

**C00A00
Judiciary**

Operating Budget Data

(\$ in Thousands)

	<u>FY 11 Actual</u>	<u>FY 12 Working</u>	<u>FY 13 Allowance</u>	<u>FY 12-13 Change</u>	<u>% Change Prior Year</u>
General Fund	\$370,036	\$374,650	\$392,400	\$17,750	4.7%
Adjusted General Fund	\$370,036	\$374,650	\$392,400	\$17,750	4.7%
Special Fund	37,260	52,715	56,388	3,673	7.0%
Adjusted Special Fund	\$37,260	\$52,715	\$56,388	\$3,673	7.0%
Federal Fund	4,449	3,634	3,460	-174	-4.8%
Adjusted Federal Fund	\$4,449	\$3,634	\$3,460	-\$174	-4.8%
Reimbursable Fund	110	141	141	0	0.0%
Adjusted Reimbursable Fund	\$110	\$141	\$141	\$0	0.0%
Adjusted Grand Total	\$411,854	\$431,139	\$452,389	\$21,250	4.9%

- The Judiciary’s fiscal 2013 budget increases by \$21.3 million, or 4.9%, over the fiscal 2012 working appropriation.
- Personnel expenses increase by \$6.7 million largely for health insurance and retirement cost increases, 7.25 new regular positions, and 41.0 new contractual full-time equivalents.
- Restoration of one-time cost containment cuts in fiscal 2012 adds \$6.4 million to fiscal 2013.
- Information technology (IT) spending adds \$5.4 million, including \$4.9 million for development and implementation of a major IT replacement of back office systems.

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

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Personnel Data

	<u>FY 11 Actual</u>	<u>FY 12 Working</u>	<u>FY 13 Allowance</u>	<u>FY 12-13 Change</u>
Regular Positions	3,581.25	3,581.25	3,588.50	7.25
Contractual FTEs	<u>390.00</u>	<u>405.00</u>	<u>446.00</u>	<u>41.00</u>
Total Personnel	3,971.25	3,986.25	4,034.50	48.25

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	144.62	4.03%
Positions and Percentage Vacant as of 12/31/11	153.20	4.28%

- The budget provides 7.25 new regular positions. Six positions are provided within Judicial Information Systems to assist with major information technology development and applications, 1 Child Support position would be provided for the Charles County Circuit Court, and a 0.75 Administrative Assistant position in the Administrative Office of the Courts would be increased by 25% to a full-time regular position.
- The budget includes 41.0 new contractual full-time equivalents. This includes 31.0 District Court bailiffs and 10.0 interpreters (6.0 for the District Court and 4.0 for the circuit courts.)
- Turnover expectancy is set at 4.03% for fiscal 2013, which will require 145.0 vacancies. By contrast, the Judiciary had 153.2 vacant positions as of January 1, 2012, for a rate of 4.3%.

Analysis in Brief

Major Trends

Average Case Processing Time: In both the District and circuit courts, the statewide case flow assessments highlighted disparities between the timeliness of those cases that are terminated within the time standard compared to those cases that are terminated beyond the time standard.

Issues

Certification Indicates Need for 40 New Judgeships: In fall 2011, the Chief Judge certified the need for 40 new judges, including 21 at the circuit court level and 19 for District Court. No funding for new judges was requested due to the fiscal condition of the State. **The adoption of committee narrative is recommended to request the Judiciary to develop a multi-year plan for creating new circuit court and District Court judgeships to address certified workload needs.**

Might the Judiciary's Major IT Development Program Benefit from Oversight by the Department of Information Technology? The Judiciary's major IT development program includes five projects totaling \$82 million. Currently, the Department of Information Technology (DoIT) oversees all major IT development in the Executive Branch but has no role in the Judiciary's program. There are benefits to be realized from DoIT, which has a wealth of experience in reviewing the development of major IT systems. **Adoption of committee narrative is recommended to direct DoIT and the Judiciary to jointly study the role that DoIT could assume and the benefits to the Judiciary's major IT development program.**

Judicial Compensation Commission Recommendations: In October 2011, the Judicial Compensation Commission recommended a 6% annual salary increase for judges for each of fiscal 2014 through 2016, adding \$29,006 per judge upon full implementation. The total cost would approximate \$14.0 million. The commission also recommended that retirement contribution rates be increased from 6% of salary to 8% only for new judges. **Given the State's fiscal condition, it is recommended that the General Assembly deny the salary increase as incompatible with the State's present financial position. The General Assembly should also amend Senate Bill 335/ House Bill 249 to require an 8% retirement contribution rate for all new and active judges.**

Attorney Assessments and Related Special Funds Lack Oversight: All lawyers practicing in the State are required to pay a \$145 assessment toward the cost of regulatory oversight of the profession and to reimburse clients who have been defrauded. Most of the assessment is not codified, thus there are no limits on how much or how often assessments may be increased. Assessments are not sized to expenditure needs, lack transparency and oversight of funds transfers and expenditures, and lack the standard provisions applied to special funds. **It is recommended that the assessments be codified and set at limits which cover their expenses. Moreover, the Disciplinary Fund should be codified in statute, and both it and the Client Protection Fund should include standard provisions applied to all special funds. Expenditures from the Disciplinary Fund should be**

appropriated in the State budget, and transfers from either fund’s balance should require a statutory change.

The Judiciary Retains High Levels of Encumbered General Funds: The Judiciary has encumbered over \$18 million in general funds at the fiscal 2011 closeout, although legislative action reduces this amount by \$5 million in fiscal 2012. **Inasmuch as the Judiciary continues to retain significant levels of encumbered funds, it is recommended that another \$5 million in general funds be reduced from the fiscal 2013 budget and replaced by prior year encumbrances.**

DeWolfe v. Richmond Ruling Could Affect District Court Commissioner Spending: A recent ruling by the Court of Appeals will require Office of Public Defender representation at all initial appearances before District Court commissioners. Emergency legislation has been introduced to repeal this mandate. **It is recommended that the Judiciary comment on the potential fiscal impacts of the *DeWolfe v. Richmond* case on operating and capital funding for District Court commissioners.**

Recommended Actions

	<u>Funds</u>	<u>Positions</u>
1. Reduce supplies to the fiscal 2012 level.		
2. Add language to reduce operating expenditures by \$5 million to be replaced by general fund encumbrances.		
3. Delete 6 new positions.	\$ 341,765	6.0
4. Delete 1 new position.	26,177	1.0
5. Reduce postage in line with postal rate increases.	530,102	
6. Adopt committee narrative requesting a multi-year plan for creating new judgeships.		
7. Adopt committee narrative to require a study of Department of Information Technology oversight of major information technology development in the Judiciary.		
Total Reductions	\$ 898,044	7.0

Updates

Auditing Procedures of the Maryland Legal Services Corporation: Fiscal 2012 budget bill language requested a report on the audit procedures used by the Maryland Legal Services Corporation. A report was submitted which outlined policies and practices for tracking grant spending, to ensure that grants fund reach indigent residents, and to maintain accounting controls.

Land Records Fee Increase Approved through Fiscal 2015: Chapter 397 of 2011 increased the land record surcharge from \$20 to \$40 with a sunset at the end of fiscal 2015. The fund is projected to be viable at least through fiscal 2014, and likely longer as constrained real estate activity has resulted in lower than budgeted spending in land records offices.

Maryland Legal Services Corporation Revenues: A filing fee surcharge passed at the 2010 session was to help make up for lost revenue from Interest on Lawyers Trust Accounts. Although the Legislature provided the Maryland Legal Services Corporation an appropriation of about \$16 million per year, the actual amount available to spend depends upon the amount of revenue collected during the fiscal year. The surcharge is currently slated to expire at the end of fiscal 2013.

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C00A00
Judiciary

Operating Budget Analysis

Program Description

The Judiciary is composed of four courts and seven programs which support the administrative, personnel, and regulatory functions of the Judicial Branch of government. Courts consist of the Court of Appeals, Court of Special Appeals, circuit courts, and 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 the administrative duties which include data analysis, personnel policies, education, and training for judicial personnel.

Other agencies are included in the administrative and budgetary purview of the Judiciary. The Maryland Judicial Conference, consisting of judges of all levels, meets annually to discuss continuing education programs. Court-related agencies also include the Commission on Judicial Disabilities, Maryland Conflict Resolution Office, and the Maryland State Board of Law Examiners (Board of Law Examiners). The State Law Library serves the legal information needs of the State. The Family Law Division manages and administers programs in the Maryland Family Law Courts, including policy and program development. Judicial Information Systems 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 Judicial Information Systems Program.

Performance Analysis: Managing for Results

Fiscal 2009 budget bill language directed the Judiciary to incorporate 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; equality, 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 as compared with other states. The statewide case flow assessment submitted by the Judiciary analyzes in depth cases that come through the District and circuit courts and, in particular, the timeliness with which those cases are terminated or otherwise disposed. The time standards for District Court cases are set according to the following case types:

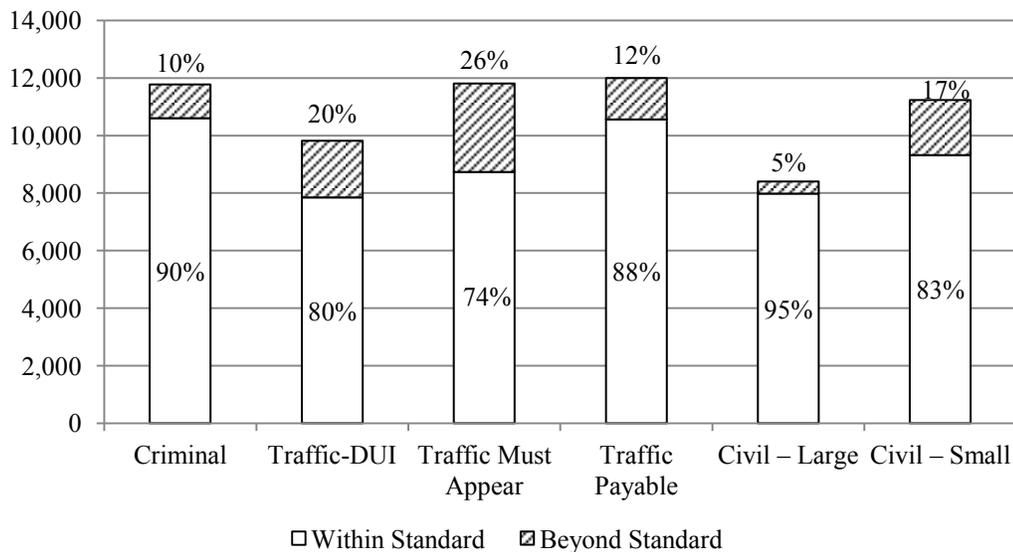
- **Criminal:** 180 days;
- **Traffic Driving Under the Influence (DUI):** 180 days;

- **Traffic Must Appear:** 180 days;
- **Traffic Payable:** 120 days;
- **Civil – Large:** 250 days; and
- **Civil – Small:** 90 days.

For each case type, the goal is to terminate 98% of cases within the time standard.

Exhibit 1 illustrates the number of District Court cases terminated within the time standard. The majority of cases for each case type are disposed of within the established timeframe. However, in all categories, the District Court failed to meet the performance standard of 98%. For example, the Judiciary was able to terminate only 74% of Traffic Must Appear cases within the time standard of 180 days and only 95% of Civil Large cases within the time standard of 250 days. The timely termination of Traffic-DUI cases improved to 80% in fiscal 2010, from 74% in 2009. Similarly, the timely termination of Traffic Payable and Civil – Small cases improved as well. Still, there is a dramatic difference in the timeliness of those cases that are terminated within the time standard when compared to those cases that are terminated beyond the time standard.

Exhibit 1
Maryland District Court
Cases Terminated Within and Beyond Time Standard
Fiscal 2010

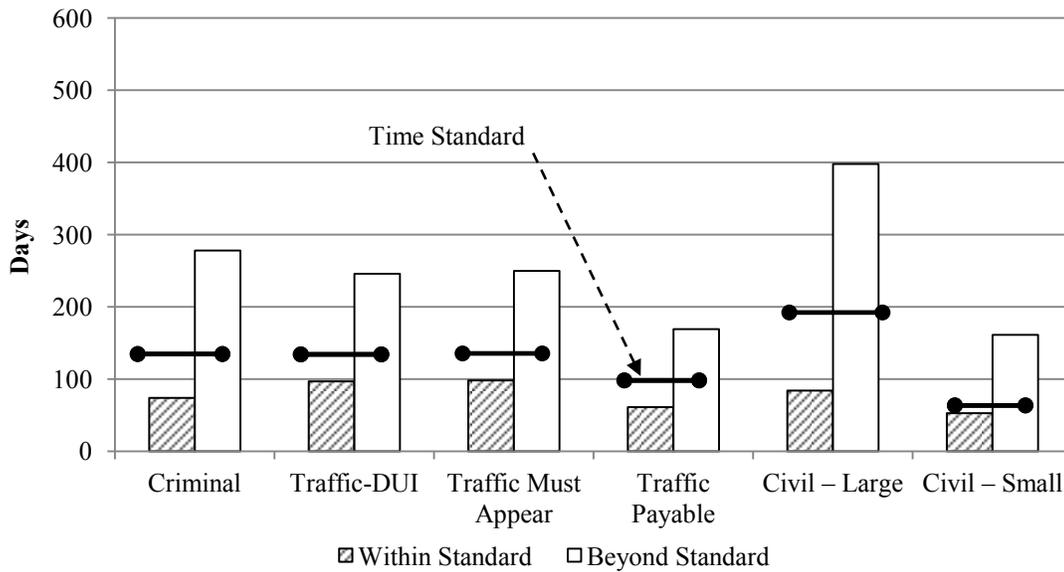


DUI: driving under the influence

Source: Maryland Judiciary

Exhibit 2 analyzes the average case processing time for District Court cases. In each case type, there are large differences between cases terminated within the time standard compared to those cases that are terminated beyond the time standard. For example, Civil – Large cases fell short of its performance goal of terminating 98% of cases within the standard of 250 days by just 3 percentage points. However, cases terminated beyond the standard took 398 days to process. Cases that were processed beyond the timeframe took between 37 and 79% longer than the time standard.

Exhibit 2
District Court Average Case Processing Time Within and Beyond Time Standard
Fiscal 2010



DUI: driving under the influence

Source: Maryland Judiciary

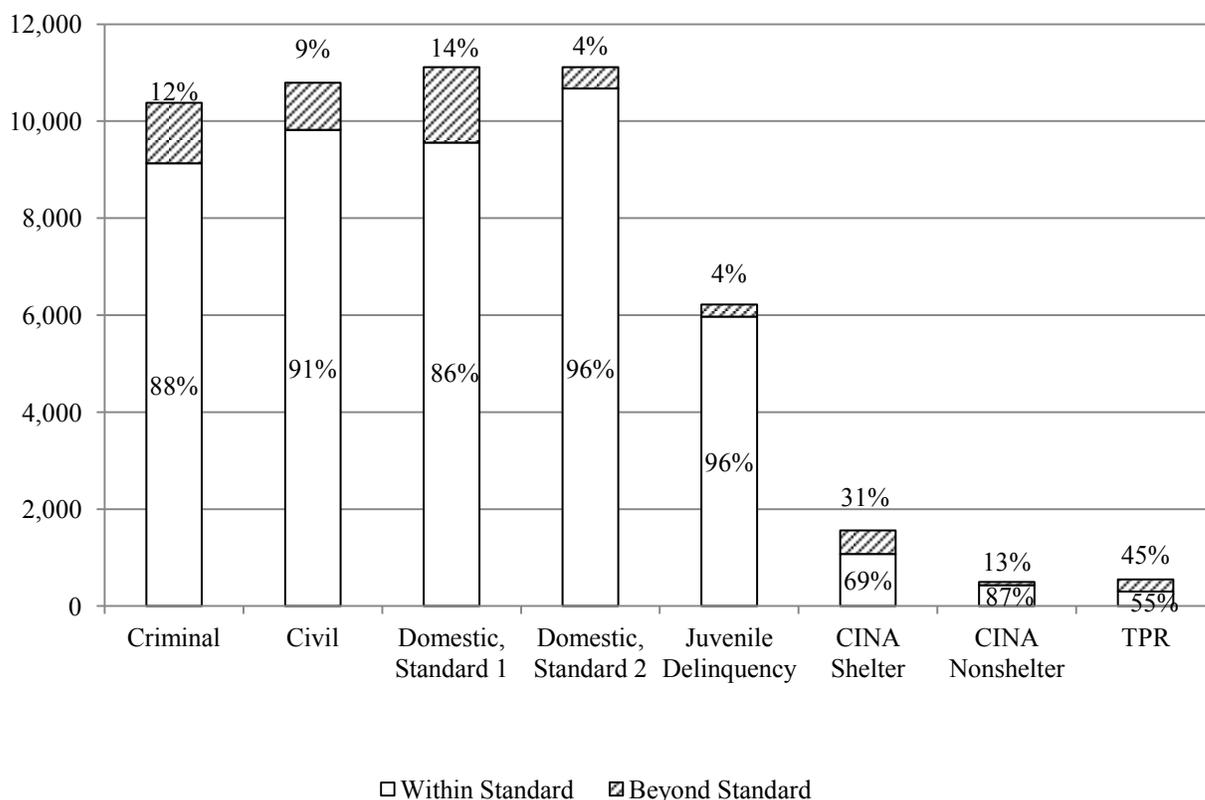
The time and performance standards for circuit court cases are set according to the following case types:

- **Criminal:** 180 days, 98%;
- **Civil:** 548 days, 98%;
- **Domestic Relations, Standard 1:** 365 days, 90%;
- **Domestic Relations, Standard 2:** 730 days, 98%;
- **Juvenile Delinquency:** 90 days, 98%;

- **Children In Need of Assistance (CINA) Shelter:** 30 days, 100%;
- **CINA Nonshelter:** 60 days, 100%; and
- **Termination of Parental Rights (TPR):** 180 days, 100%.

Exhibit 3 illustrates the number of circuit court cases terminated within the time standard. The majority of cases for each case type are disposed of within the timeframe. However, in all categories, the circuit court failed to meet the established performance standard. In particular, TPR cases were promptly terminated in just over one-half of all instances, far short of the goal of 100%. CINA Shelter cases were promptly terminated just 69% of the time, although the goal is also 100%.

Exhibit 3
Maryland Circuit Courts
Cases Terminated Within and Beyond Time Standard
Fiscal 2010

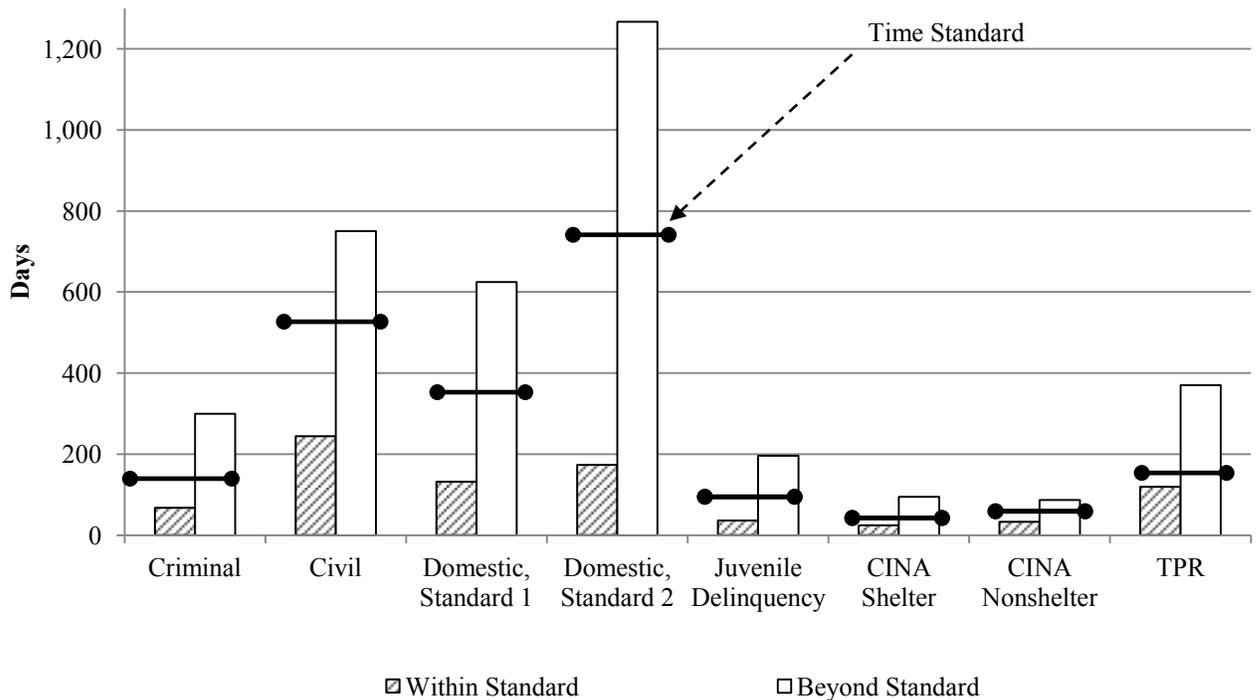


CINA: Children In Need of Assistance
 TPR: Termination of Parental Rights

Source: Maryland Judiciary

The disparities noted in the District Court exist in the circuit courts as well. **Exhibit 4** analyzes the average case processing time for circuit court cases. Again, there is a dramatic difference in the timeliness of those cases that are terminated within the time standard compared to those cases that are terminated beyond the time standard. For example, Domestic Relations (Standard 2) fell short of its performance goal of terminating 98% of cases within the standard of 730 days by just 2 percentage points. However, cases terminated beyond the standard took 1,267 days, or nearly three and one-half years, on average to process. That is 7.3 times longer than the average processing time for cases terminated within the time standard, which was only 173 days.

Exhibit 4
Maryland Circuit Courts
Average Case Processing Time for Cases Within and Beyond Time Standard
Fiscal 2010



CINA: Children In Need of Assistance
 TPR: Termination of Parental Rights

Source: Maryland Judiciary

Proposed Budget

The fiscal 2013 budget for the Judiciary totals \$452.4 million, of which approximately 87% is general funds. Compared against fiscal 2012, the budget grows \$21.3 million, or 4.9%, as seen in **Exhibit 5**. There are three cost drivers propelling spending in the next fiscal year: for personnel-related expenditures, information technology, and restoration of one-time cost containment actions.

Personnel

Costs related to regular positions grow by \$4.6 million, mostly due to statewide growth in amounts necessary to fund employee and retiree health insurance and higher contribution rates for employees and judges. Higher expenses in these categories are offset by the expiration of the one-time \$750 bonus provided to all State employees in fiscal 2012. Growth is also seen for use of retired judges, which increases by almost \$600,000, or 15%, over the prior year. As detailed below, there are also 7.25 new positions in the budget. Funding for contractual full-time equivalents (FTE) rises \$2.1 million, largely related to the provision of 41.0 new FTEs. Funds are also added to increase the amount of existing contractual usage and to annualize turnover expectancy.

The budget includes 7.25 new regular positions and 41 new contractual FTEs. These additional staff are allocated as follows:

- **Judicial Information Systems:** 2.0 positions relate to the purchase of the PeopleSoft Enterprise Resource Planning (ERP) program to replace back office systems. The remaining 4.0 IT-related positions provide database and network support, formal testing of business functions, and storage infrastructure planning.
- **Clerks of the Circuit Court:** 1.0 position to support child support case filings and dockets in the Child Support Division of the Charles County Circuit Court.
- **Administrative Office of the Courts:** The existing 0.75 Administrative Assistant to the Director of Administrative Services would be increased to full-time, adding the remaining 0.25 positions.
- **41.0 Contractual FTEs:** 31.0 District Court bailiffs for court room security; 6.0 District Court interpreters, and 4.0 circuit court interpreters. Bailiffs would be provided for Caroline (1.0), Carroll (2.0), Cecil (1.0), Harford (4.0), Howard (9.0), Kent (1.0), Queen Anne's (1.0), Prince George's (4.0), Montgomery (7.0), and Talbot (1.0) counties. District Court interpreters would be allocated to the Anne Arundel (1.0), Frederick (1.0), Howard (2.0), Montgomery (1.0), and Prince George's (1.0) counties. Finally, 4.0 circuit court interpreters would be provided for Anne Arundel (1.0), Baltimore (1.0), and Frederick/Howard (1.0) counties and Baltimore City (1.0).

Exhibit 5
Proposed Budget
Judiciary
(\$ in Thousands)

How Much It Grows:	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
2012 Working Appropriation	\$374,650	\$52,715	\$3,634	\$141	\$431,139
2013 Allowance	<u>392,400</u>	<u>56,388</u>	<u>3,460</u>	<u>141</u>	<u>452,389</u>
Amount Change	\$17,750	\$3,673	-\$174	\$0	\$21,250
Percent Change	4.7%	7.0%	-4.8%		4.9%
 Contingent Reduction	 \$0	 \$0	 \$0	 \$0	 \$0
Adjusted Change	\$17,750	\$3,673	-\$174	\$0	\$21,250
Adjusted Percent Change	4.7%	7.0%	-4.8%	0.0%	4.9%

Where It Goes:**Personnel Expenses**

Employee and retiree health insurance	\$3,537
Employee and judge retirement	3,232
Use of retired judges	585
7.25 new positions	471
Accrued leave payouts	136
Additional assistance for the Office of Fair Practices.....	110
Additional assistance for assumption of ASTAR program by the Judicial Institute	72
Other fringe benefit adjustments.....	29
Workers' compensation premium adjustment	-132
Positions filled at lower steps/increments.....	-957
One-time \$750 bonus.....	-2,476

Contractual Full-time Equivalent

10 new contractual interpreters.....	926
31 new contractual bailiffs.....	864
District Court interpreter salary and usage increases.....	216

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Where It Goes:

Annualization of District Court contractual turnover expectancy	108
Cost Containment Restoration	
One-time use of general fund encumbrances	5,000
One-time reduction to supplies	1,400
Cost Allocations	
Retirement agency administrative fee	448
Statewide Personnel information technology system allocation	282
Major Information Technology Development	
Back office systems replacement-PeopleSoft Enterprise Resource Planning	4,900
Judicial Information Systems mainframe and personal computer replacement/peripherals	1,422
Maryland Electronic Court Management	747
District Court cyclical computer replacement	404
Software	-2,110
Grants	
Court security grants	250
Mediation and Conflict Resolution grant program	226
Other	
Postage	537
Rent	427
Contractual interpreter services	325
Supplies (4.6% increase)	259
Building repairs	-168
Other	180
Total	\$21,250

ASTAR: Advanced Science and Technology Adjudication Resources

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

Information Technology

The Judiciary is in various stages of development and implementation of five major IT projects, as shown in **Exhibit 6**. The total cost for these projects is \$15.4 million. Relative to fiscal 2012, the greatest increase in fiscal 2013 is \$4.9 million toward the replacement of back office systems in the AOC. This project includes the replacement of the Judiciary’s existing finance, procurement, and human resources systems. There is also \$1.4 million for mainframe replacement and the regular replacement of personal computers and peripherals.

Exhibit 6 Judiciary Major Information Technology Project Detail Fiscal 2013

	<u>2013</u>
Case Management Modernization	\$7,900,034
Land Records (ELROI) eRecording	1,548,000
Administrative Office of the Courts Back Office Systems	5,567,158
Revenue Collection System	229,000
Electronic Payment	200,000
Total	\$15,444,192

ELROI: electronic land records online imagery

Source: Maryland Judiciary

Cost Containment Actions

As part of fiscal 2012 cost containment actions, the Judiciary imposed a one-time reduction of \$1.4 million in supplies. Legislative action also included a one-time \$5.0 million general fund reduction which was directed to be replaced by a like amount of encumbered funds. Both actions are restored in the fiscal 2013 budget.

The Governor’s fiscal 2013 general fund balance estimate includes an assumption of \$5 million in reductions to the Judiciary’s budget.

Other Changes

Other increases in the budget include statewide cost allocations for the administrative expense of the State Retirement Agency and the Judiciary's share of the new Personnel IT system in the Department of Budget and Management. Nominal increases in grants are made for Mediation and Conflict Resolution (\$226,000) and circuit court security (\$250,000). Other growth in general operating expenses is found in the areas of rent, postage, and supplies.

Issues

1. Certification Indicates Need for 40 New Judgeships

Since 1979, the Chief Judge of the Court of Appeals has annually certified to the General Assembly the need for additional judges in the State’s District and circuit courts. In fall 2011, the certification of judgeships for fiscal 2013 was submitted. Citing the economic climate, no new judgeships were requested despite having certified a need for 21 circuit court and 19 District Court judges. New judgeships have not been created since fiscal 2010, when 4 new circuit court judgeships were created. At the same time, the fiscal 2013 allowance includes \$4.6 million for the purpose of recalling retired judges to the bench. Retired judges regularly supplement the work of full-time judges and help address increases in caseloads.

In prior years, the ability to create new judgeships was limited by the availability of physical space. However, recent construction and renovations in the circuit courts and the identification of space that can be used has opened up the possibility of accommodating new judgeships. **Exhibit 7** displays judgeship needs by jurisdiction, the availability of space to accommodate additional judges, and the use of retired judge days. According to the Judiciary’s certifications, 13 counties in Maryland are in need of 21 new circuit court judgeships. Jurisdictions evidencing the greatest judicial need include Baltimore City and Anne Arundel, Baltimore, Harford, and Montgomery counties. In 9 of the 13 courts, sufficient space exists to accommodate new judges. The remaining 4 either lack the chambers or courtroom space to make the creation of a new judgeship a viable option.

In the District Court, 7 counties have a certified need for a total of 19 new judgeships. The jurisdictions evidencing the greatest judicial need include Baltimore, Prince George’s, and Montgomery counties, and Baltimore City. These jurisdictions used 358, 306, 261, and 256 retired judge days in fiscal 2011, respectively. Charles, Washington, and Wicomico counties also have a demonstrated need for 1 new judge in each jurisdiction. Except for Baltimore and Washington counties, space is currently available for 5 of the 7 courts that require new judges.

The Judiciary calculates workload standards to measure the amount of cases a judge may take in a given year based on the amount of time those cases take up. As a result of not creating new judgeships for three consecutive years while having certified the need, the workload of judges has increased.

The adoption of committee narrative is recommended to request the Judiciary to develop a multi-year plan for creating new circuit court and District Court judgeships in order to address certified workload needs.

Exhibit 7
Judgeship Needs and Availability of Space in Circuit and District Courts

Circuit Courts

<u>Jurisdiction</u>	<u>Fiscal 2013 Judgeship Need</u>	<u>Current Space Available</u>	<u>Space Available For New Judges</u>	<u>Fiscal 2011 Retired Judge Days</u>
Baltimore City	3	No		989
Baltimore County	3	Yes	2	424
Montgomery	3	Yes	3 ¹	225
Anne Arundel	2	No		318
Harford	2	No		162
Frederick	1	Yes	1	39
Wicomico	1	Yes	1	294
Calvert	1	Yes	1	108
Charles	1	Yes	1	7
Washington	1	No		81
Prince George's	1	Yes	1	587
Cecil	1	Yes	1	505
Carroll	1	Yes	1	100
Total	21		12	3,839

District Courts

<u>Jurisdiction</u>	<u>Fiscal 2013 Judgeship Need</u>	<u>Current Space Available</u>	<u>Fiscal 2011 Retired Judge Days</u>
Baltimore	6	No ²	358
Prince George's	5	Yes	306
Baltimore City	3	Yes	256
Montgomery	2	Yes	261
Washington	1	No	25
Charles	1	Yes	55
Wicomico	1	Yes	71
Total	19		1,332

¹In its November 2011 transmittal to the Maryland General Assembly, the Judiciary indicates that the Montgomery County Circuit Court expects to have space for 10 additional courtrooms and chambers in approximately two years.

²Baltimore County does not currently have space but expects to when a new District Court building is built.

Source: Maryland Judiciary

2. Might the Judiciary’s Major IT Development Program Benefit from Oversight by the Department of Information Technology?

The Judiciary submits to the budget committees an annual report which includes its master plan and project request for all major IT projects. The Information Technology Master Plan (ITMP) includes a comprehensive description of each endeavor, a summary of all prior funding for each project, and a forecast of anticipated spending requests to complete each project. The ITMP is instrumental in projecting costs for major IT, which is funded with Land Records Improvement Fund special funds. According to the 2013 ITMP, there are currently five major IT projects under some phase of development. This includes:

- **Court Management Build Out:** This project, also known as the Case Management Modernization Project, would replace the numerous legacy case management systems of the District and circuit courts with a unified court management system;
- **Electronic Land Records Online Imagery (ELROI) eRecording:** This digital imaging and filing system for all land records instruments maintained by the Clerks of the Circuit Court is in its final phase of development, which would allow users to record documents via Internet from remote sites;
- **AOC Back Office Systems:** This project includes the replacement of all of the Judiciary’s existing finance, procurement, and human resources systems. It also includes additional upgrades to allow for grants administration;
- **Revenue Collection Systems Replacement:** The project replaces existing cashier system and local court accounting for both the District and circuit courts and would allow for an interface with AOC financial systems; and
- **Electronic Payment Project:** This project would allow for the acceptance and processing of credit card payments at court locations or online.

As seen in **Exhibit 8**, the total costs for these projects was \$65.8 million in last year’s ITMP, increasing to \$81.6 million in the 2013 ITMP. The major cost difference is attributed to the Back Office Systems replacement, whose cost increased by \$11.1 million, or 122%. This ERP project entails the customization of Commercial Off the Shelf software from PeopleSoft.

Since 2009, all major IT project development in the Executive Branch is currently overseen by the Department of Information Technology (DoIT). DoIT is responsible for establishing and guiding:

- the State’s strategic direction for IT and telecommunications;
- a long-range target technology architecture;

Exhibit 8
Judiciary Major Information Technology Projects
Total Project Cost

<u>Project</u>	<u>2012 ITMP</u>	<u>2013 ITMP</u>	<u>\$ Change</u>	<u>% Change</u>
Court Management Build Out	\$47.7	\$52.0	\$4.3	9%
Land Records eRecording	4.6	4.8	0.2	4%
Back Office Systems Replacement	9.1	20.2	11.1	122%
Revenue Collection	3.6	4.0	0.4	11%
ePayment	0.8	0.6	-0.2	-25%
Total	\$65.8	\$81.6	\$15.8	25%

ITMP: Information Technology Master Plan

Source: Maryland Judiciary

- cross agency collaboration for the mutual benefit of all; and
- best practices for operations and project management.

Since its inception, DoIT has played a key role in the oversight of major IT development in the State, to ensure that projects are completed on a timely basis and within budget. DoIT's oversight was crucial in the successful implementation of the Maryland Pension Administration System and the ongoing implementation of major systems for Medicaid and for Race to the Top in the Maryland State Department of Education. Currently, DoIT plays no role in the Judiciary's IT development program. There are several reasons why the involvement of DoIT would be of benefit:

- **Magnitude of Program:** The Judiciary's IT development program totals \$82 million in the current ITMP, including two significant projects totaling \$52 million and \$20 million;
- **Conformance with State Policies and Standards:** DoIT's involvement would afford an opportunity to ensure compliance and consistency with State standards and policies, as well as to ensure the interoperability of systems;
- **Best Practices:** Having significant experience in IT development, DoIT has the experience to ensure that system architecture, project deliverables, etc. are realistic. DoIT can also ensure that independent verification and validations are included;

- **Compliance with New Planning and Cost Estimating Procedures:** Chapter 397 of 2011 modified the systems development life cycle process for Executive Branch major IT project development to include (1) a project planning request which covers the first four phases of development and which shall only include a cost estimate for the planning portion; and (2) an implementation request which provides a total project cost estimate. The purpose for adopting this approach was for the legislature to be given a more realistic estimate of the total cost of major IT projects. Under prior practice cost estimates were submitted to the legislature prior to the completion of all planning phases, thus it was not unusual to see extremely large spikes in the cost of large projects; and
- **Major IT Is a Noncore Judicial Function:** Similar to the Judiciary’s capital program, which is reviewed by the Department of Budget and Management, major IT is a noncore Judicial function. That is, just as judges are not experts in capital construction so too are they not expert in the development of major IT systems. Oversight by DoIT, which would not entail assumption of IT operations, does not constitute an issue of constitutional separation of powers.

Adoption of committee narrative is recommended to direct DoIT and the Judiciary to jointly study the role that DoIT could assume and the benefits to the Judiciary’s major IT development program.

3. Judicial Compensation Commission Recommendations

The Judicial Compensation Commission, established in 1980, consists of seven members and is charged with studying and making recommendations regarding all aspects of judicial compensation in order to ensure that highly qualified persons will be attracted to the bench and will continue to serve without undue economic hardship. Section 1-708 of the Courts and Judicial Proceedings Article requires that the commission review judicial salaries and pensions and make recommendations to the Governor and the General Assembly once every four years.

The last salary increase for judges was generated by a four-year phased-in salary plan that was recommended by the commission in 2005 and implemented after the General Assembly did not adopt or amend the joint resolution containing the salary plan within 50 days after its introduction. Chapter 444 of 2005 (the Budget Reconciliation and Financing Act (BRFA) of 2005) limited the frequency of review of judicial compensation and recommendations by the commission by establishing a schedule of once every four years, instead of the prior requirements that the commission review judicial compensation every two years and make recommendations at least every four years.

The 2008 commission concluded that the existing salary structure was not sufficient to recruit and retain the most qualified individuals to the bench. The commission recommended that the salaries of all Maryland judges be increased over a four-year period. Although its proposal was rejected by the General Assembly during the 2009 session, the legislature adopted emergency

legislation allowing the commission to meet again in 2009 and resubmit a proposal. The 2009 commission resubmitted the same salary recommendations as proposed by the 2008 commission. The recommendations were rejected by the General Assembly during the 2010 session. However, Chapter 484 of 2010 (the BRFA of 2010) altered the meeting schedule of the commission again to allow for a review of salaries in 2011 and 2013, then every four years thereafter.

Fiscal Impact of Salary Recommendations

In October 2011, the commission recommended increases for the salaries of all Maryland judges from fiscal 2014 through 2016. The commission proposes that salaries remain at current levels through fiscal 2013, with salary increases to begin in fiscal 2014 as presented in **Exhibit 9**.

Under the commission's recommendation, judges at all levels would receive salary increases of equal amounts. Based on 6% of the average salary structure in the preceding year, each judge would receive increases of \$9,111 in fiscal 2014, \$9,658 in fiscal 2015, and \$10,237 in fiscal 2016, for an overall increase of \$29,006 over a three-year period. The total cost to the State of this action would be \$14.0 million. This also reflects the incremental cost to the State for Social Security and pensions which increase as salaries rise. The projected costs include:

- \$8.7 million for salary increases;
- increases for the Public Defender, State Prosecutor, and members of the Workers' Compensation Commission, whose salaries are tied to the judicial salary structure;
- incremental pension costs totaling \$5.2 million over the four-year period. This is based on the contribution rate determined by the State's actuary, which is estimated to be 61.18% for judges and 14.36% for other State employees in fiscal 2012; and
- \$126,622 in increases to the State for Social Security costs.

Not included are incremental salary costs for State's attorneys, whose salaries are also tied to judicial salaries. Those expenses are funded locally.

Senate Joint Resolution 3 and House Joint Resolution 4 were introduced in each house of the General Assembly in January 2012. 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.

Exhibit 9
Judicial Compensation Commission Recommendations

<u>Total Judgeships</u>		<u>Current Salary</u>	<u>Proposed Fiscal 2013</u>	<u>Proposed Fiscal 2014</u>	<u>Proposed Fiscal 2015</u>	<u>Proposed Fiscal 2016</u>	<u>Total Phase-in</u>
	Court of Appeals						
1	Chief Judge	\$181,352	\$181,352	\$190,463	\$200,121	\$210,358	\$29,006
6	Judge	162,352	162,352	171,463	181,121	191,358	29,006
	Court of Special Appeals						
1	Chief Judge	152,552	152,552	161,663	171,321	181,558	29,006
12	Judge	149,552	149,552	158,663	168,321	178,558	29,006
157	Circuit Court	140,352	140,352	149,463	159,121	169,358	29,006
	District Court						
1	Chief Judge	149,552	149,552	158,663	168,321	178,558	29,006
111	Judge	127,252	127,252	136,363	146,021	156,258	29,006
	Average Salary	151,852	151,852	160,963	170,621	180,858	
	Increase at 6% ¹		0	9,111	9,658	10,237	29,006
	Incremental Salaries ²		0	2,744,147	2,908,694	3,083,114	8,732,555
	Incremental Social Security (@ 1.45%)		0	39,790	42,176	44,705	126,622
	Incremental Pensions ³		0	1,626,883	1,724,482	1,827,936	5,178,813
	Incremental Fiscal Impact		\$0	\$4,410,821	\$4,675,352	\$4,955,755	\$14,041,927

¹ Increase per judge; based on average salary of prior year's judicial salary structure.

² Includes salary increases for the Public Defender, the State Prosecutor, and members of the Workers' Compensation Commission whose salaries are tied to judicial salaries. Does not include incremental costs for state attorneys whose salaries are also tied to judicial salaries but are funded locally.

³ 61.18% pension employer contribution rate for judges. 14.36% pension employer contribution rate for all other State employees.

Note: Average Salary is based on the current salary structure for each level of court, not the weighted average of all judges.

Source: Department of Legislative Services; Cheiron – Actuary to State Retirement Pension System; Social Security Administration

Issues

Judicial Salary Increases

There are a number of reasons why a general salary increase at the magnitude recommended by the Judicial Compensation Commission is imprudent at this time:

- **General Fund Structural Deficit:** The State continues to grapple with a general fund structural deficit estimated at \$1.1 billion in fiscal 2013. The Governor has proposed a number of structural solutions including shifting a portion of teacher retirement costs to local jurisdictions, limiting or capping income tax deductions and exemptions, and nearly \$400 million in contingent reductions to mandated programs. Even if every proposal was adopted, the shortfall would still exceed \$400 million going into fiscal 2014.
- **Lackluster Economic Projections:** Although the economy is growing, it does so at nominal rates. Economists project slow growth over the next several years as unemployment remains high and the housing and construction sectors continue to struggle with high inventories. Growth in consumer spending, which makes up 70% of the economy, remains limited.
- **General Salary Increases Since Fiscal 2006:** As seen in **Exhibit 10**, judges received generous salary increases in fiscal 2006 through 2009, and would receive average increases of 6% in fiscal 2014 through 2016. By contrast, elected officials in the Executive and Legislative Branches have received no increases since fiscal 2006, and must wait until the next round of compensation commission recommendations to see if increases are recommended starting in calendar 2015. State employees received relatively Spartan increases between calendar 2006 and 2009 and are slated to receive increases of 2 and 3% on January 1 of 2013 and 2014, respectively. Judges would also receive the 2% increase on January 1, 2013, since there is no recommendation by the Judicial Compensation Commission for fiscal 2013.

Exhibit 10
History of General Salary Increases
Fiscal 2006-2016

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013³</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
COA Chief Judge	3.5%	4.8%	5.5%	5.2%	0.0%	0.0%	0.0%	2.0%	5.0%	5.1%	5.1%
Associate Judge	4.0%	5.5%	6.2%	5.9%	0.0%	0.0%	0.0%	2.0%	5.6%	5.6%	5.7%
COSA Chief Judge	3.6%	4.8%	5.5%	5.2%	0.0%	0.0%	0.0%	2.0%	6.0%	6.0%	6.0%
Associate Judge	3.6%	4.9%	5.6%	5.3%	0.0%	0.0%	0.0%	2.0%	6.1%	6.1%	6.1%
CC Judge	3.1%	4.1%	4.7%	4.5%	0.0%	0.0%	0.0%	2.0%	6.5%	6.5%	6.4%
DC Chief Judge	3.6%	4.9%	5.6%	5.3%	0.0%	0.0%	0.0%	2.0%	6.1%	6.1%	6.1%
Associate Judge	2.7%	3.5%	3.6%	3.7%	0.0%	0.0%	0.0%	2.0%	7.2%	7.1%	7.0%
Governor ¹	3.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TBD
Lt. Governor ¹	3.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TBD
Comptroller ¹	3.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TBD
Treasurer ¹	3.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TBD
Attorney General ¹	3.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TBD
Secretary of State ¹	3.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TBD
Legislators ¹	7.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TBD
State Employees ^{2,3}	1.5%	2.0%	2.0%	2.0%	0.0%	0.0%	0.0%	2.0%	3.0%	TBD	TBD

CC: circuit court
COA: Court of Appeals
COSA: Court of Special Appeals

DC: District Court
TBD: to be determined

¹ Salaries for the Governor, Lt. Governor, Treasurer, Attorney General, Secretary of State, and all legislators are provided on a calendar year basis. No increases will occur for the first half of fiscal 2015 (last half of calendar 2014). Compensation Commissions will make recommendations in 2014 for calendar 2015 through 2018.

² In fiscal 2007, the general salary increase provided \$900 for employees making less than \$45,000; \$1,400 for employees making more than \$70,000; and 2% for all others.

³ Based on collective bargaining agreements State employees would receive a 2% increase on January 1, 2013, and 3% on January 1, 2014. Judges would also receive the 2% increase on January 1, 2013, since there is no fiscal 2013 salary recommendation from the Judicial Compensation Commission.

Source: Department of Legislative Services

Retirement Contribution Rate Recommendations

Chapter 397 of 2011 (the BRFA of 2011) also required the commission to include recommendations in its report on appropriate benefit and member contribution levels, which take into account the sustainability of the pension systems.

- **2011 Session Pension Reform:** The State undertook significant pension reforms at the 2011 session, via Chapter 397. **Exhibit 11** highlights the changes adopted which affect active employees and those hired after July 1, 2011. Significant changes for new employees were enacted, affecting benefit multipliers, retirement age, and retiree health care.

Exhibit 11

2011 Session Pension Reform Versus Proposed 2012 Judicial Pension Proposal

	<u>Current Employees</u>	<u>Employees Hired After 7/1/2011</u>	<u>Current Judges</u>	<u>Judges Hired After 7/1/2012</u>
Retirement Benefits				
Vesting	5 years	10 years	Immediate	No change
Benefit Calculation	1.8% of average of highest 3 years of salary per year of service	1.5% of average of highest 5 years of salary per year of service	Two-thirds salary of an active judge	No change
Normal Retirement Eligibility	Age 62 + 5 years	Age 65 + 10years Or Rule of 90 (combined years and service)	Age 60 mandatory retirement at 70	No change
Employee Contributions				
Employee Contribution Rate	Increase from 5.0 to 7.0% effective July 1, 2011	7.0%	6.0%	Increase to 8% recommended by the Judicial Compensation Commission
State Contribution Fiscal 2013	14.36%	14.36%	61.18%	61.18%
Contribution Period	All active years	All active years	16 years	No change

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	<u>Current Employees</u>	<u>Employees Hired After 7/1/2011</u>	<u>Current Judges</u>	<u>Judges Hired After 7/1/2012</u>
Retiree Health Care				
Initial Vesting	5 years	10 years	5 years	No change
Full Vesting	16 years	25 years	16 years	No change
Vesting Increment	1/16 year	1/25 year	1/16 year	No change

Source: Department of Legislative Services; Judicial Compensation Commission

Judicial Retirement Contribution Rate

The commission voted to include in its report a recommendation that the contribution rate for judges appointed after July 1, 2012, increase from 6 to 8%. Senate Bill 335/House Bill 249 would implement this change. The recommendation to increase retirement contribution rates to 8% only for new judges also raises an issue of equity relative to other State employees.

- **Contribution Rates Raised for All Active and New State Employees in Fiscal 2012:** Chapter 397 of 2011 increased the retirement contribution rate for all active and new State employees and teachers by 2 percentage points; from 5% of salary to 7% of salary. Law enforcement officers will have a 3 percentage point contribution rate phased in over two years from 4% of salary to 7% of salary. Contribution rate increases should be applied equally to all State employees. Moreover, increasing the contribution for active judges is not an unconstitutional diminution of a judge's salary, as there is a distinction between salary and benefits as noted by the Attorney General and case law.

Given the State's fiscal condition, it is recommended that the General Assembly deny the requested salary increase as incompatible with the State's present financial position. The General Assembly should also amend Senate Bill 335/House Bill 249 to require an 8% retirement contribution rate for all new and active judges.

4. Attorney Assessments and Related Special Funds Lack Oversight

The Judiciary established the Disciplinary Fund in 1975 by Maryland Rule 16-714 to support the activities of the Attorney Grievance Commission (AGC), which investigates and prosecutes attorneys whose conduct violates the Maryland Lawyers Rules of Professional Conduct as well as those engaged in the unauthorized practice of law. Revenues for the fund are generated by

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assessments imposed on practicing attorneys in Maryland. Currently, the Judiciary levies two annual assessments totaling \$145 per attorney. Funds are distributed as follows:

- \$20 to the Client Protection Fund (codified in Section 10-311 of the Business Occupations and Professions Article), which is used to reimburse losses caused by defalcations of lawyers; and
- \$125 to the Disciplinary Fund, which is used to pay for the operating expenses of AGC.

Issues

The \$125 Assessment Should Be Codified: Assessments are required from all lawyers as a “condition precedent to the practice of law.” Neither the current assessment nor a maximum are established in statute or regulation. The last increase to this assessment occurred in fiscal 2003 but was not accomplished by rule or court order. Rather, the Judiciary increased the amount by a letter to the chairman of AGC in which it approved a \$35 increase for fiscal 2005 and a \$5 increase for each of the following five consecutive fiscal years. Since the \$125 assessment pays the expenses of AGC, which is acting in a regulatory capacity, these are “monies of the State” as determined in a February 2011 advice of counsel from the Attorney General’s office. The \$125 assessment ought to be in either statute or regulation to improve transparency and to establish independent oversight.

Assessment Levels Are Not Sized to Expenditures: **Exhibit 12** illustrates fund activity for the Disciplinary Fund since fiscal 2006. Revenues from the \$125 assessment have outpaced commission expenditures by \$0.9 million to \$1.7 million each year. This has resulted in a fund balance that would have exceeded \$10.0 million had the Judiciary not issued an Administrative Order in December 2011 transferring \$5.7 million of the fiscal 2012 balance to other purposes. **Exhibit 13** shows the trend in fund balance growth with and without the transfer. The \$20 assessment credited to the Client Protection Fund, however, may be underfunded based on the Judiciary’s assertion that it faces \$13.0 million in unfunded liabilities. With a closing balance now approaching \$9.0 million, as seen in **Exhibit 14**, the fund may require another \$4.0 million depending on when these liabilities must be addressed on a cash flow basis. In that case, the assessment may need to be increased.

Lack of Transfer and Expenditure Oversight: AGC will spend an estimated \$3.7 million in fiscal 2012 without any oversight or review by the budget committees as to how funds are spent. Moreover, as noted, in December 2011, the Judiciary moved \$5.4 million from the Disciplinary Fund to the Client Protection Fund and \$300,000 to the Professionalism Commission without any need for review or legislation to determine the appropriateness of these transactions. Any other State agency would require legislation to transfer balances between funds.

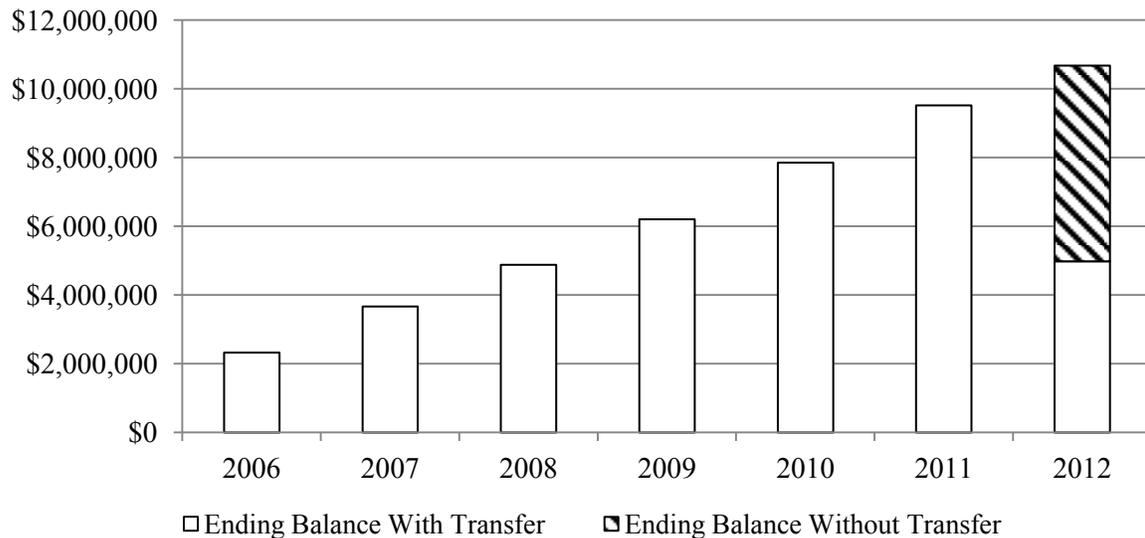
Lack of Standard Provisions Pertaining to Fund Administration: In keeping with all special funds, both the Client Protection Fund and the Disciplinary Fund should be codified to include standard provisions. These include the stipulation that they are nonlapsing, held and invested by the Treasurer, and accounted for by the Comptroller.

Exhibit 12
Disciplinary Fund Activity
Fiscal 2006-2012

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Est. 2011</u>	<u>Est. 2012</u>
<i>Complaints Received</i>	2,244	1,940	2,053	1,885	2,003	2,321	2,049
Starting Balance	\$1,383,654	\$2,329,797	\$3,664,335	\$4,884,760	\$6,203,258	\$7,853,786	\$9,521,573
Revenues from \$125 assessment	\$3,764,930	\$4,112,759	\$4,374,025	\$4,554,641	\$4,761,194	\$4,891,108	\$4,881,506
Total Revenue	\$3,764,930	\$4,112,759	\$4,374,025	\$4,554,641	\$4,761,194	\$4,891,108	\$4,881,506
Transfers							
Client Protection Fund	\$0	\$0	\$0	\$0	\$0	\$0	-\$5,400,000
Professionalism Commission	0	0	0	0	0	0	-300,000
Expenditures	-\$2,818,787	-\$2,778,221	-\$3,153,600	-\$3,236,143	-\$3,110,666	-\$3,223,321	-\$3,723,147
Ending Balance	\$2,329,797	\$3,664,335	\$4,884,760	\$6,203,258	\$7,853,786	\$9,521,573	\$4,979,932

Source: Maryland Judiciary

Exhibit 13
Disciplinary Fund Balance
With and Without Fiscal 2012 Balance Transfers
Fiscal 2006-2012



Source: Maryland Judiciary

Exhibit 14
Client Protection Fund Activity
Fiscal 2008-2012

<u>Fiscal Year</u>	<u>2008</u> <u>Actual</u>	<u>2009</u> <u>Actual</u>	<u>2010</u> <u>Actual</u>	<u>2011</u> <u>Actual</u>	<u>2012</u> <u>Estimate</u>
Opening Balance	\$5,862,938	\$6,090,261	\$5,865,492	\$4,801,867	\$4,088,404
Revenue	\$1,016,557	\$1,017,532	\$1,141,398	\$1,067,339	\$1,100,000
Interest Income	285,612	84,604	10,703	11,415	11,000
Transfers	0	0	0	0	5,400,000
Subtotal Revenue	\$1,302,169	\$1,102,136	\$1,152,101	\$1,078,754	\$6,511,000
Operating Expenses	\$1,074,846	\$1,326,905	\$2,215,726	\$1,792,217	\$1,699,404
Closing Balance	\$6,090,261	\$5,865,492	\$4,801,867	\$4,088,404	\$8,900,000

Source: Maryland Judiciary

It is recommended that the two assessments required of all practicing attorneys in Maryland be codified and set at limits which cover their expenses. Moreover, the Disciplinary Fund should be codified in statute, and both it and the Client Protection Fund should include the standard provisions which are applied to all special funds. Expenditures from the Disciplinary Fund should be appropriated in the State budget, and future transfers from either fund's balance should require a statutory change.

5. The Judiciary Retains High Levels of Encumbered General Funds

At the end of each fiscal year, agencies must account for all appropriations as either spent, unspent (in which case funds either revert to the general fund or are cancelled and return to a special fund), or are encumbered. Encumbrances are essentially funds set aside to pay for goods or services that were not delivered to the State during the fiscal year, even though there is an approved contract or purchase order. **Exhibit 15** illustrates general fund encumbrances for the Judiciary as of June 30, 2011, which totaled \$18.2 million. About 80% of the funds are found within the Administrative Office of the Courts, District Court, and Judicial Information Systems. It is not known if the Judiciary actually has contracts or purchase orders to justify all encumbrances, or if most funds are simply encumbered at closeout as a matter of policy. For example, in fiscal 2011, of a total of \$370.3 million, the Judiciary spent \$360.2 million, reverted about \$310,000 to the general fund, and swept up nearly \$10 million in encumbrances.

Exhibit 15 Distribution of Judiciary General Fund Encumbrances by Program Fiscal 2011 Closeout

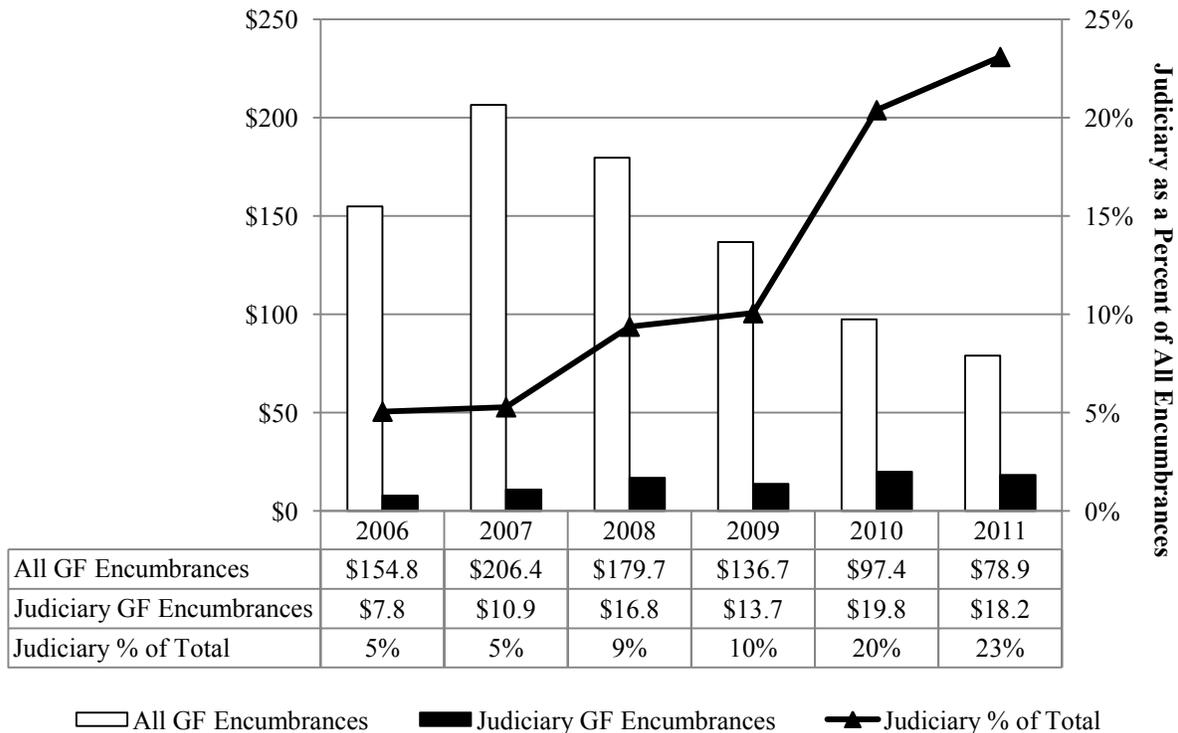
	Total	
	<u>Dollars</u>	<u>Percent</u>
Admin. Office of the Courts	\$6,038,620	33%
District Court	4,879,819	27%
Judicial Information Systems	3,628,965	20%
Other	1,604,609	9%
Clerks of the Circuit Court	1,175,028	6%
Major IT Development Projects	878,978	5%
Total	\$18,206,020	100%

IT: information technology

Source: Comptroller of Maryland General Accounting Division

Exhibit 16 shows that the amounts encumbered by the Judiciary have grown each year, from \$7.8 million at the end of fiscal 2006 to \$18.2 million for fiscal 2011. Relative to the rest of State government, the exhibit also shows that as a percent of all general fund encumbrances, the amounts set aside by the Judicial Branch have grown from about 5% of the total to nearly 25%. This is partly due to higher levels of encumbrances within the Branch but also because other agencies have been cancelling prior year encumbrances since the recent recession. In part due to these trends, the legislature reduced \$5.0 million of the fiscal 2012 budget for the Judiciary and directed the Branch to use prior year encumbered balances. This action would leave about \$13.0 million encumbered, exclusive of additional usage or funds encumbered during fiscal 2012.

Exhibit 16
General Fund Encumbrances at Closeout
Fiscal 2006-2011
(\$ in Millions)



GF: general fund

Source: Comptroller of Maryland General Accounting Division

Inasmuch as the Judiciary continues to retain significant levels of encumbered funds, it is recommended that another \$5 million in general funds be reduced from the fiscal 2013 budget and replaced by prior year encumbrances.

6. *DeWolfe v. Richmond* Ruling Could Affect District Court Commissioner Spending

In *DeWolfe v. Richmond*, the Maryland Court of Appeals held that under the Maryland Public Defender Act, no bail determination may be made by a District Court commissioner concerning an indigent defendant without the presence of counsel, unless representation by counsel is waived. This ruling is expected to take effect with a court mandate to be issued in early 2012. The Office of the Public Defender (OPD) would require additional positions and an estimated \$11.1 million in fiscal 2012, increasing to \$27.2 million in fiscal 2013 when fully annualized.

Presently, a typical commissioner initial appearance involves the defendant and the commissioner, and the appearance must occur within 24 hours of arrest. Initial appearances currently take between 15 to 30 minutes to complete. It is unclear at this time to what extent the addition of a public defender and possibly a State's Attorney will increase the average time spent on the initial appearance. If the average time for an initial appearance is extended to the point that commissioners are unable to meet the 24-hour requirement, the District Court may need to employ additional commissioners.

House Bill 261 and Senate Bill 165 have both been introduced at the 2012 session as emergency legislation, to repeal the requirement that legal representation be provided by OPD at a defendant's initial appearance before a District Court commissioner. Additionally, Senate Bill 422 and House Bill 112 propose to repeal any requirement that OPD provide representation at either the initial appearance or at bail review hearings. Even if any legislation is enacted, it is possible that the plaintiffs will appeal the ruling on constitutional grounds.

It is recommended that the Judiciary comment on the potential fiscal impacts of the *DeWolfe v. Richmond* case on operating funding for District Court commissioners in its budget. This should include an assessment of whether or not capital renovations are needed to accommodate counsel in areas currently used for the initial appearance, and whether video technology could be utilized to mitigate the need for potential renovations.

Recommended Actions

1. Add the following language:

Provided that the General Fund appropriation for the Judiciary is reduced by \$259,000 for supplies.

Explanation: This action level funds supplies to the fiscal 2012 working appropriation.

2. Add the following language:

Provided that a \$5,000,000 General Fund reduction is made for operating expenses. It is the intent of the General Assembly that the Judiciary replace these reductions through the use of surplus encumbrances from prior year closeouts.

Explanation: This language reduces \$5 million in general fund spending within the Judiciary with the intent that prior year encumbrances be used, as was done in the fiscal 2012 budget. The budget committees recognize that the Judiciary's fiscal 2014 budget will reflect a \$5 million increase to reflect restoration of this one-time action.

	<u>Amount Reduction</u>		<u>Position Reduction</u>
3. Delete 6 new positions under Judicial Information Systems. The Judiciary is authorized to reclassify existing vacant positions for these purposes.	\$ 341,765	GF	6.0
4. Delete 1 new position under the Clerks of the Circuit Court. The Judiciary is authorized to reclassify an existing vacant position for this purpose.	8,899	GF	1.0
	17,278	FF	
5. Reduce postage in line with the recent postal rate increase. The allowance for postage increases by \$536,893, or 9.6%. Postal rates had not increased since fiscal 2008 but were raised by 1 cent to 45 cents in January 2012. This action reduces spending by \$530,102, permitting a 2.27% increase over actual fiscal 2011 spending. This reduction should be allocated across the divisions of the Judiciary.	461,422	GF	
	64,393	SF	
	4,287	FF	
6. Adopt the following narrative:			

Plan for Creation of New Judgeships: The budget committees are concerned that increased workloads have resulted in the need for 40 judges (21 circuit court and 19 District Court)

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even though no new judgeships were requested by the Chief Judge in the fiscal 2013 budget. While lack of courtroom space had been an impediment in prior years, the main constraint now is limited finances. It is not prudent to continue to allow caseloads to continue to grow without adopting a plan to increase the number of judges. The committees request the Judiciary to develop a multi-year plan to request new circuit court and District Court judges, so that workloads can be addressed gradually without having a significant impact on State finances. A report should be submitted by November 1, 2012.

Information Request	Author	Due Date
Multi-year plan for creation of new judgeships	Judiciary	November 1, 2012

7. Adopt the following narrative:

Role and Benefits of The Department of Information Technology Oversight of Major Information Technology in the Judiciary: To ensure the effective use of the State’s information technology (IT) resources, it is the intent of the budget committees that the Department of Information Technology (DoIT) and the Judiciary jointly prepare a study of the role that DoIT could assume in the review and oversight of the Judiciary’s major IT development program and the benefits that would accrue. DoIT provides oversight of all executive branch major IT systems development. It is in position to ensure conformance with State standards and has the experience to bring major projects to a successful resolution. The Judiciary’s 2013 IT master plan contains five projects totaling \$82 million, of which two projects are expected to total \$52 million and \$20 million each. Projects of this magnitude would benefit from DoIT’s expertise and resources. The report should be submitted to the budget committees by November 1, 2012.

Information Request	Authors	Due Date
Role and benefits of DoIT oversight of Major IT in the Judiciary	DoIT Judiciary	November 1, 2012

Total Reductions	\$ 898,044	7.0
Total General Fund Reductions	\$ 812,086	
Total Special Fund Reductions	\$ 64,393	
Total Federal Fund Reductions	\$ 21,565	

Updates

1. Auditing Procedures of the Maryland Legal Services Corporation

At the 2011 session, the General Assembly added budget bill language that restricted \$500,000 in special funds for the Maryland Legal Services Corporation (MLSC) pending a report on the organization's audit procedures. The language required that the report include the following:

- a summary of policies and practices for tracking grant spending by grant recipients;
- a summary of policies and practices for ensuring grant funds reach targeted indigent residents; and
- MLSC's process for ensuring that grant recipients maintain proper accounting controls and safeguards, including annual independent audits.

The Judiciary submitted the report to the committees on behalf of MLSC on November 1, 2011. The report included policies and procedures for ensuring that grant funds are being expended in accordance with grant agreements. The report also included copies of the application packets, mid-year and final reports, and audit procedures. MLSC requires all grant recipients to (1) annually submit a copy of its internal control procedures; (2) submit statements of positive assurance in which independent auditors verify that grant funds have been spent according to the terms of the grant agreement; and (3) submit a detailed grant application that specifies the unmet legal needs that will be addressed, the people that will be served, and the manner in which the recipient intends to utilize the funds. MLSC indicates that these reports are carefully reviewed and analyzed. Furthermore, MLSC conducts on-site evaluations to review program activities and operations.

2. Land Records Fee Increase Approved through Fiscal 2015

The Circuit Court Real Property Records Improvement Fund, also known as the Land Records Improvement Fund (LRIF), is a nonlapsing fund that supports all personnel and operating costs within the land records offices of the Clerks of the Circuit Court. It further supports the maintenance costs of the ELROI system and the website for making images accessible to the public. During the 2007 special session, legislation was adopted to expand the scope of the fund to include the Judiciary's major IT development projects. Revenues for the LRIF are generated primarily through a recordation surcharge fee on all real estate transactions. Accordingly, revenues to the fund are largely driven by home sales. As the housing climate has deteriorated, revenues to the fund have declined similarly.

Chapter 397 of 2011 (the BRFA of 2011) increased the land records surcharge from \$20 to \$40 for fiscal 2012 through 2015 only. This was in response to concerns over the structural

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imbalance of the fund and the possibility that the fund balance would be depleted as early as fiscal 2012, threatening the fund source for the operations of the land records offices of the Clerks of the Circuit Court as well as for major IT development projects. The purpose of the fee increase was to provide sufficient funds for these endeavors. As shown in **Exhibit 17**, the fund expects to remain viable at least through fiscal 2014. The fund's balance has been helped in recent years by constrained real estate activity which has resulted in relatively higher vacancy rates in the land records offices. As seen in the exhibit, recent spending in the offices has averaged \$13 million per year. The fiscal 2012 through 2014 estimates, however, are based on full funding for the personnel complement of the land records offices. The fund balance will be higher to the extent that higher numbers of vacancies are maintained.

Exhibit 17
Land Records Improvement Fund
Fiscal 2009-2014

	<u>2009</u>	<u>2010</u>	<u>2011</u> <u>Actual</u>	<u>Working</u> <u>Approp</u> <u>2012</u>	<u>Budget</u> <u>Request</u> <u>2013</u>	<u>Projected</u> <u>2014</u>
Starting Balance	\$66,695	\$57,880	\$47,005	\$40,054	\$24,287	\$14,793
Total Revenue	\$19,758	\$16,522	\$15,821	\$30,000	\$30,000	\$30,000
Expenses						
Land Records Offices	\$13,428	\$13,178	\$12,291	\$16,772	\$16,749	\$17,586
mdlandrec.net	5,000	5,000	5,000	5,000	5,000	5,000
ELROI Maintenance	2,926	3,426	1,700	2,144	2,301	2,000
Major IT Projects	7,077	5,821	2,169	11,850	15,444	14,375
One-time Interest Repayment			2,169			
General Fund Transfer				10,000		
Encumbrance Reconciliation	142	-28	-558			
Total Expenses	\$28,573	\$27,397	\$22,772	\$45,767	\$39,494	\$38,961
Ending Balance	\$57,880	\$47,005	\$40,054	\$24,287	\$14,793	\$5,832
Structural Imbalance	-\$8,815	-\$10,875	-\$6,952	-\$15,767	-\$9,494	-\$8,961

ELROI: electronic land records online imagery

IT: information technology

Source: Maryland Judiciary

3. Maryland Legal Services Corporation Revenues

MLSC was established in 1982 to make grants to organizations providing legal services to indigent residents of the State. Grant revenue is generated by the MLSC Fund and stems from the following sources:

- **Interest on Lawyer Trust Accounts (IOLTA):** Maryland Rule 16-604 requires that all Maryland attorneys deposit funds received from a client or third person into an attorney trust account with an approved financial institution. The interest on those accounts benefits MLSC. In recent years, the federal funds target rate has been set at historic lows by the Federal Reserve, negatively impacting interest rates and, therefore, IOLTA revenues.
- **Filing Fees:** In accordance with § 7-202 and 7-301 of the Courts and Judicial Proceedings article, a surcharge on certain circuit and District Court filing fees is deposited into the fund. Chapter 486 of 2010 increased the surcharge on civil cases filed in circuit courts from a maximum of \$25 to a maximum of \$55. In the District Court, the maximum authorized surcharge increased from \$5 to \$8 for summary ejectment cases; and from \$10 to \$18 for all other civil cases. The law was enacted in response to declining IOLTA revenues and sunsets on June 30, 2013.
- **General Funds:** Section 11-401 of the Human Services Article requires that the Governor transfer \$500,000 annually from abandoned property funds to the MLSC Fund. Although the source of the money is general funds, it is appropriated as special fund revenue to MLSC.
- **MLSC Reserve Fund:** Any revenues in excess of expenses may be deposited to the MLSC Reserve Fund regardless of the source. This is because, while the State may appropriate a certain level of spending for MLSC, MLSC is permitted to transfer MLSC Fund revenues into the MLSC Reserve Fund rather than grant it to legal services organizations. However, when revenues exceed the legislative appropriation, the money remains in the MLSC Fund. It is MLSC policy to maintain at least 50% of its total anticipated grant commitments in the MLSC Reserve Fund; however, it has dropped below that threshold in recent years due to transfers to the MLSC Fund that were necessitated by declining IOLTA revenue.
- **Donations:** While not a significant revenue, MLSC receives donations to support its mission.

After Chapter 486 and the increased filing fee surcharges went into effect in fiscal 2011, grant expenditures increased to about \$16 million per year. **Exhibit 18** illustrates revenues and expenses to the fund from fiscal 2007 through 2013. Although revenues exceeded expectations in fiscal 2007 and 2008, a significant decline in IOLTA revenues created a structural imbalance in fiscal 2009, and MLSC transferred \$800,000 from its Reserve Fund to maintain grant activity levels. In fiscal 2010, the structural imbalance improved slightly due to decreased grants; however, the improvement in fiscal 2011 is entirely attributable to the impact of Chapter 486.

Exhibit 18
Maryland Legal Services Corporation
Operating Revenues and Expenses
Fiscal 2007-2013

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012 Est.</u>	<u>2013 Est.</u>
Revenues							
Interest on Lawyers Trust Accounts	\$6,384,061	\$6,723,236	\$3,951,000	\$2,276,000	\$2,524,000	\$2,500,000	\$2,500,000
Filing Fee Surcharge	6,889,035	7,475,582	7,898,000	8,091,722	12,942,300	12,500,000	12,500,000
Abandoned Property Fund	500,000	500,000	500,000	500,000	500,000	500,000	500,000
MLSC Fund Carryover from Prior Year	601,086	1,874,182	1,073,000	0	0	0	0
Transfers							
Transfer from Reserve Fund	\$0	\$0	\$800,000	\$1,507,000	\$0	\$1,637,303	\$1,612,603
Total Revenue and Transfers	\$14,374,182	\$16,573,000	\$14,222,000	\$12,374,722	\$15,966,300	\$17,137,303	\$17,112,603
Expenses							
Grants	\$11,000,000	\$13,784,550	\$15,000,000	\$11,740,000	\$15,904,977	\$16,380,126	\$16,355,426
Operating Expenses	541,768	664,286	722,488	703,743	707,443	757,177	757,177
Total Expenses	\$11,541,768	\$14,448,836	\$15,722,488	\$12,443,743	\$16,612,420	\$17,137,303	\$17,112,603
Structural Imbalance	\$2,832,414	\$2,124,164	-\$1,500,488	-\$69,021	-\$646,120	\$0	\$0
<i>Dividends, Market Value</i>					\$1,001,289		
<i>Available Reserves on June 30¹</i>	\$7,599,000	\$7,219,000	\$5,380,000	\$4,592,000	\$5,593,289	\$3,955,986	\$2,343,383

MLSC: Maryland Legal Services Corporation

¹ Includes a deposit of \$1,500,000 made by the Maryland Legal Services Corporation in fiscal 2007.

Source: Maryland Legal Services Corporation

Current and Prior Year Budgets

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 2011					
Legislative Appropriation	\$370,346	\$36,717	\$3,998	\$168	\$411,229
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	18,399	663	0	19,063
Reversions and Cancellations	-310	-17,857	-212	-59	-18,437
Actual Expenditures	\$370,036	\$37,260	\$4,449	\$110	\$411,854
Fiscal 2012					
Legislative Appropriation	\$372,372	\$52,554	\$3,595	\$141	\$428,663
Budget Amendments	2,277	161	38	0	2,476
Working Appropriation	\$374,650	\$52,715	\$3,634	\$141	\$431,139

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

Fiscal 2011

The Judiciary completed fiscal 2011 \$625,221 above its legislative appropriation.

General Funds: Actual fiscal 2011 general fund expenditures were below the legislative appropriation due to a \$309,998 reversion.

Special Funds: Actual fiscal 2011 special fund expenditures were \$542,565 above the legislative appropriation. Two budget amendments appropriated additional special funds to reflect a \$11.9 million budget for major IT development projects and \$6.5 million in additional anticipated revenue for MLCS. However, the Judiciary cancelled \$17.9 million in special funds primarily for \$12.7 million for major information technology development projects that are behind schedule and \$4.5 million in unspent funds in the Clerks of the Circuit Court.

Federal Funds: Actual fiscal 2011 federal fund expenditures were \$451,220 above the legislative appropriation. Five budget amendments appropriated \$621,107 in additional federal funds from the federal Department of Health and Human Services for child support enforcement programs in the Family Administration programs. A sixth budget amendment appropriated \$42,163 from the State Justice Institute to support the Alternative Dispute Resolution program. A total of \$212,050 in federal funds were cancelled at the end of the year.

Reimbursable Funds: Actual fiscal 2011 reimbursable fund expenditures were \$58,565 below the legislative appropriation due to unspent funds.

Fiscal 2012

The Judiciary's fiscal 2012 working appropriation is \$2.5 million greater than the legislative appropriation due to the provision of the one-time \$750 bonus. Funds were appropriated in the Department of Budget and Management budget and subsequently allocated to each unit of State government by budget amendment.

**Object/Fund Difference Report
Judiciary**

<u>Object/Fund</u>	<u>FY 11 Actual</u>	<u>FY 12 Working Appropriation</u>	<u>FY 13 Allowance</u>	<u>FY 12 - FY 13 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	3,581.25	3,581.25	3,588.50	7.25	0.2%
02 Contractual	390.00	405.00	446.00	41.00	10.1%
Total Positions	3,971.25	3,986.25	4,034.50	48.25	1.2%
Objects					
01 Salaries and Wages	\$ 278,446,160	\$ 289,360,191	\$ 293,965,793	\$ 4,605,602	1.6%
02 Technical and Spec. Fees	12,769,302	13,937,148	16,086,256	2,149,108	15.4%
03 Communication	10,886,817	11,466,412	11,834,679	368,267	3.2%
04 Travel	1,208,625	1,172,868	1,181,664	8,796	0.7%
06 Fuel and Utilities	900,172	970,759	945,571	-25,188	-2.6%
07 Motor Vehicles	100,247	134,612	137,298	2,686	2.0%
08 Contractual Services	35,687,455	47,894,209	52,764,831	4,870,622	10.2%
09 Supplies and Materials	6,518,424	4,784,508	6,451,430	1,666,922	34.8%
10 Equipment – Replacement	4,136,595	4,293,866	6,142,897	1,849,031	43.1%
11 Equipment – Additional	3,675,926	1,925,992	2,359,101	433,109	22.5%
12 Grants, Subsidies, and Contributions	43,494,180	40,165,797	45,192,852	5,027,055	12.5%
13 Fixed Charges	13,473,116	14,351,872	14,813,699	461,827	3.2%
14 Land and Structures	556,861	681,000	513,000	-168,000	-24.7%
Total Objects	\$ 411,853,880	\$ 431,139,234	\$ 452,389,071	\$ 21,249,837	4.9%
Funds					
01 General Fund	\$ 370,035,613	\$ 374,649,766	\$ 392,399,994	\$ 17,750,228	4.7%
03 Special Fund	37,259,852	52,714,821	56,388,209	3,673,388	7.0%
05 Federal Fund	4,448,780	3,633,647	3,459,868	-173,779	-4.8%
09 Reimbursable Fund	109,635	141,000	141,000	0	0%
Total Funds	\$ 411,853,880	\$ 431,139,234	\$ 452,389,071	\$ 21,249,837	4.9%

Note: The fiscal 2012 appropriation does not include deficiencies.

**Fiscal Summary
Judiciary**

<u>Program/Unit</u>	<u>FY 11 Actual</u>	<u>FY 12 Wrk Approp</u>	<u>FY 13 Allowance</u>	<u>Change</u>	<u>FY 12 - FY 13 % Change</u>
01 Court of Appeals	\$ 12,996,851	\$ 13,530,368	\$ 14,532,387	\$ 1,002,019	7.4%
02 Court of Special Appeals	8,805,697	8,936,839	8,976,868	40,029	0.4%
03 Circuit Court Judges	58,984,777	60,360,014	60,874,218	514,204	0.9%
04 District Court	142,122,396	144,966,972	150,001,956	5,034,984	3.5%
05 Maryland Judicial Conference	22,726	107,650	107,650	0	0%
06 Administrative Office of the Courts	41,483,888	38,298,651	41,781,024	3,482,373	9.1%
07 Court-related Agencies	5,919,532	5,247,884	5,837,015	589,131	11.2%
08 State Law Library	2,389,365	2,398,035	2,648,920	250,885	10.5%
09 Judicial Information Systems	34,834,536	35,886,348	37,714,540	1,828,192	5.1%
10 Clerks of the Circuit Court	85,585,316	96,775,338	98,598,848	1,823,510	1.9%
11 Family Law Division	16,539,437	12,780,725	15,871,453	3,090,728	24.2%
12 Major IT Development Projects	2,169,359	11,850,410	15,444,192	3,593,782	30.3%
Total Expenditures	\$ 411,853,880	\$ 431,139,234	\$ 452,389,071	\$ 21,249,837	4.9%
General Fund	\$ 370,035,613	\$ 374,649,766	\$ 392,399,994	\$ 17,750,228	4.7%
Special Fund	37,259,852	52,714,821	56,388,209	3,673,388	7.0%
Federal Fund	4,448,780	3,633,647	3,459,868	-173,779	-4.8%
Total Appropriations	\$ 411,744,245	\$ 430,998,234	\$ 452,248,071	\$ 21,249,837	4.9%
Reimbursable Fund	\$ 109,635	\$ 141,000	\$ 141,000	\$ 0	0%
Total Funds	\$ 411,853,880	\$ 431,139,234	\$ 452,389,071	\$ 21,249,837	4.9%

Note: The fiscal 2012 appropriation does not include deficiencies.