The first such court in the State, in Baltimore City, has been in operation since 1994, and since 2002, OPSC has supported specialty courts across the State.

The HOPE Act directed the Judiciary to take two actions. First, the State Court Administrator was required to assess drug court programs and how they could be expanded to meet the increasing need. The Judiciary submitted this report on December 22, 2017. Second, there was intent language asking that the Judiciary's budget request for fiscal 2019 increase funding for drug court grants by \$2 million. The General Assembly cannot mandate spending in the Judiciary's budget, unlike that of the Executive Branch, but it was the expectation that the Chief Judge would request and the General Assembly would approve funding under this provision.

As detailed in the report submitted by the State Court Administrator, the Judiciary developed a plan that, while otherwise consistent with the intent of the HOPE Act, provides only \$750,000 in additional funding in fiscal 2019. The Judiciary observes that the creation and expansion of drug courts requires buy-in and resource commitments from other stakeholders that cannot be achieved quickly. Successful drug courts require the participation not only of judges but of willing public defenders (and the private bar), State's attorneys, the Division of Parole and Probation, and community treatment providers. The State Court Administrator reports, therefore, that it will take several years to expand drug court offerings enough to justify \$2 million in additional funds from the Judiciary.

The report also outlines the concrete actions that the Judiciary will be taking immediately. The Judiciary's plan will add three new adult drug courts at a cost of \$390,000 in jurisdictions that are ready to proceed: Baltimore County (Towson), Montgomery County (serving court facilities in Rockville and Silver Spring), and Washington County (Hagerstown). The plan also proposes that existing drug courts reevaluate the offender and offense criteria that disqualify certain defendants from drug court participation. This expansion of eligibility would be funded with the disbursement of an additional \$360,000 statewide.

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While the Judiciary is correct to note the logistical challenges posed by largescale, rapid expansion of drug court services, the ongoing opioid crisis is a large and acute problem, and the General Assembly and Governor have agreed that an aggressive response is required, even if it is difficult. **DLS recommends that the Judiciary comment on how OPSC and the State’s drug courts are responding to the opioid epidemic, why the approach to drug court expansion that it has offered is the most appropriate under the circumstances, and how it would utilize the full \$2 million in additional funding in fiscal 2019 if it was provided by the General Assembly.**

Operating Budget Recommended Actions

1. Add the following language:

Provided that \$13,957,338 in general funds for employee merit salary increases, increased compensation for judges, and a new salary plan for regular employees are reduced. The Chief Judge is authorized to allocate this reduction across the Judiciary. These funds are provided for the following purposes:

<u>Employee merit salary increases.....</u>	<u>\$3,918,030</u>
<u>Judicial Compensation Commission recommended salary increases....</u>	<u>\$5,611,750</u>
<u>Salary plan for regular employees.....</u>	<u>\$4,427,558</u>

Explanation: This action eliminates funding for merit salary increases for Judiciary employees but retains funding for a cost-of-living adjustment consistent with the Governor’s budget. The action also eliminates funding for judicial salary increases proposed by the Judicial Compensation Commission. Finally, the action eliminates the portion of the funding for a new salary plan for Judiciary employees that it plans to fund within existing resources in fiscal 2018. This action is not intended to reduce or eliminate salary increases.

2. Add the following language:

Further provided that \$2,710,207 in general funds is reduced. The Chief Judge shall allocate this reduction across the Judiciary.

Explanation: This action reduces the fiscal 2019 general fund appropriation by \$2.7 million with the intent that, in light of the State’s fiscal situation and the Spending Affordability Committee’s recommendation to eliminate the structural deficit, the Judiciary’s general fund appropriation grow no more than the 3.3% estimated growth rate for general fund revenue in fiscal 2019.

	<u>Amount Reduction</u>	<u>Position Reduction</u>
3. Reduce funding for recalled trial court judges. This reduction is intended to eliminate funding for those jurisdictions that were shown in the Judiciary’s fiscal 2019 certification of judgeships to have sufficient judicial resources to manage their current caseloads without additional assistance.	\$ 1,077,690	GF

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4. Eliminate funding for 5.75 circuit court magistrates. 954,399 GF 5.8
 This action is intended to eliminate unneeded positions in four jurisdictions based on the Judiciary’s fiscal 2019 certification of judgeships.

5. Add the following language to the general fund appropriation:

. provided that \$8,500,000 of the general fund appropriation may only be expended for the purpose of providing attorneys for required representation at initial appearances before District Court Commissioners consistent with the holding of the Court of Appeals in DeWolfe v. Richmond. Any funds not expended for this purpose shall revert to the General Fund.

Explanation: This language restricts the use of \$8.5 million of the Judiciary’s general fund appropriation for the implementation of *DeWolfe v. Richmond*.

	<u>Amount Reduction</u>		<u>Position Reduction</u>
6. Eliminate funding for 17.0 positions in the District Court. These positions are being denied due to the fiscal condition of the State.	834,097	GF	17.0
7. Reduce funding for furniture and equipment purchases to fiscal 2017 actual expenditures. This reduction is intended to be spread across the Judiciary.	494,569	GF	
8. Adopt the following narrative:			

Appointed Attorney Program Costs and Utilization: The committees remain interested in the costs and operations of the Appointed Attorney Program. The committees request a report detailing the fiscal 2018 costs and utilization of the Appointed Attorney Program.

Information Request	Author	Due Date
Appointed Attorney Program costs and utilization	Judiciary	October 1, 2018

	<u>Amount Reduction</u>		<u>Position Reduction</u>
9. Eliminate funding for 4.0 new positions in the Administrative Office of the Courts. These positions are being denied due to the fiscal condition of the State.	272,604	GF	4.0

10. Adopt the following narrative:

Maryland Electronic Courts Initiative Upgrades for Baltimore City: The committees are committed to providing sufficient funding for the statewide implementation of the Maryland Electronic Courts Initiative (MDEC) but also expect the project finances to be carefully managed. The committees are concerned that the Judiciary plans to spend at least \$250,000 on information technology upgrades for the Fayette Street District Courthouse in Baltimore City in fiscal 2021 before vacating the facility in fiscal 2022. The committees request a report providing a more detailed explanation of the planned upgrades for the facility and their estimated costs, as well as any less costly alternatives that would achieve the Judiciary’s underlying goal of making the building MDEC capable.

Information Request	Author	Due Date
MDEC upgrades in Baltimore City	Judiciary	December 1, 2018

11. Adopt the following narrative:

New Judgeship Deployment Plan: The committees are interested in the impact of the new judicial workload standards and how they can be best utilized to inform decision-making on new and existing judgeships. The committees request that the Judiciary submit a new, multi-year Judgeship Deployment Plan as part of the Judiciary’s fiscal 2020 certification of judicial need. The committees also request that the certification of judicial need include a plan for utilizing excess judge time in jurisdictions shown to have more judges than are necessary to manage existing caseloads.

Information Request	Author	Due Date
New judgeship deployment plan and strategy for efficient management of judicial resources	Judiciary	January 1, 2019

		<u>Amount Reduction</u>		<u>Position Reduction</u>
12.	Eliminate funding for a 0.25 new position in the Court Related Agencies program. This position is being denied due to the fiscal condition of the State.	22,429	GF	0.3
13.	Eliminate funding for 13.0 new positions in Judicial Information Systems. These positions are being denied due to the fiscal condition of the State.	1,039,768	GF	13.0

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14. Add the following language to the general fund appropriation:

, provided that \$293,611 of the general fund appropriation is contingent upon the enactment of HB 286.

Explanation: This language makes \$293,611 of the general fund appropriation of the Clerks of the Circuit Court contingent upon the enactment of HB 286, which increases the maximum salary for the circuit court clerk of each jurisdiction from \$114,500 to \$124,500. The Judiciary’s budget request includes funding to increase the elected clerk’s salaries by 8.5% when the next term begins for those positions in December 2018. These funds reflect the pro-rated cost of those salary increases in fiscal 2019. If HB 286 is not enacted, the Judiciary will not be authorized to increase salaries as planned.

	<u>Amount</u> <u>Reduction</u>		<u>Position</u> <u>Reduction</u>
15. Eliminate funding for 20.5 new positions in the Clerks of the Circuit Court program. These positions are being denied due to the fiscal condition of the State.	1,024,627	GF	20.5
	32,295	SF	
Total Reductions	\$ 22,420,023		60.5
Total General Fund Reductions	\$ 22,387,728		
Total Special Fund Reductions	\$ 32,295		

Updates

1. Appointed Attorney Program on Track with Lower Expenditure Target

Committee narrative in the 2017 JCR required that the Judiciary submit an accounting of expenditures and utilization statistics for the Appointed Attorney Program for fiscal 2017. The Appointed Attorney Program was created by the General Assembly to bring the State into compliance with the Court of Appeals decision in *DeWolfe v. Richmond*. Under the program, the Judiciary selects private attorneys to represent indigent defendants at initial appearances before District Court commissioners and compensates them at a rate of \$50 per hour. The program began to operate on July 1, 2014.

Exhibit 12 provides a detailed breakdown of program utilization for fiscal 2017. Statewide, a total of 138,458 initial appearances were logged with 51.0% resulting in a release either on personal recognizance or unsecured bond. Appointed attorneys represented defendants in 42,420 of these appearances, but 93,825 defendants (67.8%) waived their right to an attorney. This waiver rate is similar to the 67.0% waiver rate in fiscal 2016. Total expenditures for the program in fiscal 2017 were \$7.9 million, a decrease of \$170,071 from fiscal 2016.

The 2017 budget bill extended program funding through the end of fiscal 2018, but reduced the appropriation for the program from \$10.0 million to \$8.5 million based on actual costs in fiscal 2015 and 2016. It is anticipated that this funding level will be sufficient in both fiscal 2018 and 2019.

Exhibit 12
Appointed Attorney Program
Utilization by Jurisdiction
Fiscal 2017

<u>County</u>	<u>Initial Appearances</u>	<u>Personal Recognizance</u>	<u>Unsecured Personal Bond</u>	<u>Release Rate</u>	<u>Appointed Attorneys</u>	<u>Private Attorneys</u>	<u>Public Defenders</u>	<u>Waivers</u>	<u>Waiver Rate</u>
Baltimore City	26,895	11,237	1,277	46.5%	17,035	98	6	9,748	36.2%
Dorchester	1,100	333	127	41.8%	45	-	1	1,053	95.7%
Somerset	699	131	203	47.8%	17	6	1	673	96.3%
Wicomico	3,852	1,367	424	46.5%	107	9	-	3,670	95.3%
Worcester	3,293	1,778	321	63.7%	113	11	-	2,903	88.2%
Caroline	808	291	194	60.0%	29	8	-	765	94.7%
Cecil	3,621	1,235	592	50.5%	586	38	1	2,967	81.9%
Kent	364	108	54	44.5%	16	12	-	331	90.9%
Queen Anne's	1,300	373	193	43.5%	77	19	-	1,191	91.6%
Talbot	943	409	173	61.7%	38	13	-	890	94.4%
Calvert	2,136	703	834	72.0%	46	9	-	2,036	95.3%
Charles	4,010	2,105	339	60.9%	291	8	1	3,451	86.1%
St. Mary's	2,033	1,070	393	72.0%	87	2	-	1,878	92.4%
Prince George's	24,564	10,787	752	47.0%	8,022	98	-	16,375	66.7%
Montgomery	12,643	3,299	3,464	53.5%	6,872	262	11	5,493	43.4%
Anne Arundel	13,402	7,140	1,169	62.0%	5,447	182	17	7,742	57.8%
Baltimore County	16,769	6,275	1,075	43.8%	2,469	62	7	14,173	84.5%
Harford	3,279	1,673	39	52.2%	251	18	4	2,986	91.1%
Carroll	2,142	893	337	57.4%	40	14	2	2,039	95.2%
Howard	4,252	948	1,335	53.7%	208	47	1	3,967	93.3%

<u>County</u>	<u>Initial Appearances</u>	<u>Personal Recognizance</u>	<u>Unsecured Personal Bond</u>	<u>Release Rate</u>	<u>Appointed Attorneys</u>	<u>Private Attorneys</u>	<u>Public Defenders</u>	<u>Waivers</u>	<u>Waiver Rate</u>
Frederick	3,829	1,863	398	59.0%	279	11	-	3,463	90.4%
Washington	3,737	1,607	231	49.2%	198	7	3	3,496	93.6%
Allegany	2,250	743	39	34.8%	91	25	3	2,123	94.4%
Garrett	537	209	53	48.8%	56	11	4	412	76.7%
Totals	138,458	56,577	14,016	51.0%	42,420	970	62	93,825	67.8%

Source: Maryland Judiciary

2. New Bail Rule Goes into Effect

In February 2017, the Court of Appeals adopted a new rule changing the role of cash bail in the State’s criminal justice system. Under the amended rules, which went into effect July 1, 2017, judicial officers are permitted to impose a cash bail only if they determine that no other condition will ensure the appearance of the defendant. The amended rules also clarify that no defendant is to be held solely because they cannot afford to pay their set bail.

This rule change, which was initiated in fall 2016 at the request of Attorney General Brian E. Frosh, drew considerable attention during the 2017 legislative session, with a variety of bills introduced in both houses to extend the reach of the rule, to provide support for pretrial services as contemplated in the new rule, and to limit its impact. In particular, both houses considered legislation that would have pared back the changes by placing cash bail on equal footing with nonmonetary conditions. While the Senate passed a version of this legislation, the House of Delegates did not act on the issue and the rule was allowed to go into effect.

Early Impact of the New Rule

In anticipation of the new rule, the budget committees requested that the Judiciary provide a report including a variety of data to help evaluate the early impact of changes to bail practice. As shown in **Exhibit 13**, the new rule, as well as changes in practice preceding it, had a significant impact on pretrial dispositions. Comparing the third quarter of 2016 (the last full quarter before the rulemaking process began) to the third quarter of 2017 (the first in which the rule was in effect and covering the same time of year), the share of defendants assigned a bail at initial appearance fell 19.6 percentage points, a 47% decline. There were 2,702 more unsecured releases in the third quarter of 2017, despite a slight decrease in the total number of initial appearances.

Exhibit 13
Pretrial Dispositions
July 2016-December 2017

	<u>Total Initial</u> <u>Appearances</u>	<u>Total</u> <u>Unsecured</u> <u>Releases¹</u>	<u>Percent</u>	<u>Assigned</u> <u>Bail</u>	<u>Percent</u>	<u>Held</u> <u>without</u> <u>Bail²</u>	<u>Percent</u>
Jul. - Sep. 2016	36,235	17,080	47.1%	15,154	41.8%	3,214	8.9%
Oct. - Dec. 2016	32,197	16,552	51.4%	10,705	33.2%	4,209	13.1%
Jan. - Mar. 2017	34,872	18,393	52.7%	10,231	29.3%	5,510	15.8%
Apr. - Jun. 2017	35,154	18,568	52.8%	9,822	27.9%	6,037	17.2%
Jul. - Sep. 2017	35,999	19,782	55.0%	7,995	22.2%	7,555	21.0%
Oct. - Dec. 2017	31,809	18,245	57.4%	6,286	19.8%	6,918	21.7%

¹ Includes arrestees released due to lack of probable cause.

² Includes fugitives held without bail.

Source: Maryland Judiciary

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The share of defendants held without bail increased from 9% to 21%. This change was anticipated prior to the issuance of the new rule, which also clarifies that a cash bail is never appropriate when a judicial officer believes a defendant is a threat to public safety. Therefore, it was expected that individuals charged with more serious crimes would be held rather than assigned extremely high bonds. The Judiciary reports that this is what has occurred. The new rule, then, appears to have had the intended effect; more low-risk individuals are being released without bail and more high-risk individuals are being held without bond.

Another central goal for the new rule is to prevent any individual in the State from being held solely because they cannot afford their assigned bail. Judicial officers are now barred from setting unaffordable bails, based on a concern that doing so probably violates the United States Constitution. It is somewhat difficult to track how many individuals are being held because they cannot afford to post bail because defendants may choose not to post bail for any number of reasons, even if they can afford it.

However, the Judiciary was able to provide strong evidence that fewer defendants are being held due to inability to afford their bail. At the request of the budget committees, the Judiciary compiled data on the number of individuals held in default of bond for more than five days. While this measure cannot tell us the reason individual defendants have not posted bail, it does illustrate the change after the rule went into effect, as shown in **Exhibit 14**. The percentage of defendants who have a bail assigned but do not post that bail declined by approximately two-thirds from the third quarter of 2016 to the third quarter of 2017. This means that 2,363 fewer individuals were in jail six days or more when a judicial officer had authorized their release on bail. Until a more detailed review can be undertaken, it is reasonable to infer from this data that the number of individuals being held solely because they cannot afford bail is significantly smaller; however, it is also likely the case that some arrestees charged with more serious crimes who would have been assigned prohibitively high bails are now being held without bond.

Exhibit 14
Individuals in Custody for Six Days or More without Posting Bail
July 2016-September 2017

	<u>Count</u>	<u>Percent of Total Arrestees</u>
Jul. - Sep. 2016	3,636	17.6%
Oct. - Dec. 2016	2,145	11.8%
Jan. - Mar. 2017	1,784	8.9%
Apr. - Jun. 2017	1,745	8.3%
Jul. - Sep. 2017	1,273	5.7%

Source: Maryland Judiciary

3. Major IT Projects

Each year as part of its budget submission, the Judiciary prepares an ITMP identifying its current and future major IT projects. These projects are funded by the Judiciary from the LRIF.

As shown in **Exhibit 15**, the Judiciary’s current ITMP includes a total of 12 projects, 7 of which are funded in fiscal 2019, with expenditures totaling \$14.6 million. Each of the 7 funded projects (MDEC, Courthouse eReadiness, Enterprise Virtualization, Cybersecurity, IT Service Management, AIS, and Case Search 2.0) is ongoing and were funded in prior budgets. Four of these projects have material changes reflected in the fiscal 2019 ITMP:

- **MDEC:** Total estimated project expenditures for MDEC increase from \$71.1 million to \$74.1 million. The Judiciary reports that this increase is attributable to revised cost estimates for deployment in larger, higher volume jurisdictions;
- **Courthouse eReadiness:** As discussed in the Issues section, the Judiciary reports that IT infrastructure upgrades have been more expensive than estimated due to the age and condition of some courthouses in the State. The total estimated cost of these upgrades has increased from \$12.1 million to \$14.3 million.
- **AIS:** AIS will create a single system within the Judiciary for information on attorneys, replacing a number of systems currently spread across several court-related agencies. Once complete, AIS will streamline online navigation for both Judiciary staff and attorneys in the State. The project schedule has been refined in the current ITMP, and funding is now scheduled to continue into fiscal 2020. However, the total estimated cost of the project has declined from \$1.6 million to \$1.3 million.
- **Case Search 2.0:** The fiscal 2018 ITMP included funding for this project in fiscal 2018 and 2019. The project has been pushed back a year in fiscal 2019, and the total estimated cost has declined from \$1.4 million to \$1.1 million.

Exhibit 15
Fiscal 2019 Information Technology Master Plan
Actual and Projected Expenditures

<u>Project</u>	<u>Pre-2018 Expenditures</u>	<u>2018 Working Appropriation</u>	<u>2019 Request</u>	<u>2020-2022 Planned Expenditures</u>	<u>Total Project Cost</u>
MDEC	\$42,345,462	\$7,787,975	\$7,191,073	\$16,799,644	\$74,124,154
ELROI	26,147	-	-	-	26,147
Courthouse eReadiness	2,348,950	2,730,771	2,811,841	6,361,661	14,253,223
Enterprise Virtualization	1,909,616	1,284,234	1,237,950	-	4,431,800
Cybersecurity	331,639	1,697,341	1,281,000	-	3,309,980
IT Service Management	973,586	2,168,544	817,272	-	3,959,402
Attorney Information System	-	188,313	617,100	534,225	1,339,638
Case Search Version 2.0	-	-	693,600	442,680	1,136,280
Mobile Courthouse*	-	-	-	6,250,000	6,250,000
Digital Evidence*	-	-	-	2,600,000	2,600,000
Data Warehousing*	-	-	-	5,000,000	5,000,000
Electronic Records Management*	-	-	-	5,000,000	5,000,000
Total	\$47,935,400	\$15,857,178	\$14,649,836	\$42,988,210	\$121,430,624

MDEC: Maryland Electronic Courts
ELROI: Electronic Land Records Online Imagery
IT: information technology

* Denotes new projects.

Source: Maryland Judiciary

4. LRIF

The LRIF was established by Chapter 327 of 1991 to provide for the maintenance and modernization of the State’s land records offices. Since 2007, the Judiciary has also funded major IT projects from the LRIF. Until the beginning of fiscal 2016, the LRIF was supported entirely by a surcharge on recordable instruments on real property filed in the State. This surcharge is currently \$40 and will sunset at the end of fiscal 2020 under Chapter 487 of 2015. The Judiciary estimates that the revenue would decline by \$15.3 million beginning in fiscal 2021 if the fee is allowed to sunset. If this occurs, the fund’s balance would be depleted in fiscal 2022 at current spending levels.

Chapter 488 of 2015 created a new surcharge of \$11 on civil cases filed in the circuit courts and all appellate cases filed in the State. These fees are deposited into the LRIF to support development and maintenance costs for MDEC. The surcharge generated \$5.6 million in fiscal 2017, and the Judiciary projects that it will continue to generate approximately this amount going forward. The Judiciary has previously estimated that the actual cost of MDEC maintenance would reach \$6.5 million by fiscal 2021, indicating that there may be an additional \$1.0 million per year in costs beyond the revenue generated by the filing fee.

The current financial status of the fund and projected revenue and expenditures through fiscal 2022 is shown in **Exhibit 16**. The fund ran at a \$2.5 million structural deficit in fiscal 2017, and the Judiciary projects that there will be a structural deficit in each year through fiscal 2022. If this occurs, the fund’s cash balance will fall from \$36.2 million to \$17.8 million over that period. This estimate also assumes that the \$40 surcharge on recorded instruments does not sunset at the end of fiscal 2020 and that MDEC maintenance costs will not exceed the filing fee revenue. If either of those assumptions is incorrect, the structural deficit for the fund will increase substantially. Overall, while major IT development continues to put pressure on the LRIF’s fund balance, careful planning and realistic expectations should ensure the health of the fund going forward.

Exhibit 16
Land Records Improvement Fund
Fiscal 2017-2022
(\$ in Thousands)

	<u>2017</u>	<u>Working Approp. 2018</u>	<u>Requested 2019</u>	<u>Projected 2020</u>	<u>Projected 2021</u>	<u>Projected 2022</u>
Starting Balance	\$38,638	\$36,162	\$32,047	\$28,348	\$25,141	\$20,473
Revenues						
Land Records						
Surcharges/Fees	\$32,259	\$30,501	\$30,501	\$30,501	\$30,501	\$30,501
e-Filing Service						
Surcharge	5,622	5,622	5,622	5,622	5,622	5,622
Total Revenue	\$37,881	\$36,123	\$36,123	\$36,123	\$36,123	\$36,123
Expenses						
Land Records						
Offices	\$16,260	\$16,672	\$16,672	\$16,672	\$16,672	\$16,672
Archives						
(mdlandrec.net)	5,000	2,000	1,000	500	500	500
ELROI						
Maintenance	2,458	3,401	3,073	2,948	2,448	2,198
e-Filing						
Operations and						
Maintenance	615	2,307	4,427	5,622	5,622	5,622
Major IT Projects	10,711	15,857	14,650	13,589	15,550	13,850
Encumbrance						
Reconciliation	5,313					
Total Expenses	\$40,356	\$40,238	\$39,822	\$39,330	\$40,791	\$38,842
Ending Actuarial Balance	\$36,162	\$32,047	\$28,348	\$25,141	\$20,473	\$17,754
Structural						
Imbalance	-\$2,475,735	-\$4,114,797	-\$3,698,919	-\$3,207,324	-\$4,668,412	-\$2,718,763

ELROI: Electronic Land Records Online Imagery
IT: information technology

Source: Maryland Judiciary; Department of Legislative Services

5. Push from Budget Committees Spurs New Budget Practices for Clerks of the Circuit Court Program

During the 2017 session, the budget committees took two actions designed to increase oversight of the budgets of the Clerks of the Circuit Court program across the State. First, based on evidence showing that the budget requests for the clerks significantly exceeded actual operating costs, the committees agreed to a reduction of \$3.1 million from the budget request for the Clerks of the Circuit Court program and expressed the intent that an additional \$2.0 million should be used for other purposes within the branch at the request of the Chief Judge. In addition, the budget committees requested a report from AOC explaining the budget development process for the courts and recommendations to improve that process.

The Judiciary submitted this report in November 2017. It provides a general overview of the existing process, including the budget guidance given to the clerks of the circuit courts and how the Judiciary’s Department of Budget and Finance reviews budget submissions. In addition, the report outlined several significant process changes including:

- increased utilization of actual past expenditures for analysis;
- use of actual expenditures to determine requests for more expenditure categories;
- use of actual inflation data; and
- more detailed directions and guidance from the Department of Budget and Finance, especially with regard to expenses shared across the Judiciary (such as information technology costs).

The Judiciary’s fiscal 2019 request reflects the implementation of these new processes. **Exhibit 17** includes a breakdown of the total general fund budget request for the clerks’ offices by object of expenditure. While the request increases by \$8.0 million, or 8.8%, over fiscal 2018, it is important to note that this increase is entirely in salary and wages and is tied to three specific items: (1) funding for salary increments; (2) a multi-year, Judiciary-wide salary plan that proposes to increase the salary base for many circuit court employees; and (3) requests for 22.5 new positions. Aside from these specific requests, the total request for the clerks is actually less than the fiscal 2018 working appropriation.

Exhibit 17
Clerks of the Circuit Court
General Fund Appropriation by Object of Expenditure
Fiscal 2017-2019
(\$ in Thousands)

	<u>2017</u> <u>Actual</u>	<u>2018</u> <u>Working</u>	<u>2019</u> <u>Request</u>	<u>2018-2019</u> <u>Change</u>	<u>%</u> <u>Change</u>
Salaries and Wages	\$84,456	\$82,360	\$92,117	\$9,758	11.8%
Technical and Special Fees	94	87	-	-87	-100.0%
Communications	1,284	1,608	1,473	-135	-8.4%
Travel	180	273	294	21	7.8%
Fuel and Utilities	9	5	20	14	259.2%
Contractual Services	1,146	2,670	2,270	-400	-15.0%
Supplies and Materials	1,550	1,581	1,298	-283	-17.9%
Equipment Replacement	685	1,140	559	-581	-50.9%
Equipment Additional	322	481	185	-297	-61.6%
Grants, Subsidies, and Contributions	272	267	333	66	24.7%
Fixed Charges	822	1,155	1,105	-50	-4.3%
Total	\$90,820	\$91,627	\$99,654	\$8,027	8.8%

Source: Department of Legislative Services

6. Path Forward for Electronic Court Reminder Messages

In the 2017 JCR, the budget committees asked the Judiciary to submit a report on the contact information that courts currently collect from criminal defendants and the feasibility of collecting telephone numbers and email addresses. The budget committees requested this information in anticipation of potential legislation or other action creating a reminder program to reduce failure to appear rates in the State.

The Judiciary submitted this report on August 1, 2017. In the report, the Judiciary confirmed that, while court intake forms and civil citations have fields for some contact information, collection of this information is not mandatory, and even when it is available, there is no system in place to use it. The report also addresses, in detail, prospective questions posed by the committees on necessary steps to collect additional contact information and the feasibility of implementing a reminder program.

Types of Notification Systems

In addition to the way in which reminders are delivered (in this case by telephone and/or email), the other principal characteristic of court reminder systems is how individuals are brought into the reminder pool.

According to the Judiciary’s report, opt-in systems (in which an individual proactively signs up for alerts) are simpler to administer and less likely to violate other statutes limiting data collection and barring “autodialing.” However, they also reach a much smaller percentage of defendants and are likely to have a smaller effect on the failure to appear rate.

Some jurisdictions instead use an opt-out system in which the courts collect telephone contact information from as many defendants as possible while also providing a mechanism for defendants to later remove themselves from the notification list. This system would almost certainly reach a larger share of the target population, but opt-out mechanisms would need to be carefully designed to avoid legal issues.

The state of New Jersey currently operates a hybrid system in which defendants are asked if they wish to opt-in to alerts at the time of arrest. This system allows defendants a clear opportunity not to participate up-front, but also ensures that all defendants are aware and can opt-in with minimal additional effort.

Feasibility

As noted in the Judiciary’s report, text message reminders for court appearances are a recent development and still uncommon. Four states currently have such systems and all are less than 18 months old and, therefore, have not been evaluated for efficacy, to date.

With those caveats in mind, setting up a text message alert system would be relatively straightforward. The collection of the necessary data should be simple, regardless of whether there is an opt-in or opt-out system. Intake forms may have to be redesigned to include the extra information, but the officials filling out the forms would simply need to ask for the information.

On the technical side, the Judiciary would need to contract with a vendor to send text alerts via special “short-code” messaging, a form of text messaging that allows for large batches of messages to be sent rapidly. This is a well-established technology that is already used for a number of purposes.

The Judiciary also identifies two main technological challenges: integrating text message alerts into its systems and the need for increased data security. The Judiciary is in the process of moving to a unified case managed system across the State (MDEC), but the State’s largest jurisdictions still operate on legacy systems, and some will continue to do so into fiscal 2021. While the Judiciary was not able to provide an estimate of the cost to bring this functionality to MDEC or any of the other systems, it is important to note that adding this functionality to legacy systems may have a substantial cost but would be used for an extremely short period of time (a few years at most).

Further, adding another avenue of communication between the MDEC system and the third-party system that will transmit the reminder messages introduces a new security risk for JIS that will need to be managed. Cybersecurity is already a significant part of JIS’s duties; but if additional monitoring or security measures are necessary, costs will be higher. While these are both important considerations, neither poses a major obstacle to the creation of a reminder system.

The costs of generating and sending the actual alerts are relatively low. The Judiciary estimates that even if 100% of defendants participate and each defendant receives 10 messages (both of which are high-end estimates), the annual cost to send those messages would be about \$33,000. There may be other administrative costs related to data collection and project oversight, but it is not possible to estimate those costs before a plan is developed.

7. JIS and the Department of Information Technology Compare Notes on Cybersecurity

In response to a 2016 Office of Legislative Audits (OLA) audit of JIS that raised several concerns about the Judiciary’s cybersecurity, the budget committees requested a joint report from JIS and the Department of Information Technology (DoIT) on each office’s cybersecurity policy and the possibility for the development of a unified cybersecurity policy for the State, which was submitted November 1, 2017.

JIS and DoIT jointly reviewed their cybersecurity policies and protocols and determined that each has implemented functionally identical rules and procedures based on best practices promulgated by the National Institute of Standards and Technology. While JIS and DoIT did examine the issue of joining together to set cybersecurity policy, it was determined that such a partnership was unnecessary because both organizations already have adequate programs in place that address their unique needs and systems and, further, it would likely prove less efficient than the current system because of the assumed need for an oversight mechanism to adequately shield the interests of the two branches.

Despite determining that combining security was not a good option, the organizations have increased their collaboration and regularly communicate on emerging issues and share technical expertise. In addition to the analysis undertaken to prepare this report, JIS has taken additional actions to improve the security of its system over the last year, including the addition of 2.5 new positions focused on cybersecurity for fiscal 2018.

8. Commissioners Assume Responsibility for Indigency Determinations

Under Chapter 606 of 2017, the Judiciary assumed responsibility for determining whether individuals qualify financially for representation by the Office of the Public Defender (OPD). Previously, applicants’ finances were screened by clerks employed by OPD. This change was prompted by longstanding concerns from the General Assembly and OLA regarding the sufficiency of OPD’s screening procedures and whether the agency had sufficient resources to properly vet applicants.

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The Judiciary and OPD met several times in spring 2017 and collaborated on technical issues as the District Court commissioners developed the tools and work processes necessary to perform their new function.

Immediately after the new screening procedures went into effect on July 1, 2017, there were reports of substantially increased wait times from booking to initial appearance in some jurisdictions. Within the first month, these initial difficulties had been resolved and wait times moved toward their prior averages. It was anticipated that it would take commissioners longer to conduct initial appearances because they must now collect more information from defendants. The Judiciary reports that it takes approximately 10 minutes to complete the new process, the same amount of time it took OPD to make determinations. This does create a noticeable impact on the time to complete initial appearances. In Prince George’s County, for instance, the average time from booking to the completion of an initial appearance has increased from 12 to 15 hours.

To support this new responsibility, the fiscal 2018 budget bill restricted \$1.5 million and added 19 new full-time positions for the Judiciary. The Judiciary has reported that, consistent with the funding provided in fiscal 2018, personnel costs associated with these new positions will be \$1.5 million in fiscal 2019. The Judiciary has also reported that 15 of the positions have already been placed around the State and that the other 4 will be placed in the near future based on an analysis of workloads across the State.

While the system is largely functioning as expected, the Judiciary has identified several issues, including:

- some commissioner locations offer 24-hour service, and the Judiciary had expected that some applicants would apply at those offices during nondaytime hours. Less individuals have taken advantage of this opportunity than anticipated, with most individuals applying at the courthouse during regular business hours;
- not all jurisdictions have commissioners at both the central booking facility and the courthouse, the two main places where people apply for representation;
- defendants who do not apply for a public defender at their initial appearance and then wish to apply before their bail hearing have limited access to commissioners; and
- the Judiciary collects data from the Comptroller’s Office to verify application information and cannot finalize applications until this information is received. Currently, the Judiciary can only receive data packets from the Comptroller once every three hours, which creates additional delays in the process.

9. Preliminary Sunset Evaluation Suggests Need for Increased Fees for the State Board of Law Examiners

During the 2017 interim, DLS conducted a preliminary sunset evaluation for the State Board of Law Examiners. The board is the agency within the Judiciary charged with evaluating candidates for the Maryland Bar and conducting the Maryland General Bar Examination. DLS's primary recommendation was that the Legislative Policy Committee waive the board's pending sunset evaluation and extend the board's termination by 10 years to July 1, 2030. It was also noted, however, that for fiscal 2017, the various applicant and examination fees charged by the board were not sufficient to cover its expenses due to a decline in the number of exam takers. This gap is likely to persist, even if the number of exam takers increases, due to increased costs when the State begins using the national Uniform Bar Examination. Since January 2009, the bar examination fee has been \$250 while the statutory cap on this fee is \$400.

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**Appendix 1
Current and Prior Year Budgets
Judiciary
(\$ in Thousands)**

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2017					
Legislative Appropriation	\$481,702	\$59,251	\$161	\$4,506	\$545,621
Deficiency Appropriation	0	0	0	0	0
Cost Containment	0	0	0	0	0
Budget Amendments	0	0	\$1,054	\$635	1,689
Reversions and Cancellations	-\$2,059	-\$7,591	-\$513	-\$265	-10,429
Actual Expenditures	\$479,643	\$51,660	\$702	\$4,876	\$536,881
Fiscal 2018					
Legislative Appropriation	\$490,373	\$66,279	\$57	\$4,769	\$561,479
Cost Containment	0	0	0	0	0
Budget Amendments	0	0	995	421	1,417
Working Appropriation	\$490,373	\$66,279	\$1,053	\$5,191	\$562,895

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. Numbers may not sum to total due to rounding.

Fiscal 2017

Actual expenditures for the Judiciary were \$8.7 million below the legislative appropriation. This decrease is attributable to the reversion of \$2.1 million in unspent general funds for the Appointed Attorney Program and the cancellation of \$8.4 million in other unspent funds. These decreases were offset by budget amendments totaling \$1.7 million.

General Fund

General Fund expenditures were \$2.1 million below the legislative appropriation. This decrease is entirely attributable to the reversion of unspent funds restricted for the Appointed Attorney Program.

Special Fund

Special fund expenditures were \$7.6 million below the legislative appropriation due to the cancellation of unspent funds from the Land Records Improvement Fund. Of the canceled funds, \$4.1 million was for major information technology projects due to a delay in the Maryland Electronic Courts Initiative and \$3.5 million for land records office operating costs.

Federal Fund

Federal fund expenditures were \$540,563 above the legislative appropriation. This increase is attributable to budget amendments that added \$1.1 million and partially offset by the cancellation of \$513,272 that will be available for expenditure in future fiscal years. Budget amendments added the following funds:

- \$929,174 for the Foster Care Improvement Program, judicial education, and protective order advocacy;
- \$107,795 for foster care projects; and
- \$16,866 for training with the State Justice Institute.

Reimbursable Fund

Reimbursable fund expenditures were \$370,145 above the legislative appropriation. This increase is attributable to budget amendments that added a total of \$635,238 and partially offset by the cancellation of \$265,093 in unspent funds. Five budget amendments added funds for the following purposes:

- \$250,000 from the Department of Human Services for child support enforcement;

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- \$247,790 for the Baltimore City Teen Court and Violence Against Women Act (VAWA) programming;
- \$83,410 for child support enforcement;
- \$29,138 for the Adult Guardianship Special Assistant Project; and
- \$24,900 also for the Baltimore City Teen Court.

Fiscal 2018

To date, a total of \$1.4 million has been added by budget amendments to the legislative appropriation for fiscal 2018. This increase includes \$995,476 in federal funds for foster care programs, an adult drug court performance review, and the Adult Guardianship Special Assistant Project as well as \$421,411 in reimbursable funds for the Baltimore City Teen Court, VAWA programs, human trafficking prevention, and the Pretrial Justice and State Courts Initiative.

**Appendix 2
Audit Findings**

Audit Period for Last Audit:	July 1, 2012 – December 20, 2015
Issue Date:	May 2017
Number of Findings:	5
Number of Repeat Findings:	1
% of Repeat Findings:	20%
Rating: (if applicable)	n/a

Finding 1: The Judiciary lacked adequate documentation to support that certain bid evaluations and contract award decisions were appropriate and certain vendor invoices were verified.

Finding 2: Numerous individuals were granted system capabilities allowing them to unilaterally perform certain purchasing or disbursement functions; supervisory approval for the access granted was not always on file.

Finding 3: Controls over the processing of traffic citations and the related collections were not sufficient to ensure all citations were recorded and all collections were deposited.

Finding 4: Monitoring of the security of the financial management system’s application and database was not sufficient.

Finding 5: **The Judiciary lacked adequate controls over equipment.**

*Bold denotes item repeated in full or part from preceding audit report.

**Appendix 3
Object/Fund Difference Report
Judiciary**

<u>Object/Fund</u>	<u>FY 17 Actual</u>	<u>FY 18 Working Appropriation</u>	<u>FY 19 Allowance</u>	<u>FY 18 - FY 19 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	3,950.50	3,989.00	4,051.75	62.75	1.6%
Total Positions	3,950.50	3,989.00	4,051.75	62.75	1.6%
Objects					
01 Salaries and Wages	\$ 357,882,474	\$ 358,172,621	\$ 383,641,837	\$ 25,469,216	7.1%
02 Technical and Spec. Fees	20,378,906	20,392,106	22,641,365	2,249,259	11.0%
03 Communication	11,426,619	13,211,320	12,551,393	-659,927	-5.0%
04 Travel	2,037,993	2,239,251	2,643,796	404,545	18.1%
06 Fuel and Utilities	767,776	969,090	849,174	-119,916	-12.4%
07 Motor Vehicles	380,646	327,277	190,186	-137,091	-41.9%
08 Contractual Services	64,805,329	81,558,746	77,943,350	-3,615,396	-4.4%
09 Supplies and Materials	5,655,817	6,382,452	5,963,227	-419,225	-6.6%
10 Equipment – Replacement	5,681,152	7,169,215	6,955,182	-214,033	-3.0%
11 Equipment – Additional	5,471,147	4,379,641	4,966,784	587,143	13.4%
12 Grants, Subsidies, and Contributions	46,961,259	50,753,594	54,713,871	3,960,277	7.8%
13 Fixed Charges	14,996,398	16,392,130	16,782,481	390,351	2.4%
14 Land and Structures	435,339	948,000	1,565,000	617,000	65.1%
Total Objects	\$ 536,880,855	\$ 562,895,443	\$ 591,407,646	\$ 28,512,203	5.1%
Funds					
01 General Fund	\$ 479,643,047	\$ 490,373,193	\$ 524,243,868	\$ 33,870,675	6.9%
03 Special Fund	51,659,656	66,278,622	62,199,930	-4,078,692	-6.2%
05 Federal Fund	701,678	1,052,961	168,770	-884,191	-84.0%
09 Reimbursable Fund	4,876,474	5,190,667	4,795,078	-395,589	-7.6%
Total Funds	\$ 536,880,855	\$ 562,895,443	\$ 591,407,646	\$ 28,512,203	5.1%

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. The fiscal 2019 allowance does not include contingent reductions or cost-of-living adjustments.

**Appendix 4
Fiscal Summary
Judiciary**

<u>Program/Unit</u>	<u>FY 17 Actual</u>	<u>FY 18 Wrk Approp</u>	<u>FY 19 Allowance</u>	<u>Change</u>	<u>FY 18 - FY 19 % Change</u>
01 Court of Appeals	\$ 12,107,068	\$ 11,703,211	\$ 13,303,584	\$ 1,600,373	13.7%
02 Court of Special Appeals	12,406,821	12,471,444	12,784,952	313,508	2.5%
03 Circuit Court Judges	69,630,240	70,776,012	74,504,576	3,728,564	5.3%
04 District Court	183,807,441	187,731,268	198,629,052	10,897,784	5.8%
06 Administrative Office of the Courts	79,315,012	86,249,987	90,706,580	4,456,593	5.2%
07 Court Related Agencies	2,750,986	3,301,279	3,152,745	-148,534	-4.5%
08 State Law Library	3,214,757	3,453,594	3,675,733	222,139	6.4%
09 Judicial Information Systems	52,442,209	51,524,142	57,075,373	5,551,231	10.8%
10 Clerks of the Circuit Court	110,483,945	116,211,055	122,925,215	6,714,160	5.8%
11 Family Law Division	11,519	40,398	0	-40,398	-100.0%
12 Major IT Development Projects	10,710,857	19,433,053	14,649,836	-4,783,217	-24.6%
Total Expenditures	\$ 536,880,855	\$ 562,895,443	\$ 591,407,646	\$ 28,512,203	5.1%
General Fund	\$ 479,643,047	\$ 490,373,193	\$ 524,243,868	\$ 33,870,675	6.9%
Special Fund	51,659,656	66,278,622	62,199,930	-4,078,692	-6.2%
Federal Fund	701,678	1,052,961	168,770	-884,191	-84.0%
Total Appropriations	\$ 532,004,381	\$ 557,704,776	\$ 586,612,568	\$ 28,907,792	5.2%
Reimbursable Fund	\$ 4,876,474	\$ 5,190,667	\$ 4,795,078	-\$ 395,589	-7.6%
Total Funds	\$ 536,880,855	\$ 562,895,443	\$ 591,407,646	\$ 28,512,203	5.1%

IT: information technology

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. The fiscal 2019 allowance does not include contingent reductions or cost-of-living adjustments